

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3123 OF 2021

M/s. Concrete Developers,
A partnership firm registered under
the Partnership Act through its Partner
Mr. Nitish Rameshchandra Chordia,
Aged about 46 years, Occ.: Business,
R/o. 96, Atharva Apartment, Shivaji
Nagar, Nagpur having its office at 151,
Anjali Apartment, Gandhi Nagar,
Nagpur.

.. Petitioner

Versus

1. Central Bank of India,
Head Office at Chandermakhi,
Nariman Point, Mumbai – 400 021.

.. Respondents

2. Central Bank of India,
Through its Senior Manager,
Canal Road, Ramdaspath,
Nagpur.

Mr. R.M. Bhangde, Advocate for petitioner.

Mr. S.N. Fuladi, Advocate a/w Ms. S.D. Khatri, Advocate for respondent
Nos.1 and 2.

CORAM : MANISH PITALE, J.

RESERVED ON : 04.04.2022

PRONOUNCED ON : 05.05.2022

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned counsel appearing for the rival parties.

(2) The petitioner i.e. original plaintiff is aggrieved by order dated 06.08.2021 passed by the Court of Additional Judge, Small Causes Court, Nagpur, whereby application at Exhibit 93, moved by the petitioner under Order 12 Rule 6 of the Code of Civil Procedure (CPC) for passing decree on admission, has been rejected.

(3) The petitioner filed suit for ejectment, possession, damages and mesne profits against the respondents claiming that it is entitled for a decree and that the respondents ought to deliver possession of the suit property to the petitioner. The suit is based on a registered indenture of lease dated 22.07.2005. The same was executed for the period of five years from 01.08.2005 to 31.07.2010. It is the case of the petitioner that the said indenture of lease clearly stated that while it was executed for the period of five years, it could be renewed for further two periods of five years each. It was submitted that when the period of first five years under the said document was to expire, the respondents had proposed a fresh lease but, the same did not fructify into a fresh lease for the reason that the respondents did not agree for 20% increase in the rent.

(4) In response, the petitioner had given a counter offer,

which was not accepted by the respondents and they insisted upon the same terms as were applicable to the first period of five years of the lease. As a result, the lease was not executed afresh and the respondents continued in the said premises.

(5) According to the petitioner, when it was found that despite exchange of number of communications between the parties, the respondents were not proceeding in the matter and they continued to occupy the said premises, the petitioner gave notice on 27.09.2014 to the respondents under Section 106 of the Transfer of Property Act, 1882, which was received by the respondents on 29.09.2014. On this basis, the petitioner claimed that the occupation of the premises by the respondents from 01.11.2014 was rendered illegal and accordingly, on 12.01.2015, the petitioner filed the aforesaid suit.

(6) The petitioner further claims that in the written statement filed in the aforesaid suit, the respondents admitted that the indenture of lease dated 22.07.2005, was for the period of five years between 01.08.2005 and 31.07.2010. The petitioner further claimed that when the contents of the said indenture of lease dated 22.07.2005 were admitted by the respondents, it was evident that even if two

further renewals of five years each were to be taken into consideration, the maximum period under the said document stood expired on 31.07.2020. In fact, the petitioner claimed that the respondent No.2 itself by letter dated 08.12.2011, in response to a communication sent by the petitioner, specifically conceded that the date of expiry of the lease upon maximum two renewals of five years each was 31.07.2020.

(7) On this basis, after 31.07.2020 i.e. on 27.02.2021, the petitioner moved the aforesaid application at Exhibit-93 under Order 12 Rule 6 of the CPC for passing decree on admissions given by the respondents. It was stated that in view of the pleadings in the written statement and as per letter on record dated 08.12.2011, even as per the respondents the period of lease expired on 31.07.2020 and therefore, a decree of possession ought to be passed in favour of the petitioner. The said application was opposed by the respondents and it was submitted that the pleadings on record did not amount to admission as claimed by the petitioner.

(8) By the impugned order dated 06.08.2021, the Small Cause Court rejected the application by observing that the written statement was filed in the year 2015 itself and that the application

moved much later could not be considered favourably. It was further held that the documents on record and the alleged admissions would have to be considered along with other evidence, thereby demonstrating that the petitioner had failed to make out a case for a decree on admissions under Order 12 Rule 6 of the CPC.

