

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

205

RSA No.4796 of 2019 (O&M)

DATE OF DECISION : 2nd DECEMBER, 2020

HDFC Bank Ltd., SCO No.189-191, Sector-17C, Chandigarh

.... Appellant

Versus

Sanjiv Kumar Jain & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Narender Hooda, Senior Advocate with
Mr. Rishab Raj Jain, Advocate and
Mr. Naveen Sharma, Advocate for the appellant-Bank.

Mr. Chetan Mittal, Senior Advocate with
Ms. Shefali Goayal, Advocate for the respondents.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is the second appeal on behalf of the defendant in the original suit, challenging the concurrent judgments and decrees passed against it by the courts below in a suit filed by the plaintiffs/respondents herein; for recovery of arrears of rent and the electricity charges for the premises which had been rented out to the appellant/defendant/Bank.

2. For the convenience, the parties are being referred to herein as the plaintiffs and the defendant; as they were described in the original suit.

3. Shorn of the unnecessary details, brief facts, as can be delineated from the undisputed, rather, admitted documents of both the sides, are that the plaintiffs were the owner in possession of SCO No.147-148, Sector 17-C, Chandigarh (hereinafter referred to as the 'premises') They were interested in leasing out the abovesaid premises

on rent. The defendant-Bank approached the plaintiffs for taking the same on lease. Accordingly, vide lease deed dated 25.09.2002 the said premises was rented out to the defendant for a period of nine years, i.e. up to 24.09.2011. As per the terms of the lease, the rent for the said rented premises was fixed as ₹1.80 lacs per month. The premises comprised of the basement and the ground floor. As per the terms of the lease deed the rent was to be increased by 15% after every three years. Vide letter dated 15.03.2003 the defendant-Bank had asked owner to construct the RCC flooring and the RCC walls of the basement; to be used as currency chest for the Bank; as per the terms of the lease deed. Accordingly, the said civil work was carried out. Thereafter, by an agreement, the rent of the premises was increased to ₹3.45 lacs per month w.e.f. 01.04.2006. With these terms the said usage period of lease was completed. Thereafter, with effect from the next date itself; the parties entered into the second agreement of lease dated 25.09.2011. The duration of this lease was fixed as one year. There was no provision for extension of the lease period. The compensation for the lease/lease money for this entire period was fixed to be ₹1,45,80,000/-; to be paid in lump-sum. Therefore, the said lease was to come to end on 24.09.2012. Since there was no provision for extension of lease in the second lease deed, therefore, the defendant-Bank issued a notice dated 18.09.2012 intimating the plaintiffs qua termination of the lease w.e.f. 17.10.2012. The defendant-Bank had asked the plaintiffs-lessor to take possession of the premises which the defendant-Bank would hand over on or before the said date. However, the plaintiffs replied to the said notice of termination of the lease by their letter dated 02.10.2012, thereby insisting upon the

bank to first clear the water and electricity dues; and further to ensure the handing over of the said property in the same condition in which it was handed over to the defendant. The plaintiffs sent another letter dated 17.10.2012 writing therein that they had come to take possession of the premises but it was found to be not in the position to be handed over in the same condition in which it was given to the bank at the time of handing over to them. However, it was not mentioned clearly in either of these two letters of the plaintiffs as to what was the alteration in the building which prevented them from taking the possession of the said premises. Since the plaintiffs had not taken the possession of the premises despite being intimated to this effect by the defendant, therefore, the defendant-Bank wrote another letter dated 02.11.2012; referring to their earlier termination notice issued on 18.09.2012; and intimating the plaintiffs that the defendant-Bank had vacated the said premises and that the bank had been calling the plaintiffs for taking possession of that premises. It was further intimated in this letter that despite repeated calls the plaintiffs were not taking over the possession, therefore, the possession of the premises in question stood handed over to the plaintiffs w.e.f. 02.11.2012 and that the defendant-Bank was not liable for payment of any rental or any other compensation, whatsoever, after the said date. As a reply to this, the plaintiffs again wrote a letter dated 12.11.2012 stating therein that they request the defendant-Bank to hand over the possession of the premises in the condition and shape as was handed over to the defendant-Bank on 21.09.2002. Therefore, for the first time; the plaintiffs had introduced the reference date for the condition and shape of the premises to be 21.09.2002, i.e., the date before

