



2024 : DHC : 4207



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

% *Judgment reserved on: 26.02.2024*
Judgment pronounced on: 22.05.2024

+ CM(M) 1070/2023, C.M. No. 34772/2023

MANISHA KASANA Petitioner

Through: Mr. Vikas Aggarwal, Adv.

versus

UNION BANK OF INDIA & ANR. Respondents

Through: Ms. Rupak Srivastava, Adv.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The collective owners of the suit property i.e. Shop No.13 & 14, Old Market, Tilak Nagar, New Delhi 110018, admeasuring 88 square yards each, are the petitioner (plaintiff no.3) and respondents no.3 & 4 (plaintiffs no.1 & 2). The Respondent no.1 (defendant no.1) is a public sector bank headquartered in Mangalore, with one of its branches located at the suit property, and the respondent no.2 (defendant no. 2) serves as the branch head of respondent no.1 bank.

2. Respondents no.1 & 2 have taken on lease the suit property from the joint owners i.e. petitioner and respondents no.3 & 4 on multiple occasions, with the latest lease deed dated 19.07.2017, with a validity of 15 years. The



clause 10 of the registered lease deed dated 19.07.2017 provides for termination and vacation of the suit property.

3. A letter dated 01.05.2018 from the Support Service Department of respondent no.1/bank requested the vacation of the first and second floors of the suit property by 31.07.2018, along with a refund of the security deposit.

4. Consequently, the lease deed dated 19.07.2017 was terminated as the respondent nos. 1 & 2 provided a three-month notice period before vacating the second floor, which was accepted by the respondent no.1/bank. In response to the letter dated 01.05.2018, the petitioner, through a letter dated 10.05.2018, informed the respondents that only one floor could be vacated at a time. Subsequently, the Support Service Department of the respondent no.1/bank confirmed in a letter dated 06.09.2018 that they had vacated the second floor, allowing the plaintiffs to take possession.

5. Despite the plaintiffs' letter dated 08.09.2018 stipulating that only one floor could be vacated, the respondent no.1/bank, via a letter dated 19.02.2019, served notice to vacate the first floor by 31.05.2019 and demanded a refund of the security deposit.

6. In their representation dated 27.02.2019 to respondent no.1 bank, the petitioner and respondent nos. 3 & 4 (plaintiffs) emphasized that the suit property was constructed to suit the specific needs of the respondent no. 1 bank and was intended to be let out as a single unit. The lease was consistently renewed on the same terms and conditions. Clause 10 of the lease deed stipulated that the bank could vacate any floor only after termination of the lease deed.



7. Subsequently, in another letter dated 08.05.2019, the petitioner and respondent nos. 3 & 4 (plaintiffs) requested the respondent nos. 1 & 2 to vacate the entire suit property, but received no response. A notice dated 23.05.2019 was then sent, informing the respondent nos. 1 & 2 that the tenancy was terminated as per the letters dated 01.05.2018 and 19.02.2019, and by virtue of the letter dated 01.05.2018, the respondent no.1/bank had become a month-to-month tenant. The petitioner and respondent nos. 3 & 4 (plaintiffs) terminated the month-to-month lease and demanded the respondent nos. 1 & 2 to vacate the suit property within 15 days of receiving the legal notice, but no later than 15.06.2019.

8. In response, the respondent nos. 1 & 2 sent a letter dated 04.06.2019, stating they had vacated the first floor of the suit property and would not pay rent thereafter. The petitioner and respondent nos. 3 & 4 (plaintiffs) objected to the said move of respondent nos. 1 & 2 that since the lease was terminated, the respondent no. 1 bank became a month-to-month tenant, and is now unauthorized occupants of the suit property. Consequently, the petitioner and respondent nos. 3 & 4 (plaintiffs) filed the present suit for possession, mesne profits, and permanent injunction against the respondent nos. 1 & 2.

9. Following this, Respondent no. 1/Bank filed its Written Statement denying the facts presented in the plaint. It was specifically denied that the suit property was constructed to suit the needs of the respondents. Respondent no. 1/Bank claimed that the property was already constructed before it was leased to them. Referring to clause 10 of the lease deed, respondent No. 1 bank argued that they had the right to vacate any floor of



the premises at any time. Respondent No. 1 further contested that they were not obligated to vacate the leased floors only after termination of the lease deed. According to respondent nos. 1 & 2, the termination of the lease deed by the petitioner's notice dated 23.05.2019 was against the provisions of Section 106 of the Transfer of Property Act, 1892. Respondent No. 1 bank claimed that despite the alleged notice dated 23.05.2019, the petitioner and respondent nos. 3 & 4 (plaintiffs) continued to receive rent at the rates agreed upon in the Lease Deed, thereby waiving the notice.

10. The respondents filed an application under Section 151 of the Code of Civil Procedure Code, 1908, seeking to submit the keys of the first floor of the suit property. This request was granted by the learned Trial Court with the observation that *"From reading of the said Clause, on the face of it, it appears that defendants had a right to vacate any of the floors at any point of time. However, without going into merits of the case and without prejudice to the contentions of both parties, the defendant is permitted to place on record the key of the first floor with the court and plaintiffs shall be at liberty to take the same against acknowledgment."*

11. Thereafter, the learned Trial Court after perusing the record and the submissions of the parties opined that the suit is based upon the interpretation of Clause 10 of the lease deed dated 19.07.2017 and formulated the preliminary issue as *"Whether the lease dated 19.07.2017 qua the entire suit property has been terminated by the defendant on 01.05.2018 as alleged by the plaintiff? If so, its effect"*. The said issue was decided by the learned Trial Court in favor of the respondent no. 1 bank vide order dated 03.03.2023.



