

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 01.05.2020

+ RFA 196/2020

BANK OF BARODA ERSTWHILE DENA BANK..... Appellant

versus

SURESH CHAND SETH & ORS.Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Arun Aggarwal, Advocate.

For the Respondent: Ms. Shalini Kapoor, Mr. Dikshant Khanna and Ms. Bindita Chaturvedi, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.10503/2020 (for extension of time for depositing court fee), CM APPL.10504/2020 (exemption from filing duly attested affidavits), CM APPL.10506/2020 (exemption from filing certified copy of the Judgment) & CM APPL.10507/2020 (exemption from filing certified copy of the trial court record)

Exemptions are granted subject to all just exceptions. Appellant shall deposit the court fees and duly attested affidavits within one week of the lockdown being lifted.

Applications are disposed of in the above terms.

RFA 196/2020, CM APPL.10505/2020 (for stay of order dated 20.02.2020), & CM APPL.10508/2020 (for summoning the record from the Trial Court)

1. The hearing was conducted through video conferencing.
2. The Appellant Bank of Baroda has filed the present Appeal impugning order dated 20.02.2020, whereby, the application of the Respondents/Plaintiffs under Order 12 Rule 6 Code of Civil Procedure was allowed and a decree of possession by way of ejectment has been passed in favour of the Respondents.
3. The original tenant in the property was M/s. Dena Bank. By way of acquisition and transfer of undertakings, Dena Bank has been acquired by the Appellant – Bank of Baroda.
4. Subject Suit for ejectment, for permanent injunction and recovery of mesne profit towards user and occupation charges were filed by the Respondents against M/s. Dena Bank, its tenant.
5. M/s. Dena Bank was a tenant in the subject property i.e., comprising of one hall, two toilets and measuring 2000 sq. feet situated on the first floor of property No.E-4, Connaught Place, New Delhi (which was previously known as Property No.E-9, Connaught Place, New Delhi).
6. Dena Bank was inducted as a tenant with effect from 04.07.1957. In the year 2004, the previous lease of the property

expired. By way of a lease deed executed on 22.02.2006, lease of the subject property was renewed in favour of M/s. Dena Bank at a monthly rent of Rs.70,000/- per month for a period of 10 years, with effect from 01.09.2005. It was agreed that there shall be an increase of 25% in the lease rent after every five years.

7. It was agreed that on expiry of the terms of the lease, lease deed could be renewed for a further period of 5 years with an increase in the lease rent by 25%. The precondition for renewal of lease was that the tenant Dena Bank would be required to give one month's notice in advance seeking renewal of the lease.

8. It is the case of the Appellant that they had given the notice for renewal, as stipulated in the lease deed. However, the case of the Respondents is that no such notice was given and accordingly, by notice dated 02.09.2015, the Appellant tenant was required to vacate the premises. Since they failed to vacate the premises, subject Suit for Possession by way of Ejectment as also permanent injunction and for payment of use and occupation charges was filed against the Bank.

9. During pendency of the subject Suit, subject application under Order 12 Rule 6 CPC was filed by the Respondents which has been allowed by the impugned order dated 20.02.2020 and a decree of ejectment has been passed.

10. After arguments, learned counsel for the Appellant, under instructions from Mr. Dalip Kumar Singh, Chief Manager and

constituted attorney of the Appellant seeks leave to withdraw the Appeal. He, however, prays that since it is a service branch of the bank, time may be granted to the bank to vacate the premises till 31.08.2020.

11. Learned counsel for the Appellant submits that he has instructions to undertake on behalf of the Bank that the Bank shall vacate and handover the peaceful vacant possession of the tenanted premises to the Respondents on or before 31.08.2020. Appellant has also filed an affidavit of undertaking of Mr. Dalip Kumar, the Chief Manager and constituted attorney of the Appellant Bank over e-mail today, to that effect.

12. Learned counsel for the Appellant further submits that he has instructions to undertake on behalf of the Bank that till 31.08.2020, the Bank shall continue to pay use and occupation charges, as directed by the Trial Court by its order dated 25.10.2018.

13. Learned counsel for the Appellant further submits that in terms of order dated 25.10.2018, the use and occupation charges for the period with effect from 01.09.2015 till the Appellant Bank vacates, is subject to further orders to be passed in the Suit after trial on the said issue.

14. Learned counsel for the Appellant further submits that he has instructions to undertake on behalf of the Bank that Appellant shall clear all water, electricity and other dues/charges in respect of the

tenanted premises before the petitioner vacates the premises on or before 31.08.2020.

15. Learned counsel for the Appellant further submits that he has instructions to undertake on behalf of the Bank that the Appellant shall not sublet, assign or part with the possession of the tenanted premises or any part thereof. Appellant further undertakes that Appellants shall not cause any damage to the property and shall hand over the peaceful vacant possession of the tenanted premises to the Respondents in a condition as existing today, subject to normal wear and tear.

16. Learned counsel appearing for the Respondents submits that the undertaking is acceptable to the Respondents.

17. In view of the above, the Appeal of the Appellant is dismissed as withdrawn.

18. Subject to the Appellant bank filing a fresh affidavit of undertaking in the above terms, execution of impugned order dated 20.02.2020 shall remain stayed till 31.08.2020.

19. Appellant shall continue to pay the use and occupation charges till 31.08.2020 as per the order dated 25.10.2018 of the Trial Court. The use and occupation charges for the period 01.09.2015 till the time Appellant vacates the premises shall be subject to further orders to be passed in the Suit by the Trial Court after trial.

20. Fresh affidavit of undertaking of the duly authorised officer shall be filed within two weeks from today. In case the lockdown on account of COVID 19 is not lifted within the period of two weeks and Appellant is not in a position to have the affidavit attested, Appellant shall file the affidavit certified by the Advocate and shall thereafter file a proper duly attested affidavit of undertaking within one week of the lifting of the lockdown.

21. Copy of the judgment be uploaded on the website and be also forwarded to learned counsels through email.

MAY 01, 2020
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SANJEEV SACHDEVA, J

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