IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

IA No. GA 1 of 2024

In

R.V.W.O. No. 16 of 2024

T.E. Thomson & Company Limited

Versus

Musical Films Private Limited

Mr. Krishna Raj Thaker, Sr. Adv.
Mr. Chayan Gupta
Mr. Rittick Chowdhury
Mr. Dwip Raj Basu

… For the plaintiff/ petitioner.

Mr. Jayanta Mitra, Sr. Adv.
Ms. Manju Agarwal, Sr. Adv.
Mr. Rishi Agarwal
Ms. Anju Manot

… For the defendant/respondent.

Hearing Concluded On : 28.11.2024

Judgment On : 05.12.2024

Krishna Rao, J.:

1. The plaintiff has filed the present Review application for review of the order passed by this Court dated 19th December, 2023 in I.A. No. G.A 1 of 2019 (Old No. GA 626 of 2019) in C.S. No. 258 of 2018 wherein the application filed by the plaintiff under Chapter XIIIA of the Original Side Rules of this Court for summary was dismissed.

2. Mr. Krishna Raj Thaker, Learned Senior Advocate representing the plaintiff submits that this Court considered the rent bills prior to February, 2017 and arrived at the conclusion that the plaintiff has paid monthly rent, occupier's shares of Municipal Tax and Commercial charges separately but this Court has not considered the rent bills on and from February, 2017 till November, 2017 when the last paid rent was Rs.10,080/- which was duly acknowledged and accepted by the defendant and made payment of the same by a single cheque of Rs. 10,080/- and there was no bifurcation of the said amount of Rs. 10,080/-.

3. Mr. Thaker further submits that the factual matrix of the present case and in the case of ***Rajshri Productions Private Limited Vs. T.E. Thomson and Company Limited*** reported in ***2023 SCC OnLine Cal 899*** are similar wherein the Hon'ble Division Bench upheld the order passed by this Court by allowing the application under Chapter XIIIA of the Original Side Rules of this Court but this Court has erred in coming to the conclusion that the fact of the present case and in the case of

Rajshri Productions Private Limited (supra) is not similar. He further submits that the last paid rent by the defendant in the case of ***Rajshri Productions Private Limited (supra)*** was Rs. 10,080/- per month which is exactly same in the present case as the last paid rent was Rs.10,080/- per month.

4. Mr. Jayanta Kumar Mitra, Learned Senior Advocate representing the defendant submits that the Review is not maintainable and if the plaintiff is aggrieved with the judgment passed by this Court dated 19th December, 2023, the plaintiff could have preferred an appeal before the appropriate Court. He submits that the Memorandum of Review does not contain any cogent ground for review of the Judgment dated 19th December, 2023.

5. Mr. Mitra submits that it is settled law that a party is not entitled to seek a review of the judgment merely for the purpose of rehearing and a fresh decision of the case. Mr. Mitra submits that under Order 47, Rule 1 of the Code of Civil Procedure, 1908, a judgment may be open to review if there is a mistake or an error apparent on the face of the record. He submits that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 of the CPC, 1908.

6. Mr. Mitra submits that one of the ground on which the plaintiff has filed the Review application is that the last rent paid was Rs. 10,080/-

per month which was duly acknowledged and accepted by the defendant. He submits that at no point of time the defendant has ever accepted that the rent in respect of the said premises was or is Rs. 10,080/- per month. He submits that the defendant has annexed the documents to show that on and from September, 2015, the rent of the premises was Rs. 7,200/-, Rs. 1,440/-was being paid on account of commercial surcharge, i.e. Rs. 4320/- per quarter. He submits that till November, 2017, the defendant had made payment of rent as also the occupier's share of municipal tax and commercial surcharge but from the month of November, 2017, the plaintiff refused to accept the rent.

7. Mr. Mitra submitted that this Court in paragraph 19 of the judgment categorically held that the plaintiff is claiming that the total monthly rent is Rs. 10,080/- on the basis of the bills raised by the plaintiff for recovery of arrears but the defendant has relied upon the documents wherein it reveals that even in 2015 and 2017, the defendant has paid the monthly rent, occupier's shares of the Municipal Tax and commercial charges separately. He submits that this Court while passing judgment considered the defence of the defendant made in paragraphs 11 and 12 of the affidavit-in-opposition and come to the conclusion that the defendant has raised triable issue and no summary judgment can be passed.