(9) In the present writ petition, upon notice being issued for final disposal, the respondents entered appearance through counsel. The respondent is a Bank and in the premises in question, a Branch of the said Bank is functioning.

(10) Mr. R.M. Bhangde, learned counsel appearing for the petitioner submitted that the Court below erred in rejecting the application under Order 12 Rule 6 of the CPC. The learned counsel referred to the aforesaid provision and by inviting attention of this Court to the written statement of the respondents and particularly the letter dated 08.12.2011 on record, it was vehemently submitted that the Court below erred in holding against the petitioner. It was submitted that the application under Order 12 Rule 6 of the CPC being moved in the year 2021, could not be said to be belated and that the Court below erred in making observations to that effect. It was

submitted that the application was moved immediately in February 2021, after the date of expiry of the maximum period of lease even as per the respondents on 31.07.2020. It was submitted that the aforesaid registered indenture of lease executed on 22.07.2005, itself specifically provided for a maximum of two renewals of five years each. It was submitted that even though the respondent – Bank had continued in possession of the premises without executing any fresh lease with increased rent as contemplated under the clauses in the said indenture of lease, the maximum period for which the respondent – Bank could have continued in possession of said premises was till 31.07.2020 and that this fact was admitted in the written statement as well as the letter dated 08.12.2011, sent by the respondent No.2 itself in the context of the aforesaid lease.

(11) The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in the cases of *Sevoke Properties Limited Vs. West Bengal State Electricity Distribution Company Limited*, 2020 (11) SCC 782, *Payal Vision Limited Vs. Radhika Choudhary*, 2012 (11) SCC 405 and *Firm Srinivas Ram Kumar Vs. Mahabir Prasad and Ors.*, AIR 1951 SC 177 and the

judgment of the Delhi High Court in the case of *Surjit Sachdev Vs. Kazakhstan Investment Services Pvt. Ltd. & Ors.* 1997 SCC OnLine Del 129. He also relied upon the judgment of the Hon'ble Supreme Court in the case of *National Company Vs. Territory Manager, Bharat Petroleum Corporation Ltd., and anr.* 2021 SCC OnLine SC 1042, wherein conduct of the respondent Corporation therein of continuing in occupation of the premises was found to be unbecoming.

(12) On the other hand, Mr. S.N. Fuladi, learned counsel appearing for the respondents submitted that no case for grant of decree on admission was made out in the facts and circumstances of the present case. It was submitted that after the first five year period of the aforesaid indenture of lease expired on 31.07.2010, the petitioner continued to accept the rent deposited by the respondents. It was submitted that the aforesaid Act on the part of the petitioner in accepting the rent demonstrated that the relationship between the parties was no longer under the said lease and that therefore, the contentions raised on behalf of the petitioner could not be accepted. It was submitted that the series of communications exchanged between the parties, indicated that although demands were raised by

the petitioner for increasing the rent, the respondent – Bank had continued in the premises and the petitioner had indeed continued to receive rent with regard to the same. It was submitted that a perusal of the written statement would indicate that although reference was made to the indenture of lease dated 22.07.2005 executed between the parties, there was no admission that the date of expiry of the lease with renewals was 31.07.2020. It was further submitted that letter dated 08.12.2011, relied upon the petitioner was being read out of context and therefore, the Small Causes Court was justified in rejecting the application at Exhibit-93 and that the matter deserved to go to trial.

(13) This Court has appreciated the contentions raised on behalf of the rival parties. The material on record has been perused. The respondent No. 2 – Bank entered into the premises as a lessee on the basis of the aforesaid registered indenture of lease dated 22.07.2005, for the period between 01.08.2005 to 31.07.2010. This fact is not disputed by the parties. It is also not disputed that as per the terms of the said lease-deed, the parties could enter into the process of renewal of the lease for further two periods of five years each. The

relevant clauses also provided that if the respondents were desirous of further terms of five years each, they shall pay 20% rise in the rent.