the start of the first lease deed between both the parties. Again the plaintiffs had written similar letter dated 24.11.2012 reiterating that they would accept the possession of the property in the condition and in the shape as was handed over to the defendant-Bank on 21.09.2002. It was further asserted in that letter that they had entered into an agreement with some leading jewelry brand of Mumbai for renting out the same and that they had also received an amount of ₹3 lacs in that context. However, the plaintiffs had not actually gone to the defendant-Bank to take the possession of the said premises. Further, again it was not specified as to which alteration the plaintiffs were insisting to be removed before taking over the possession of the premises. As response to this, the defendant-Bank sent legal notice dated 08.12.2012 through their counsel; stating therein that the defendant-Bank had already been requesting the plaintiffs to take over the possession of the premises. The defendant-Bank had called the plaintiffs several times but they were not coming forward to take over the possession of the property. For the first time it came out in writing as to what was the structure which was being referred by the plaintiffs to be removed before they could take over the possession. In this reply the Bank had specifically written that the premises was in the same condition and shape in which it was handed over to it on the initiation of the first lease, except the construction of RCC floor and RCC walls around the basement which was got constructed by the plaintiffs themselves. It was further clarified in this reply that even the amount for raising that construction was borne by the plaintiffs. However, since the said construction was done as per the requirements and specifications of the defendant, therefore, only 50% of the cost of that construction was

borne by the defendant; as per the terms of the first lease deed. Hence, the defendant had intimated to the plaintiffs that the plaintiffs were intentionally not taking over the possession just to prolong the process with an ulterior motive. Accordingly, it was also called upon the plaintiffs that the Bank had already vacated the premises and the possession stood handed over to the plaintiffs w.e.f. 02.11.2012. Hence, it was also called upon the plaintiffs to refund the security amount of ₹37.5 lacs deposited by the defendant-Bank with the plaintiffs, within fifteen days. As response to this legal notice of the defendant-Bank, the plaintiffs sent their reply dated 21.01.2013 through their counsel, in which it was stated that as per the first lease deed dated 25.09.2002 the premises was to be handed over to them in the same condition in which the same was let out to the defendant-Bank. However, since the defendant had not removed the construction/*malba*, which was required to be removed by the defendant-Bank, therefore, it was not possible for the plaintiffs to take possession of the same. The possession can only be handed over to the plaintiffs after removing the said construction. It was further stated that since, the defendant-Bank had paid the rent only up to 17.10.2012, therefore, the security deposits, which were lying with the plaintiffs, are to be adjusted towards the outstanding rent of the premises w.e.f. 18.10.2012.

4. Further, as per the claim of the plaintiffs, they had gone to the premises in February, 2013 for carrying out some civil work, i.e. for demolishing the RCC construction in reference, along with labours. However, they were not permitted to carry out the work. Hence, the plaintiffs approached the police on 14.02.2013 with a complaint against

the defendant-Bank that the Bank was obstructing the plaintiffs in carrying out the work in their premises. When called by the police, the defendant-Bank had given in writing that since despite the termination of lease and repeated requests to take over the possession of the premises, the plaintiffs were not formally taking over the possession of the premises, therefore, although the Bank had deemingly handed over the possession to the plaintiffs but the Bank could not have permitted the plaintiffs to carried out any civil work in the premises. The plaintiffs could have taken the possession of the premises and then could have carried out any work at the premises. Thereafter, by making a statement to the police that since the Bank had admitted its possession over the premises, therefore, the plaintiffs did not want to proceed with their complaint, the plaintiffs had withdrawn their complaint made to the police. One thing to be noted is that even before the police; the plaintiffs never asked the police to ensure that the possession is handed over to the plaintiffs. The plaintiffs only withdrew their complaint by getting the alleged admission of the defendant recorded; to the effect that it was in actual possession of the property.

