

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**FA No. 273 of 2016**

Amirchand Arora S/o Late Shri B.D. Arora, Aged About 55 Years R/o New Khurshipar, Police Station Khursipar Bhiali, Tahsil And District Durg, Chhattisgarh

---- Appellant/Plaintiff**Versus**

1. Chief Manager, The Oriental Insurance Company Limited , Main Office, Oriental House A 25/27 Asafali Road, New Delhi, Undersigned Authorized Signatory Shri K.S. Chhabda, Regional Manager, Malviya Nagar, Durg, District Durg, Chhattisgarh
2. Divisional Manager, The Oriental Insurance Company Limited, Branch Bhilai, Office Shivnath Complex, 1st Floor, G.E. Road Supela, Bhilai, Tahsil And District Durg, Chhattisgarh

----Respondents/Defendants

For Appellant	:	Mr. Viprasen Agrawal, Advocate
For Respondents	:	Mr. Sandeep Shrivastava, Advocate

Hon'ble Mr. Justice P. Sam Koshy
Hon'ble Mrs. Justice Rajani Dubey, JJ

Par, Hon'ble Mr. Justice P. Sam Koshy**10/11/2021**

1. Present is a plaintiff's first appeal under Section 96 of the C.P.C. assailing the impugned judgment dated 16.02.2016 passed in Civil Suit No. 23-B/2013 decided by the 2nd Additional District Judge, District Durg. Vide the impugned judgment the learned Court below has partly allowed the suit for recovery.
2. The brief facts relevant for the disposal of the present first appeal is that the appellant/plaintiff is the owner of the suit premises situated at Block No.9, Plot No.1 measuring 1800 sqft on G.E. Road Supela, Bhilai. An agreement for rent was entered into between the plaintiff

and the respondents (Exhibit P/1). The agreement was for a period of 10 years starting from 01.01.1999 to 31.12.2008 with a renewable clause at the discretion of the tenant/lessee. As per the agreement, the respondents were to pay rent for the suit premises @ Rs.4/- per sqft on monthly basis. Though the suit premises measured 1800 sqft, but the carpet area was 1603 sqft and the monthly rent agreed upon @ Rs.4/- per sqft came to Rs.6412/- per month.

3. For proper understanding of the dispute involved in the present first appeal, it would be relevant at this juncture to take note of the two clauses in the agreement i.e. Clause (1) and (2), which for ready reference is being reproduced hereinunder:-

“(1) The lessee agrees to take and the lessors agree to give on lease the aforesaid premises at a monthly rent of Rs.6412/- (Rupees Six thousand four hundred and twelve only) @ Rs.4/- per sq.feet/carpet area.

(2) The lease shall initially commence on the 1st January of 1999 and shall in the first instance be for a period of 10 (TEN) years ending on 31st day of December, 2008, and shall be renewable at the discretion of the lessees after every five years with in escalation clause of 25% on the last rent paid.”

4. In terms of the agreement referred to in the preceding paragraph, there was no dispute as long as the first 10 years of the agreement is concerned i.e. up till 31.12.2008. Subsequent to 31.12.2008, the respondents intended to renew the agreement clause in terms of the conditions agreed as per the agreement. Since the appellant/plaintiff was not ready to extend/renew the agreement on the same terms and conditions, initially they also did not accept the monthly rents that was being paid by the respondents/tenant and finally the respondents/tenant vacated the premises on 28.02.2011.

5. The whole claim of the appellant in the present dispute revolves around the occupation of the suit premises by the respondents/ company for the period between 01.01.2009 to 28.02.2011 i.e. for 26 months. Much after the respondents/company having vacated the premises on 28.02.2011 after paying the rent in terms of the agreement entered into between the parties in 1999, the appellant/ plaintiff filed the instant suit for recovery claiming arrears of rent and also cost for the damages caused to the premises. After the pleadings were complete, the learned Court below framed main issues i.e. :

“(i) Whether the tenancy agreement entered into between the appellant and the respondents in respect of the suit premises, the commercial complex has come to an end on 31.12.2008 ?

(ii) Whether there is a clause for a rise in the rent @ 25% for the next 5 years beyond 31.12.2008 envisaged in the agreement ?

(iii) Whether the appellant/plaintiff is entitled for cost for maintenance and damages to the tune of Rs.1,20,000/- for the maintenance of the tiles, wiring, furniture, walls, etc. which has damaged ?

(iv) Whether the plaintiff was entitled for the relief sought for ?”

6. After the pleadings were complete and the recording of the evidence, the Court below passed the impugned judgment partly allowing the suit to the extent holding that the respondents/tenant was entitled for payment of rent at the enhanced rate of 25% beyond 31.12.2008 till the property was finally vacated on 28.02.2011. Since the respondents/tenant had already deposited an amount of Rs.1,89,154/- in the CCD of the Court, the said amount was to be adjusted from the rent payable as ordered by the Court below. It is this judgment which is under challenge in the present appeal.