8. Heard the Learned Counsel for the respective parties perused the materials on record. The first contention raised by the plaintiff in the present Review application that this Court has considered the rent bills prior to February, 2017 but has not considered the bills on and from February, 2017 to November, 2017. The plaintiff raised the contention that the last paid rent was Rs. 10,080/- which was duly accepted by the defendant and made payment by a singular cheque of Rs. 40,320/- being the bills raised by the plaintiff dated 1st December, 2017 being the rent for the month of August, 2017 to November, 2017.

The contention raised by the plaintiff in the present application is duly dealt by this Court in paragraph 15 of the Judgment dated 19th December, 2023 which reads as follows:

> ***"15.*** *The documents appearing at pages 10, 11 and 12 of the application, reveal that the plaintiff has raised rent/arrears bill of the suit premises from the defendant for the month of February' 2017 to November' 2017 @ Rs. 10,080/- per month and at page no. 13 of the application, the defendant has paid an amount of Rs. 40,320/- by way of cheque to the plaintiff (wrongly recorded as defendant). Relying upon the said document, the plaintiff raised the contention that the monthly rent was fixed at Rs. 10,080/- and the same was duly accepted by the defendant and without any objection the defendant has paid the same to the plaintiff. In paragraph 5 of the said application, the plaintiff is stated that : "the rent last paid by the respondent for the demised portion is Rs. 10,080/- per month. This is the amount of rent that the respondent has been paying since the month of September, 2015". In contrary, the defendant has enclosed a document at pages 43 to 46 dated 30th September, 2015 and 28th February, 2017, wherein it reveals that the plaintiff has accepted the monthly rent from the defendant for the month of September' 2015 and for the month of February' 2017 @ Rs. 6,900/- per month and in addition to the monthly rent Rs. 1,380/- occupier shares of municipal tax and Rs. 7 1,380/- charges for surcharge on Calcutta Municipal Corporation Tax. As per the statement made in paragraph 11 of the Affidavit-inopposition, it is the specific case that the*

> *plaintiff is entitled to enhance Rs. 300/- on existing rent and 20% of Rs. 300/- on account of occupier share of municipal tax as Rs. 60/- and 20% as commercial surcharges as Rs. 60/- total aggregating to Rs. 420/- and the total amount would come Rs. 10,080/-."*

The plaintiff has admitted that till February, 2017, the monthly rent was Rs. 6,900/- per month and in addition to the monthly rent Rs. 1,380/- was occupier's shares of the Municipal Tax and Rs. 1,380/- charges for surcharge on Calcutta Municipal Corporation Tax. The defendant has made out a specific case that the plaintiff is entitled to enhance Rs. 300/- on the existing rent and 20% of Rs. 300/- on account of occupier share of Municipal Tax as Rs. 60/- and 20% as commercial surcharges as Rs. 60/- total aggregating to Rs. 420/- and the total amount would be Rs. 10,080/-.

Considering the above, this Court held that the defendant has raised triable issue whether the amount of Rs. 10,080/- is the total monthly rent or includes the occupier's share of the Municipal tax and commercial charges.

9. The second contention raised by the plaintiff that this Court erred in coming to the conclusion that the judgment passed by the Appellate Court in the case of ***Rajshri Productions Private Limited Vs. T.E. Thomson and Company Limited*** reported in ***2023 SCC OnLine Cal 899***, is distinguishable from the facts and circumstances of the present case.