5. Even after withdrawal of the police complaint the plaintiffs never approached the defendant to formally take over the possession of the premises. Instead, the plaintiffs preferred a rent petition before the Rent Controller, Chandigarh (in short, the 'Rent Controller') for eviction of the defendant-Bank on the ground of non-payment of rent w.e.f. 18.10.2012 to 28.02.2013 @ ₹12.15 lacs per month. This is the period after the defendant-Bank claims to have terminated the tenancy by serving notice upon the plaintiffs. After appearing before the Rent

Controller, the defendant-Bank made a statement that it had never objected to taking possession of the premises by the plaintiffs. However, it was not liable to make any payment of rent after termination of the lease by it. It was also stated by the defendant-Bank that it was ready to hand over the keys to the plaintiffs even now in the presence of the Rent Controller. The plaintiffs also had made a similar statement that they are ready to take the keys. Accordingly, the keys of the premises were handed over to the plaintiffs before the Rent Controller on 07.11.2013. Hence, on the same day the plaintiffs had withdrawn their rent petition by making a statement that they would approach the civil court for recovery of the arrears of rent and other charges. Accordingly, the rent petition had also come to end.

6. In the meantime, since the plaintiffs had not returned the security deposits to the defendant-Bank, therefore, the defendant-Bank had also approached the Debt Recovery Tribunal, Chandigarh (in short, the 'DRT') with a prayer that the security amount was deposited by the defendant-Bank with the plaintiffs in ordinary course of business, therefore, the plaintiffs be directed to return the said amount. This Original Application (OA) was filed before the DRT on 22.10.2013 and it was fixed for first hearing on 29.11.2013 and notice was issued to the plaintiffs. The plaintiffs appeared on 24.12.2013. However, instead of filing reply before the DRT in the main case, the plaintiffs filed an application under Order 7 Rule 11 of the CPC before the DRT.

7. When the above said application was pending before the DRT, the plaintiffs preferred the present suit before the Civil Court on 18.02.2014 seeking recovery of amount of ₹1,27,96,137/- on account of

arrears of rent, interest, electricity and water charges etc. This suit remained pending. However, by order dated 22.04.2016 the DRT dismissed the application filed by the plaintiffs under Order 7 Rule 11 and ordered that the proceedings against the plaintiffs be carried on. Challenging the proceedings before the DRT, the plaintiffs filed CWP No.1634 of 2017 before this court. This Court stayed the proceedings before the DRT vide its order dated 31.01.2017. But in the meantime the suit filed by the plaintiffs had been decreed and the defendant-Bank had already filed appeal before the first appellate court. Therefore, the said writ petition was partly allowed by Division Bench of this court vide order dated 20.03.2018 by ordering the proceedings before the DRT to be kept in abeyance till the appeal filed by the defendant-Bank was decided and further clarifying that the parties shall be at liberty to raise their contentions after the decision of the said appeal.

8. With the above said broad gamut of facts and the documents, the civil court was called upon to decide the liability of the defendant-Bank to pay the arrears of the rent, electricity and water charges and other compensation.

9. The trial court dismissed the suit qua the claim of the plaintiffs regarding the electricity and water charges because the plaintiffs could not prove anything on record that they had made the payment of the electricity and water charges. However, the claim regarding arrears of rent was decreed by the trial court. While partly decreeing the suit, the trial court had recorded a finding that as per the Clause 2(j) of the lease agreement dated 25.09.2011 between the parties, since it was the responsibility of the defendant-Bank to handover the

possession in the same condition in which it was handed over to the defendant-Bank at the time of initiation of the first lease, and the Bank had not handed over the said premises in the same condition, therefore, the Bank was liable to pay the rent up to the date the actual possession was taken by the plaintiffs before the Rent Controller. Accordingly, the suit was decreed along with interest on the said amount from the date of filing of the suit till realization of the amount.

10. Challenging the judgment and decree passed by the trial court, the defendant had preferred appeal before the District Judge, Chandigarh. However, the lower appellate court dismissed the appeal filed by the defendant and upheld the finding of the trial court. The lower appellate court also recorded a finding that although it is not established on record as to who raised the construction of the RCC floor and the RCC walls in question, however, since the defendant was to hand over the possession in the same state in which it had taken the possession, therefore, it was liability of the Bank itself to remove the said structure. Since the said structure was not removed by the defendant-Bank, therefore, the plaintiffs were right in not accepting the possession of the premises and they were entitled to rent for the delayed period. Aggrieved against the said judgments and decree passed by the courts below, the present appeal has been filed by the defendant-Bank.