The relevant clauses of the said indenture of lease read as follows :-

*“WHEREAS THE lease has applied to the Lessor for a Lease of 1675 sq. ft. on Ground Floor of Building bearing N.M.C. House No.191, Ward No.72, Canal Road, Ramdaspath, Nagpur being a part of the premises described in the Schedule hereto (which part is hereinafter unless otherwise distinguished for brevity's sake called ‘the demised premises’) for a term of 5 years certain from the 1st day of August 2005 with two options of 5 years to the Lessee **to renew the Lease as hereinafter mentioned;**”*

“3. The Lessor doth hereby convenient with the Lessee as follows :

(f) That, if the lessee shall be desirous of continuing the term hereby granted for a further term of 5 years from the day of 01.08.2010 at the expiration of the period hereby granted and shall at least thirty days before the day of 31.07.2010 or earlier given to the Lessor a notice in writing of such of its desire and shall pay 20% rise in the rent hereby reserved and perform the several stipulations herein contained and on its part to be observed unto the termination of the term hereby granted then the lessor shall demise the demised premises to the Lessee for a further term of 5 years from the day 01.08.2010 upon the same terms and conditions as are herein contained including the covenant for renewal.

(g) That if the Lessee shall be desirous of continuing the term hereby granted for a further term of 5 years from the day of 01.08.2005 at the expiration of the period hereby granted and shall at least thirty days before the day of 31.07.2015 or earlier give to the lessor a notice in writing of such of its desire and shall pay 20% rise in the rent hereby reserved and perform the several stipulations herein contained and on its part to be

observed upto the termination of the term hereby granted then the lessor shall demise the demised premises to the Lessee for a further term of 5 years from day of 1st August 2015 upon the same terms and conditions as are herein contained including the convenient for renewal”.

(14) The above quoted clauses do show that while the indenture of lease was executed for the period between 01.08.2005 to 31.07.2010, two options of five years for renewal of lease were available, subject to conditions as stated in the said document. It was stipulated that if the respondents desired to continue for further terms of five years each from 01.08.2010 and 01.08.2015, the respondent – Bank would issue a notice in writing thirty days prior to the dates of expiry of the periods i.e. on 31.07.2010 and 31.07.2015, expressing such a desire and it was mandatory to pay 20% rise in the rent.

(15) A perusal of the written statement shows that the contents of the said paragraph of the plaint, which referred to the indenture of lease dated 22.07.2005 and wherein the aforesaid clauses were quoted, was not denied. In fact, it was stated that the contents of the said paragraph were a matter of record. The respondents raised dispute about the manner in which the petitioner wanted to proceed in the matter and reference was made to the communications exchanged

between the parties.

(16) In the series of communications exchanged between the parties, letter dated 08.12.2011 sent by the respondent No.2 was undisputed and in the said letter, it was recorded that the date of expiry of lease was 31.07.2020. In fact, this was a communication from the respondent No. 2 – Bank, stating that the proposal made by the petitioner was approved by the Managing Committee of the respondent – Bank and the terms of conditions stated in the said letter included specific reference to the lease and the fact that the date of expiry of lease was 31.07.2020.

(17) This Court is of the opinion that the true purport of the contents of the written statement and the said document on record dated 08.12.2011, was not properly appreciated by the Court below while passing the impugned order. Even though the respondent – Bank claimed that the petitioner had accepted the rent, the fact that the maximum period for which the respondent – Bank could continue in the premises expired on 31.07.2020, could not be denied in view of the material on record.

(18) A perusal of the aforesaid material shows that even as per the pleadings of the respondents on record and the document addressed by the respondent No.2 itself to the petitioner, it is evident that the date of expiry of the lease being 31.07.2020, was an admitted position on facts.

(19) In this situation, it needs to be examined as to whether a decree of possession must immediately follow on expiry of the lease on 31.07.2020, as per the admission of the respondents and whether a decree could be passed in favour of petitioner on the basis of such admission.

(20) This Court is of the opinion that in the face of admissions in the pleadings and the documents on record on behalf of the respondents, decree of possession must follow immediately upon expiry of the period of lease stretched to the maximum i.e. up to 31.07.2020. It cannot lie in the mouth of the respondents to claim that the matter must continue further before the Small Causes Court till the trial proceedings terminate, for the reason that in view of the aforesaid admissions, nothing further remains in dispute and there is no question of the parties leading any further evidence as regards the

said issue about expiry of the lease on 31.07.2020.