Paragraphs 10 and 11 of the above judgment reads as follows:

> ***"10.*** *The proposition of law as enunciated in the aforesaid report exposes that the property tax cannot ipso facto come within the purview of the rent but depends upon the intentions and the conduct of the parties in relation thereto. It can be safely said that there is no uniform principle that the property tax shall be outside the purview of the rent but it depends upon the facts of the each case which can be conceptualised from the examples quoted in the aforesaid passage. It has been held that if the parties have agreed that the amount shall include the tax then in that event the tax component will become a part of the rent. There is no scintilla of doubts in our mind that every component in respect of the enjoyment of the premises payable to the landlord may not come within the definition of a rent as it depends upon the intentions and the conduct of the parties in relation to the tenancy having created. Any amount or a component which is variable in nature cannot be regarded as a component of the rent even if it is paid along with the basic rent.*
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> ***11.*** *On the conspectus of the aforesaid proposition of law, let us see whether the defence of the appellant justifies that the portion of the municipal tax or the surcharge is not a component of the rent nor can be regarded as an integral part of the rent for the purpose of determining the quantum of the rent so that it can fall outside the purview of the exempted clause. As already discussed three components constitute the payment per month at the instance of the appellant, our attention is drawn to the rent receipts issued by the respondent for the months of January and February, 2017 which indicates that a sum of Rs. 6,900/- was basic rent and a sum of Rs. 1,380/- was the occupier's shares of municipal tax totalling Rs. 8,280/-, which is admittedly below the cap of Rs. 10,000/- as indicated in clause (f) of Section 3 of the Act of 1997. It is apparent from the record that the tenancy was created many years before and the occupation of the appellant in respect thereof is more than decades. The rent which was initially fixed might have been enhanced from the time to time either by virtue of the terms and conditions incorporated in the agreement or by*

> *mutual agreement between the parties. The rent which was fixed at the time of creation of the tenancy may not be the same by passage of time. After the month of January and February, 2017, we cannot ignore the correspondences exchanged between the appellant and the respondent in the month of June and subsequent thereto. By virtue of a letter dated June 2, 2017 issued by the appellant, there is a clear stipulation that they are enclosing the rent and the arrears which became due from September, 2015 to be accepted by the landlord. It is clearly indicated in the said letter that the rent at the rate of Rs. 10,080/- for the months of April, 2015 and May, 2017 are also enclosed by virtue of cheques being issued in this regard. The subsequent letter dated July 20, 2017 would reveal that since the rent for the month of February, 2017 which was paid by cheque was not encashed and the period of validity of the cheque has expired, a fresh cheque for the rent of the said month is further enclosed which indicates a sum of Rs. 9,660/-. However, by a subsequent letter dated July 25, 2017, the appellant in categorical terms indicated that the rent for the month of June, at the rate of Rs. 10,800/- is paid by a cheque and asked the landlord/respondent to issue the rent receipts therefor. The landlord responded to the aforesaid payment on 1st December, 2017 issuing rent receipts for the aforesaid months and there is no ambiguity that the rent from the months of April to July, 2017 was accepted and agreed at the rate of Rs. 10,080/-. Even in the month of March, the appellant caused a letter dated 12th March, 2018 enclosing the cheques towards the rent for the months of December, 2017 and January, 2018 at the rate of Rs. 10,080/-."*

In the above judgment there are three letters issued by the appellant (tenant), letter dated 2nd June, 2017, letter dated 20th July, 2017 and letter dated 25th July, 2017. In the letter dated 2nd June, 2017 issued by the appellant, there is a clear stipulation that they are enclosing the rent and the arrears which became due from September, 2015 indicating that the rate of rent was Rs. 10,080/- for the month of

April, 2015 and May, 2017. The letter dated 20th July, 2017, reveals that since the rent for the month of February, 2017 which was paid by cheque was not encashed and the period of validity of the cheque was expired and a fresh cheque for the rent of the said month is further enclosed which indicates a sum of Rs. 9,660/- but by way of subsequent letter dated 25th July, 2017, the appellant in categorical terms indicated that the rent for the month of June, at the rate of Rs. 10,080/- is paid by a cheque and asked the landlord to issue rent receipts thereof.

The said fact is missing in the present case. The plaintiff raised bills and the defendant has paid the rent by way of single cheque but has raised specific defence that the said amount is not the total rent and includes occupier's shares of the Municipal Tax and charges of surcharge on Calcutta Municipal Corporation Tax.

10. Considering the above, this Court did not find any ground to review of the judgment passed by this Court dated 19th December, 2023, accordingly, Review filed by the plaintiff is dismissed.

11. **R.V.W.O. No. 16 of 2024** with **G.A No. 1 of 2024** are **dismissed**.

(Krishna Rao, J.)