11. Arguing the case, the learned senior counsel for the appellant has submitted that although the defendant/appellant never accepted that it had raised the construction in question or that it was under any liability to remove the same, however, in any case after the lease was terminated by the appellant-Bank; with due intimation to the

lesser, then the lesser-plaintiffs could not have backed out from taking possession of the said premises on any ground whatsoever. If the plaintiffs had any other claim, the only course available to them was to file a suit for compensation for the damage to the premises, if any. Otherwise also the defendant-Bank had already deposited an amount of ₹36 lacs as security for the rent and proper upkeep of the premises and an amount of ₹1.5 lacs as security for electricity charges, therefore, if there was any amount due towards the defendant-Bank, the same could have been adjusted by the plaintiffs from the said security amount. It has also been submitted by the counsel that there was no unpaid electricity or water bills at the time when the plaintiffs was informed about termination of the lease and was asked to take over the possession. So far as the removal of RCC construction in question, is concerned, even as per the plaintiffs, when subsequently the same was removed by the plaintiffs, then expenses of only ₹2.25 lacs were incurred by them. Hence, at the best this amount of ₹2.25 lacs could have been adjusted by the plaintiffs against the security which was being deposited with them. For such a meager amount, the plaintiffs were neither justified in refusing to take over the possession of the premises nor in not to return the balance of the security amount to the Bank. In fact, ultimately; when the plaintiffs had taken the possession of the premises before the Rent Controller, even then they had taken the same even without removal of the said RCC wall/structure. If they could take the possession of the premises without removal of the RCC construction in Nov., 2013, then they could have taken the possession of the said premises in the same condition in Nov., 2012 as well. Hence, it is clear that the plaintiffs were avoiding taking

possession of the property only to prolong the matter so as to raise the claim of rent at a very hefty amount of about ₹12 lacs per month. This intention of the plaintiffs had even become clear in the letters written by them that they would adjust the security amount towards the rent payable after the date of termination of the lease by the defendant. It is further submitted by the counsel that the defendant was otherwise also handing over the possession in the same condition and shape as was taken over by them under the second lease agreement. Undisputedly, the said RCC walls and floor had come into existence during the tenure of first lease agreement; which stood expired in the year 2011. Thereafter the fresh lease was executed between the parties. At that time the RCC wall and floor was very much existing in the premises. Hence, the plaintiffs could not have insisted that the premises was not being handed over to them in the same condition and shape in which it was taken over by the Bank.

12. While referring to the findings recorded by the courts below, the counsel for the appellant has further submitted that both the courts have wrongly relied upon the clause 2(j) of the agreement to infer that the defendant-Bank was under obligation to return the possession in the same condition and shape in which the premises was handed over to it. It is submitted by the counsel that there is no such provision in first lease deed or the second lease deed. The clause relied upon by the courts below only requires the return of the possession in a condition which was consistent with the covenants of the lease deed entered into between the parties. As per the said covenant the said RCC wall and flooring was to be constructed by the plaintiffs/lessor. They had constructed the same. Although keeping in view the specific requirements of the construction

for the purpose of the defendant-Bank even the defendant had contributed 50% cost of the said construction, however, even that cost was borne by the defendant-Bank only as per the terms of the lease deed. Therefore, if the defendant-Bank was returning the possession with the RCC flooring and the RCC walls then it was perfectly in accordance with the covenants of the lease deed. In the end it is submitted by the counsel for the appellant that even if this is to be taken a case for entitlement of damages to the plaintiffs, then also it was their duty to mitigate the losses so that the amount of damages was kept minimum. Hence, the plaintiffs could have taken possession of the property, demolished the said RCC construction and would have, at the best claimed the said amount from the defendant-Bank, which subsequently happens to be only an amount of ₹2.25 lacs. Accordingly, it is submitted that passing a decree for an amount of ₹1,27,95,137/- is totally beyond the scope of law. It is also submitted by the counsel for the appellant that all the relevant documents had already been placed on record and duly proved or admitted before the courts below. However, the courts below have totally misappreciated the documents. In fact, some of the documents have been totally ignored by the courts below to the total prejudice of the defendant-Bank. Hence, the judgment and decree deserves to be set aside. Accordingly, it is prayed that the present appeal be allowed with costs.