(21) The learned counsel for the petitioner is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of *Firm Srinivas Ram Kumar (supra)* wherein it has been held that the demand by the plaintiff based on the defendants' own plea cannot possibly be regarded with surprise by the defendants and there is no question of adducing evidence on the facts admitted by the defendants in their pleadings.

(22) In the case of *Payal Vision Limited (supra)* the Hon'ble Supreme Court held that when the tenancy is not protected under the provisions of the Rent Control Act and the relationship between the parties terminates by lapse of time, a suit for recovery can be decreed in terms of Order 12 Rule 6 of the CPC. It has been held that in such cases the only question that needs to be determined is, as to whether the admission is clear and unequivocal.

(23) In the case of *Sevoke Properties Limited (supra)*, it was held that when a tenant continues in the premises even after the expiry of the period of lease, such a tenant holding over is a tenant at

sufferance and it does not create a tenancy of any kind.

(24) The Delhi High Court in the case of *Surjit Sachdev (supra)*, in similar circumstances, held that even if it was to be assumed that the lease stood further extended for specific period during pendency of the suit and the extended period also expired, the plaintiff in the admitted factual position would be entitled to a decree under Order 12 Rule 6 of the CPC. It was held that in such a situation there was no question of any prejudice being caused to the defendant, in view of the admitted factual position.

(25) In the present case, a perusal of the written statement of the respondents and the documents placed on record shows that even as per the respondents, according to the steps allegedly taken by them, including exchange of number of communications with the petitioner, the lease stood extended in terms of the indenture of lease dated 22.07.2005. The said document gave a maximum of two options of renewal of five years each, which would take the period up to 31.07.2020. The respondents admitted the

aforesaid indenture of lease dated 22.07.2005 and the specific clauses quoted in the plaint, by stating that they were a matter of record. The aforesaid letter dated 08.12.2011 sent by the respondent No.2 – Bank itself to the petitioner further reiterated that even according to the respondents the lease between the parties remaining alive, the last date on the basis of two consecutive renewals, was 31.07.2020. Thus, the petitioner could certainly invoke Order 12 Rule 6 of the CPC to claim a decree of possession after 31.07.2020. The said application seeking such a decree was indeed immediately moved in February 2021, but the Small Causes Court erroneously observed that it was belated.

(26) In fact, the Small Causes Court committed an error in holding that the petitioner was not entitled to the decree on admission, since this Court finds that the aforesaid material on record demonstrates a clear admission that the lease could remain alive at the maximum till 31.07.2020. Hence, it is found that the impugned order deserves to be interfered with.

(27) The petitioner is also justified in relying upon the judgment of the Hon'ble Supreme Court in the case of *National*

Company Vs. Territory Manager, Bharat Petroleum Corporation Ltd. (supra), wherein it has been observed that the conduct of the respondent – Corporation therein, in continuing in occupation of the premises without paying rent was unbecoming. In the present case also, it is an admitted position that after 31.07.2020, the petitioner did not receive a single penny towards rent. The respondent – Bank claimed that it was ready to pay the amount of rent, but the petitioner was not accepting the same. No fault can be attributed to the petitioner in such circumstances as the maximum period for which the lease could have remained alive expired on 31.07.2020 itself. In view of the clear and unequivocal admission of the respondents about the said fact of expiry of lease on 31.07.2020, the application for grant of decree on admission filed under Order 12 Rule 6 of the CPC ought to have been allowed by the Small Causes Court.

(28) In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. The application at Exhibit-93 filed under Order 12 Rule 6 of the CPC for passing decree in view of admissions, is allowed to the extent that the petitioner (original Plaintiff) is entitled to a decree of possession in respect of the

suit premises. The respondents (original Defendants) are directed to put the petitioner in possession of the suit premises within three months from today. Consequently, the decree of possession be drawn up in favour of the petitioner.

(29) Rule is made absolute in above terms. No costs.

[MANISH PITALE J.]

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