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

Date of decision: 29.11.2023

+ **EX.F.A. 48/2023 and CM APPL. 61346/2023 & 61347/2023**

ALLAHABAD BANK

NOW KNOWN AS INDIAN BANK

..... Appellant

Through: Mr. Satyam Khare & Mr. Deshraj,
Advocates.

versus

MR CHETAN GADI THROUGH ITS ATTORNEY

SH. NARENDER KUMAR GADI

..... Respondent

Through: None.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present appeal impugns the orders dated 17.11.2023 passed by the Additional District Judge – 07 (West), Tis Hazari Courts, Delhi in Ex. No.353/22, titled as **Chetan Gadi v. Allahabad Bank** ('Executing Court') whereby the Executing Court dismissed the objections filed by the Appellant and vide separate order dated 17.11.2023 the Executing Court directed for issuance for warrants of attachment against the movable properties of the Appellant.

1.1. The Appellant is the original judgment debtor and the Respondent is the original decree holder before the Executing Court.



1.2. The execution petition arises out in pursuance of the order dated 14.12.2023 passed in the Civil Revision Petition bearing No. 121/2019 passed by the Coordinate Bench of this Court, titled as **Chetan Gadi v. Allahabad Bank** ('Revision Petition') filed by Respondent against the Appellant herein.

1.3. In the Revision Petition, the Coordinate bench of this Court partly decreed the civil suit of the Respondent filed before the ADJ-01, West/Tis Hazari Courts, Delhi in Civ DJ/612585/2016 ('Trial Court') with respect to the recovery of possession of the premises A-3/32, Ground Floor, Janakpuri, New Delhi-110058 ('suit premises') against the Appellant with the direction to be vacated on or before 30.09.2022. It was further directed to the Appellant to pay use and occupation charges of Rs. 1,60,000/- per month for the period commencing from 1st January, 2022 and besides the use and occupation charges, the applicable service tax and statutory charges will also be payable by the Appellant.

1.4. Thereafter Respondents filed the execution petition against the Appellant for execution of the order dated 14.12.2021 to recover the arrears of use and occupation charges. The Respondents claimed use and occupation charges for the period January 2022 till May 2022 as per the said order. The Appellant herein filed objections disputing its liability by seeking adjustment of the advance rent lying deposited with the Respondent. However, as the objections filed by the Appellant in the said execution petition before the Executing Court was dismissed vide impugned order dated 17.11.2023. The Executing Court has directed the Appellant to make good the entire amount for the said period. Hence the present appeal has been preferred by the Appellant.



2. Learned counsel for the Appellant states that the Executing Court has failed to examine Clause 16 of the Lease Deed dated 29.05.2006.

2.1. He states that in Clause 16 of the Lease Deed, it is contemplated that the deposit of advance rent of six (6) months will be adjusted at the time when the suit premises are vacated by the Appellant, bank.

2.2. He states that the Appellant herein, therefore, sought adjustment of the amount of Rs. 6,34,500/- which were paid as advance rent to the Respondent towards the amount payable for the arrears of use and occupation charges.

2.3. He states that considering the fact that the Appellant herein is a Nationalized Bank, therefore, there the Respondent can have no apprehension with respect to recovery of amount, in the event, decree of mesne profits is passed by the Trial Court post-trial.

2.4. He states that Rs. 6,34,500/- is the only amount due and the Appellant is entitled to seek an adjustment. He states that the said amount has also been accounted for in audit for the said purpose.

3. None appears on behalf of the Respondent.

4. This Court has considered the submissions of learned counsel for the Appellant and perused the record.

5. The Executing Court vide order dated 17.11.2023 has rejected the aforesaid submission of the Appellant in view of the order dated 14.12.2021 passed by the Coordinate Bench of this Court in the Revision Petition. The operative paragraph of the said order dated 14.12.2021 reads as under:

“10. Admittedly, the Bank is a tenant in respect of the suit premises. Thus, the Bank cannot continue in possession of the suit premises, without negotiating a fresh lease deed with the Plaintiff-landlord. Accordingly, the following directions are issued:



- i. Suit being **CivDJ/612585/2016** titled **Chetan Gadi v. Allahabad Bank** is partly decreed for recovery of possession against the Bank, with effect from 1 October, 2022. The bank shall hand over vacant and peaceful possession of the premises to the Plaintiff on or before 30 September 2022. Prior to vacating the premises, all electricity and water dues including other statutory dues, if any, shall all be cleared by the bank for the entire period while it was in occupation. No damage shall be caused to the property by the bank.
- ii. Use and occupation charges of Rs. 1,60,000/- per month for the period commencing from 1 January, 2022 as also service tax, shall be paid by the Bank directly to the Plaintiff/Landlord, by the tenth of every calendar month.
- iii. The payment of the above use and occupation charges fixed by this Court as also the service tax would be without prejudice to the rights of the parties and subject to the final adjudication of the damages/mesne profits as claimed in the suit."

(Emphasis supplied)

6. In view of the aforesaid unequivocal directions issued by the Coordinate Bench, the Executing Court has opined that the Appellant herein has been directed by the said order to pay use & occupation charges as per the directions contained therein for the period from 01.01.2022 to 20.07.2022 since the possession of the suit premises were handed over to the Respondent on 20.07.2022. However, the Appellant herein by filing the said objections is seeking adjustment of the advance rent deposited towards the use and occupation charges. The Executing Court has rejected the said contention of the Bank and passed the following order:

"7. The only issue to be considered is whether the advance rent is liable to be adjusted towards the use and occupation charges directed to be paid by the JD vide Order dated 14.12.2021. As has already been mentioned above, the main suit regarding payment of damages/use and occupation charges at the rate of Rs. 150 sq. ft. w.e.f. 01.03.2016 along with certain other prayers is still pending. The issue adjustment of the advance rent in sum of Rs. 6,34,500/- shall be decided after the trial in the main civil suit is complete. Besides, as per the directions of Hon'ble High Court of Delhi, payment of the above mentioned use and occupation charges fixed in Order dated 14.12.2021 as also the service tax would be



without prejudice to the rights of the parties and subject to the final adjudication of the damages/mesne profit as claimed in the suit.

8. It is not disputed that on 21.07.2022 an amount of Rs. 4,02,300/- has been transferred in the bank account of the DH by the JD after Order dated 14.12.2021 was passed by Hon'ble High Court of Delhi. This amount is, therefore, liable to be adjusted towards the present execution petition.

9. In these circumstances and in view of the directions of Hon'ble High Court of Delhi, the Court does not find any ground to allow the objection of the JD and to adjust advance rent in sum of Rs. 6,34,500/- towards the use and occupation charges payable in terms of Order dated 14.12.2021 of Hon'ble High Court of Delhi.”

7. In the opinion of this Court, there is no error or infirmity in the order passed by the Executing Court as the order dated 14.12.2021 is unequivocal and clear. The order of the Co-ordinate Bench is unequivocal in its direction to the Appellant Bank to pay the use and occupation charges from the date 01.01.2022. The Executing Court cannot go behind the decree. There was no direction of the Co-ordinate Bench to permit adjustment as sought by the Appellant Bank in the execution proceedings.

8. The Executing Court has rightly held that the Appellant herein has a right to seek adjustment of the advance rent deposit and which will remain available to it against the final decree of *mesne* profits passed by the Trial Court in the civil suit filed by the Respondent.

9. For the aforesaid reasons, this appeal is completely devoid of merit and is accordingly dismissed. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 29, 2023

B.S. Rohella/ms

Click here to check corrigendum, if any