7. The contention of the appellant was that there was no renewal of the contract or agreement between the parties beyond 31.12.2008. In the absence of the renewal of the agreement, the respondents/tenant could not have retained the premises in terms of the agreement which was executed for 10 years only and which stood culminated on 31.12.2008. It was the further contention of the appellant/plaintiff that beyond a period of 31.12.2008 since the area of the suit premises had been substantially processed and developed, the rental income at that area got substantially increased and therefore the appellant/plaintiff was also entitled for the prevailing rent, which according to the plaintiff was approximately Rs.30/- per sqft, which comes to around Rs.54,000/- per month. It was the further contention of the appellant that in the absence of renewal of the agreement, the respondents/tenant would be entitled for payment of the prevailing market rent and not the rent which was agreed upon more than 10 years back.
8. Per contra, the learned counsel appearing for the respondents/company submitted that Clause (2) of the agreement (Exhibit P/1) specifically provides for the renewal of the agreement beyond 31.12.2008 and the renewal was at the discretion of the tenant i.e. the respondents. The respondents/tenant was interested in retaining the premises in terms of the agreement with a hike in rent by 25% for the next 5 years from 01.01.2009 and that it is only when the appellant/landlord refused to accept the tenancy of the respondents/company, they decided to vacate the premises and shift their office to another location. Accordingly they had vacated the premises on 28.02.2011 and till 28.02.2011 the entire rents payable in

terms of the agreement with a hike of 25% as agreed upon between the parties was paid to the appellant/landlord. Thus, the suit is totally baseless and devoid of merits and the same deserves to be rejected. It is the further contention of the respondents that the plaintiff also has not been able to substantiate his claim before the respondents in any manner and in the absence of any substantive cogent material evidence before the Court below, the judgment under challenge does not warrant interference and the appeal deserves to be rejected and prayed for that.

9. Having heard the contentions put forth on either side and on perusal of record, some of the admitted factual matrix as is reflected from the pleadings is that:-

- (i) There was an agreement between the appellant and the respondents initially for a period of 10 years from 01.01.1999 to 31.12.2008. As per the terms of agreement the rent fixed for the said suit premises was @ Rs.4/- per sqft for the carpet area per month, which came to around Rs.6412/- per month.

- (ii) The agreement had a renewal clause at the discretion of the tenant. The renewal Clause was with a hike in rent by 25% for the next 5 years.

- (iii) The respondents intended to continue with the tenancy beyond 31.12.2008 also. They had also tried to pay the monthly rent beyond 31.12.2008 in terms of the agreement, which however was refused to be accepted by the appellant/landlord. Finally, the respondents/company vacated the premises on 28.02.2011 after clearing the rent as per the earlier agreement.

10. Now the issue to be considered by this Court is, whether there was any sufficient force available with the appellant/plaintiff claiming for the arrears of rent as claimed for @ Rs.30/- per sqft amounting to

Rs.54,000/- per month and also whether there was any material available to show that the respondents/company has caused damages to the suit premises, for which the plaintiff would be entitled for the cost of maintenance and repairs. From the evidence, which is available on record and which has come before the Court below, it appears that the first legal notice sent by the plaintiff to the respondents/company was on 07.04.2011 i.e. much after the respondents/company had vacated the premises on 28.02.2011.

11. Another admitted position, what is reflected from the pleadings is that the respondents/company has been ever willing to pay the rent to the appellant/plaintiff beyond 31.12.2008 also with a hike by 25%. There is also evidence to show that the respondents/company had been making efforts in paying the rent to the appellant/ plaintiff repeatedly which was always refused by the appellant/ plaintiff. From the evidence it is also clear that there was no material to show on the part of the appellant/plaintiff of having issued any notice to the respondents for vacating of the premises beyond 31.12.2008 except by the first legal notice on 07.04.2011. The one document which the plaintiff referred to as Exhibit P/1 dated 27.03.2009, there is no proof of such a correspondence made to the respondents/ company, nor is there any proof of the service of the said letter to the respondents/ company while they were in occupation of the said premises.
12. Another aspect which needs consideration is that the plain reading of clause (2) of the agreement between the parties clearly stipulates that beyond 31.12.2008 also the lease was renewable at the instance of the lessee with an escalation clause of 25% after every 5 years on the

last rent paid. The fact that it was left at the discretion of the lessee for renewal and the lessee retaining the premises beyond 31.12.2008 it has to be presumed and assumed that the respondents/lessee was in fact interested in continuing with the lease with an escalation clause of 25% on the last rent paid for the next 5 years. The very term 'renewal' means renewal of the terms and conditions agreed upon between the parties. It does not under any circumstances mean a requirement of a fresh terms of agreement. Further, there is no material brought on record by the plaintiff before the Court below to show that the existing market rent near the suit premises was around Rs.30/- per sqft, neither is there any material brought on record by the plaintiff to show that there has been a damage incurred to the suit premises, which led to the appellant/plaintiff incurring a cost of Rs.1,20,000/-.

13. In the absence of the aforesaid evidence by the appellant/plaintiff, we are of the considered opinion that the finding arrived at by the Court below is fair enough and is strictly in accordance with the evidence, which has come on record and also in terms of the agreement entered into between the parties. It cannot be lost sight of the fact that it was the appellant who has filed the suit and it was the appellant who was raised a claim against the respondents/company. Therefore, in the circumstances the burden of proof rest upon the plaintiff to establish his case by leading strong cogent evidence. As discussed in the preceding paragraphs, there is no material produced by the plaintiff in support of his contention. On the contrary, the evidence and the cross-examination of the appellant/plaintiff before the Court below by itself speaks volume, so far as the accepted terms and conditions

and the renewal clause available in the agreement and the part played by the respondents so far as making efforts in making the monthly rental payments to the appellant/plaintiff.

14. For all the aforesaid facts and circumstances of the case, we are of the considered view that no strong case has been made out by the appellant calling for an interference with the impugned judgment and decree. Accordingly, the first appeal being devoid of merits deserves to be and is accordingly rejected affirming the judgment and decree passed by the Court below.
15. The Registry to draw a decree accordingly.
16. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Rajani Dubey)
Judge

Ved