13. On the other hand, the counsel for the respondents/plaintiffs has submitted that the plaintiffs had given the premises to the defendant-Bank without the existence of the RCC wall and flooring. The said construction was raised by the defendant. Therefore, it was obligatory upon the Bank that it removed the said construction before handing over

the possession to the plaintiffs. Since the Bank had not removed the said structure and it tried to handover the possession to the plaintiffs with the said structure, therefore, the plaintiffs were very much within their legal right not to accept the possession of the property and to insist upon demolition and removal of the said structure by the defendant before handing over possession of the premises to the plaintiffs. It is further submitted by the counsel that actual possession of the said premises remained with the defendant-Bank till 07.11.2013, when the keys were handed over to the plaintiffs before the Rent Controller. The electricity and the water bills were also paid by the plaintiffs only. It is also submitted that in their various replies; filed by the defendant-Bank before the Rent Controller, as well as, before the police; and also in the written statement filed before the court, the defendant has accepted that the possession was with the defendant-Bank till 07.11.2013, therefore, the plaintiffs are fully entitled to recover the rent upto this date. Mere writing of the letter dated 02.11.2012 by the defendant-Bank that the possession had been handed over to the plaintiffs, would not amount to handing over the possession of the premises to the plaintiffs unless the same had actually been taken over by the plaintiffs. The counsel has further submitted that both the courts below have recorded concurrent findings of facts against the defendant-Bank. Therefore, in second appeal the defendant cannot be permitted to raise the same issue once again. It is also submitted by the counsel that the argument of the defendant that possession had already been handed over to the plaintiffs on 02.11.2012, is against the pleadings of the parties in which the defendant had

admitted that possession was with them till 07.11.2013. Accordingly, it is prayed that the present appeal be dismissed with costs.

14. Having heard the counsel for the parties and having perused the file, this court finds that the facts are not much in dispute in this case and the substantial issue involved in the present case is; the entitlements and liabilities of the parties; in view of the documents and evidence led on the file. Hence, the following substantial questions of law arise for consideration before this court:

- (i) Whether the plaintiffs-lesser had any right in law to refuse to take back the possession of a premises which was rented out by them, on any ground whatsoever, once the defendant-lessee had terminated the lease and intimated the fact to the plaintiffs-lesser and had also asked the plaintiffs-lesser to take possession of the premises, and also, whether they claim any right to lease money/rent after the date of termination of the lease by the lessee ?
- (ii) Whether the judgments of the courts below are perverse being the consequence of misappreciation of the evidence led on the file ?

15. The answer to the above said issues has to be found in the documents placed on file by the respective parties, which determined the rights of the respective parties. In this regard it is apposite to have a reference to the first lease deed dated 25.09.2002; Exhibit P-1 which was entered into between the parties. As pointed out above, this lease deed was for a period of nine years and the rent was fixed @ ₹1.80 lac per

month with escalation of 15% every three years. The covenants of the agreement were included into the schedule attached to this lease deed. This lease deed specifically shows that it was incumbent upon the lesser to construct the RCC flooring and the RCC walls around the basement area, which was to be used by the defendant-Bank as the currency chest. This was the sole responsibility of the plaintiffs/lesser to raise this construction as per the requirement of the RBI. However, since the RCC structure was to be constructed as per the requirements of the Bank, besides strengthening the structure of the building, therefore, under the terms of the agreement the Bank was also to bear 50% of the expenses for the said construction. This all is so specifically written in the first lease deed dated 25.09.2002, under which the defendant-Bank had entered into the premises. Therefore, since the requirement of the construction of the RCC structure in question by the plaintiffs/lesser was part of the same lease deed under which the defendant-Bank had taken the possession of the said premises, therefore, the defendant-Bank shall be taken to have entered into possession of the said premises along with the RCC structure in question only. Obviously, the defendant-Bank had not forced the plaintiffs/lesser to raise this construction. It was to be provided by plaintiffs as per the terms of the agreement between the parties. However, since the plaintiffs had not constructed the RCC structure in question immediately, therefore, the defendant-Bank had asked the plaintiffs/lesser vide letter dated 15.03.2003 Exhibit D-2 to complete the said structure within a period of 60 days as per the terms of the lease agreement. Therefore, and thereafter, the plaintiffs had constructed the said structure. If the plaintiffs-lesser did not want to

construct the said structure, they were free to move out of the lease by terminating the contract. However, they had chosen to comply with the terms of lease agreement regarding the provision of RCC flooring and the RCC walls as per the lease deed. Therefore, the defendant-Bank could not be fastened with any liability to remove the said RCC structure at the expiry of the lease period. Not only the construction of the said RCC walls and RCC flooring was the responsibility of the plaintiffs/lesser, the plaintiffs/lesser had also got extra benefit on account of the construction of the said structure. This is clear by the fact that under the original lease agreement dated 25.09.2002, the monthly rent fixed by the parties was ₹1.8 lacs per month. However, w.e.f. 01.04.2006 the rent was increased to ₹3.45 lacs per month. This extra increase in rent was made despite the fact that original agreement provided for only 15% increase in the rent after a period of three years. Therefore, but for this construction; and but for the further agreement to increase the rent by the defendant-Bank, in the year 2006, the rent as per the original agreement would have been increased only by an amount of ₹27 thousand, whereas the rent was increased by more than about ₹1.65 lacs per month. Therefore, it is clear that the plaintiffs/lesser had not obliged the defendant-Bank by raising the structure, rather, the plaintiffs/lesser extracted extra benefit on account of the said construction despite the fact that it was the responsibility of the plaintiffs-lesser only under the original agreement also, to provide this structure to the defendant-Bank. This aspect of terms and conditions of the first lease, which required the plaintiffs-lesser to provide the RCC structure in question to the defendant-Bank, has been totally ignored by both the courts below. The Lower Appellate Court has

gone to the extent of writing that it is not clear as to who raised this construction, despite the fact that it is clearly mentioned in the lease deed itself that it was to be provided by the plaintiffs-lesser only and despite the fact that subsequent letter dated 15.03.2003 Exhibit D-2 written by the defendant-Bank clearly asked the plaintiffs-lesser to complete the said structure within sixty days and defendant had also paid an extra amount of ₹5 lacs to the plaintiffs-lesser towards its 50% contribution to the cost of construction. Hence, the courts below have recorded the findings in this regard without even heeding to the terms of the agreement between the parties.

16. The next question, as to who was under liability to remove the said structure and whether the defendant-Bank was to hand over the possession to the plaintiffs-lesser after removing the said structure, is also dependent upon the above said rights and liabilities of the parties under the lease deed. The clause 2(j) of the lease deed which has been relied upon by both the courts below is the same in both the lease deeds between the parties. This clause of the first lease deed, as well as, of the second lease deed, nowhere requires the defendant-Bank to first remove the said structure and then to hand over the possession to the plaintiffs/lessor. Beside this clause also, there is no term/covenant between the parties in either of the lease deeds to the effect that the defendant-Bank would be under liability to remove the said structure before handing over the possession of the same. The clause 2(j) referred to above is reproduced for ready reference:

“2(j) On the expiry of the said period of the lease the
Lessee shall deliver the demised premises in such

order and condition as is consistent with the terms, covenants and conditions on the part of the Lessee herein contained (save and except damage to the demised premises by fire unless the fire has occurred due to negligence of the Lessee), riots, earthquake, storm, war, civil commotion, acts of God and other conditions over which the Lessee shall have no control) SUBJECT ALWAYS to what is stated hereinafter.”

17. The perusal of this clause shows that the Bank was to return the possession of the premises only in such order and condition as was consistent with the terms, covenant and conditions contained in the lease deed, as mentioned above. Since the condition of the lease deed put upon the plaintiffs-lessor the liability of providing the said RCC structure to the defendant-Bank, therefore, it was perfectly consistent with the terms and covenants between the parties if the Bank had offered the possession to the plaintiffs along with the said structure. Therefore, no fault could be found with the conduct of the defendant-Bank in asking the plaintiffs/lessor to take over the possession of the premises along with the said structure. Accordingly, the findings of the court below qua liability of the defendant-Bank to remove the structure before handing over the possession to the plaintiffs is against the terms and conditions of the lease deed entered in to between the parties and has been recorded in ignorance of the evidence led on the file. Accordingly the said findings are reversed.

18. A bare perusal of the lease deed entered into between the parties also shows that although the defendant-Bank had taken the premises on the lease vide first lease deed dated 25.09.2002 Exhibit P-1,

yet the lease deed provided liberty to the defendant-Bank to move out of the agreement at any time by terminating the lease. The said lease deed did not reserve any right with the plaintiffs/lesser to force the continuation of the lease upon the defendant-Bank. So far as the second lease deed dated 25.09.2011 Exhibit D-1, is concerned, a bare perusal of this shows that it was a fixed period lease deed for the duration of one year only. It contained no stipulation of extension of lease at the option of the either parties. Even the rent was specified for a period of one year only and it was paid in lump sum as one time payment. Therefore, the defendant-Bank had not committed any wrong if it had given notice of termination of the lease between the parties at the time of expiry of the period of one year. Rather, it was in conformity with the terms of lease between the parties. Therefore, it was incumbent upon the plaintiffs to immediately accept the possession of the premises on the date when the lease deed expires. The plaintiffs/lesser could not have, by any means, extended the said lease unilaterally and against the wishes of the lessee-Bank for any reason whatsoever. If at all the plaintiffs had any grievance or outstanding claim against the defendant-Bank then the plaintiffs had a remedy to approach the civil court for raising their appropriate claim against the lessee-Bank. Needless to say that in the end also the plaintiffs have approached only the civil court for claiming the compensation from the lessee after taking the possession without removal of the said RCC structure. Therefore, this court find force in the argument of the counsel for the appellant/defendant that if the plaintiffs could take possession of the premises without removal of the structure on 07.11.2013 and subsequently filed a suit for damages/recovery, then there is no reason

why the same course could not have been adopted by the plaintiffs on or before 17.10.2012 by taking the possession of the property as per the offer of the lessee/defendant-Bank. This court does not find any legal basis for the plaintiffs-lesser to extend the period of taking of possession of the premises for a duration of about one year; and then to follow the procedure which they should have followed; in the first instance; in October, 2012 itself.

19. Rather, the sequence of facts shows merit in the submission of the counsel for the appellant that the plaintiffs-lesser intended to delay the process of taking over of the possession just to create a ground for claim of recovery of the rent, which according to the plaintiffs was a hefty amount of more than ₹12 lacs per month. This is reflected from the conduct of the plaintiffs in insisting on return of the possession in the same condition and shape as was handed over to the defendant-Bank even without specifying as to what the Bank was supposed to do to bring the premises in the same condition and shape. Initial stand of the plaintiffs had been totally innocuous in this regard. Subsequently, in their correspondence dated 12.11.2012 Exhibit P-5, the plaintiffs, for the first time, introduced the date of 21.09.2002 to be the reference date qua the condition of the property required to be restored. Even at this stage they were not specifying as to what the Bank was supposed to do to bring the premises in the same shape and condition in which it was handed over to the Bank. It was only when the defendant-Bank referred to some discussion between the parties and pointed out that it was the responsibility of the plaintiffs only to raise the paid RCC construction that the plaintiffs started saying that the specific RCC structure deserves

to be removed by the Bank. Further, the conduct of the plaintiffs in approaching the police, again with the innocuous complaint qua entering into the premises without formally taking possession of the property, and raising a complaint against the defendant Bank that the plaintiffs were obstructed by the Bank in carrying out the civil work, is also significant. When the Bank disclosed to the police that it was ready to hand over the possession, instead of taking the possession of the premises in presence or through the police, the plaintiffs simply withdrew their complaint by getting recorded the fact that possession of the said property was still with the defendant Bank. Hence, this also shows that the plaintiffs were not interested in taking the possession, rather, they were only trying to create some kind of evidence, to negate the communication of the Bank vide letter dated 02.11.2012 which stated that the possession had already been handed over to the plaintiffs. Although it was a bad draftsmanship on the part of the Bank to say that the possession had been handed over to the plaintiffs on 02.11.2012, however, the import and intention of the letter is simply that the said premises stood vacated by the Bank and the possession shall be deemed to have been handed over to the plaintiffs. In any one of the documents or written statement or the statement before any authority, the defendant-Bank has not denied the fact that actual and symbolic possession of the premises was with the defendant-Bank till 07.11.2013, however, the same was continuing with the Bank only because the plaintiffs had failed to take actual possession of the same despite being asked repeatedly. It deserves mention that there is no evidence on file to show that the defendant-Bank was carrying out any kind of operation from this premises after 02.11.2012. Only the lock of

the Bank was put on this premises. Hence, only to create a basis for filing some kind of recovery proceedings against the defendant-Bank, the plaintiffs approached the police and withdrew their complaint without any effective action being taken upon it. Even the proceeding before the Rent Controller is testimony to the intention of the plaintiffs. When the defendant-Bank had been offering them possession of the premises, then there was no reason or occasion for the plaintiffs to approach the Rent Controller. They could have taken the possession of the property by just approaching the defendant-Bank. However, the said proceeding before the Rent Controller were also filed by the plaintiffs only to create ground for recovery of arrears of rent which the plaintiffs tried to create by delaying the taking over of the possession. Otherwise, as mentioned above, the plaintiffs had taken the possession before the rent controller also without removal of the said RCC structure, upon which they were insisting earlier.

20. It is also the argument of the counsel for the respondents that the defendant-Bank had admitted possession of the premises with them up to 07.11.2013 in various communications/reply or written statement filed by authorities and the courts below, therefore, the plaintiffs were entitled to claim the compensation/rent for the period of occupation of the compromise by the defendant-Bank. However, there is no evidence on the file that bank have carried any operation at the premises after 17.10.2012. Therefore, if the Bank was having the keys of the premises on account of denial of the plaintiffs to take the possession of the premises, so as to avoid any damage to be caused to the premises by all and sundry, then plaintiffs cannot claim any compensation/rent of the

premises for a period after the termination of the lease agreement by the defendant-Bank, which was duly communicated to the plaintiffs with a request to take the possession of the premises by 17.10.2012. In any case, the defendant-Bank had made it clear to the plaintiffs by its letter dated 02.11.2012 that it would not be responsible for any rent or compensation after that date, therefore, if the plaintiffs had any grievance against the defendant-Bank they were supposed to approach the court immediately by raising their grievance. However, instead of approaching the court immediately it is the plaintiffs only who kept on moving one authority or the other to extract some kind of alleged admission on the part of the defendant-Bank that it was in possession of the property, and then approached the civil court after a delay of about one year, even that in the same condition in which they could have approached the court immediately on 02.11.2012. Hence, any alleged admission, as referred to by the counsel for the plaintiffs/lesser, is totally non-existence on the file, rather the same is ruled out by the pleadings of the parties, as well as, by the documents on record. It is only the convenient way of reading of the documents and pleadings by the plaintiffs that this argument has emerged from the plaintiffs. Hence, the same is liable to be rejected.

21. In view of the above, this court comes to a conclusion that the plaintiffs-lesser had no right to refuse taking over of the possession of the premises in question for any reason whatsoever. The delay in transfer of possession from the defendant-Bank to the plaintiffs-lesser was only creation of the plaintiffs themselves. The suit filed by the plaintiffs is qua arrears of the rent for delayed period only and for a period after the date of termination of lease. Therefore, they are not entitled to claim any

compensation/damages for the period of delayed handing over of the possession to them.

22. Although the learned counsel for the respondents/plaintiffs has submitted that concurrent finding of facts could not be disrupted by the court in the second appeal, however, this court does not find any merit in this argument. As stated above, the facts are not even much in dispute in this case. It is only the adjudication of rights and liabilities of parties on the basis of undisputed documents which are involved in this case. Moreover, there could not be any blanket rule that the concurrent findings cannot be interfered with in second appeal. It is more a rule of caution and less a rule of law. It would depend upon the facts of the case, as well as, on the evidence led on the file. If the courts below record a finding in ignorance or against the evidence on the file, then the court in second appeal should not only interfere with such findings, rather, it is the legal duty cast upon such a court to appreciate such findings in view of the available evidence and to bring the same in consonance with the evidence led on file. No litigant can claim premium on ignorance of the evidence on file or misappreciation of the said evidence by the courts below. A court would be negating the very rationale of its existence if it denies to undo injustice caused by ignorance or misappreciation of evidence on file only because such injustice has been perpetuated by two courts below. After all second appeal is meant only to undo the injustice perpetuated by two courts below. As mentioned above, the courts below have not only wrongly appreciated the evidence on file and misread the terms of the agreement between the parties, rather, even the material evidence on file has been totally ignored by the courts below. Hence,

this court does not find any substance in this argument of the counsel for the respondents.

23. No other argument was raised by either of the counsel for the parties.

24. In view of the above, the judgment and decrees passed by the courts below are reversed and the present regular second appeal is allowed with costs.

2ND DECEMBER, 2020
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>