12. Vide the impugned order, the learned trial court held that on 01.05.2018 the respondent no. 1/bank did not terminate the lease and it only communicated to the petitioner and respondent nos. 3 & 4 (plaintiffs) that the respondent no. 1 bank would be vacating the first and second floors of the property and that the clause gave the right to the respondent no. 1 bank to vacate any floor of the premises at any point of time and consequently decided the issue in favor of the respondent nos. 1 & 2. Aggrieved by the passing of the impugned order, the petitioner (plaintiff no. 3) has preferred the present petition before this court.

13. Learned counsel for the petitioner submitted that the respondent nos. 1 & 2 while proposing to vacate the first and second floor of the suit property vide their letters dated 01.05.2018 and 19.02.2019 had issued a three months notice proposing to vacate the second and first floor respectively of the suit property and the said letter amounts to termination of the lease dated 19.07.2019. It was submitted that under clause 10 of the lease deed, the respondent nos.1 & 2 could not have vacated any floor of the suit property without first terminating the lease deed. Moreso, the lease deed being a composite document cannot be terminated in parts with respect to each floor.

14. It was submitted that respondent no.1/bank upon termination of lease deed by virtue of its letter dated 01.05.2018 has become month to month tenant w.e.f. 06.09.2018. The petitioner and respondent nos. 3 and 4 (plaintiffs), therefore, terminated the lease and tenancy culminated into month to month lease of the respondent no.1 bank with respect to the suit property. Hence the petitioner called upon the respondent nos. 1 & 2 to



vacate the suit property within 15 days of the receipt of said legal notice and in no event later than 15.06.2019.

15. The learned counsel submitted that the learned Trial Court has ignored the vital fact that one common lease deed is executed for four separate floors of the building with separate rent and security deposits and termination of the entire lease i.e. all the floors can only be done by giving a 3-months notice. The right to vacate separate floors at any time is dependent upon the termination of the entire lease and cannot be exercised in isolation of the same, meaning thereby that the vacation of different floors cannot be made without first terminating the lease in its entirety and for that purpose 3 months' notice is to be given.

16. It was submitted that the said fact is evident from the letter dated 01.05.2018 issued by the respondents giving an exact 3-months notice to vacate the first and second floor and demanding refund of security deposit of the said floor. The respondent bank again on 19.02.2019 issued notice dated 19.02.2019 that it shall vacate the first floor on 31.05.2019 again giving a 3-months notice.

17. The learned counsel submitted that the respondent bank therefore, while giving 3-months notice to vacate the two floors thereby complied with clause 10 (i) of the lease deed. The learned counsel submitted that the learned Trial Court failed to appreciate the use of the word “and” in clause 10 of the lease deed, requiring the fulfillment of all the conditions, “and” is used to connect the two parts of the sentence in clause 10.

18. To controvert the submissions, the learned counsel for the respondent submitted that the lease deed dated 19.07.2017 was never terminated by



respondent nos.1 and 2 vide their letter dated 01.05.2018. The plain meaning of the clause 10 of the lease is, the lessee shall have the right to vacate any floor of the premises at any point of time, which was with respondent no.1, thus it could at any point of time partially revoke its tenancy as per terms of the lease deed by surrendering any of the floors which the respondent no.1 does not require for its banking business. It was submitted that by no stretch of imagination, can it be deduced that as per clause 10 of the lease deed, the respondent no.1 would have the right to vacate any of the floors but could only be done after termination of the lease deed.

19. The learned counsel also submitted that the termination of the lease by the petitioner and others vide a notice dated 23.05.2019 was not as per the provisions of Section 106 of Transfer of Property Act, 1882. Hence the respondent nos.1 and 2 were well within their rights to partially revoke its tenancy and surrendered two floors, and by no means the respondent no.1 bank had terminated its tenancy.

20. Submissions heard, record and impugned order perused.

21. The learned Trial Court has passed a well reasoned order. Pertinently, the entire controversy in the present petition rests on the interpretation of clause 10 of the lease deed.

22. The terms of clause 10 of the lease deed are clear and without any ambiguity. On the plain reading of the clause, it is clear that it is phrased in two parts which are as follows:

- (i) *That the lessee alone shall have the right to terminate the lease at any point of time during the period covered by indenture of the lease by giving 3 months' prior notice to the date of such termination of lease;*



and

(ii) The lessee shall have right to vacate any floor of the premises at any point of time.

23. Accordingly, from the above, it is evident that right to terminate the lease is solely of that of respondent no.1 bank. It is further clear from part (i) of the clause that lessee can only by giving 3 months' prior notice from the date of termination of lease can terminate the lease. According to part (ii) of clause 10, the lessee has a right to vacate any floor (basement, ground, first or second at any point of time) and there is no stipulation for giving any prior notice to be served upon the petitioner and others before respondent no.1 decides to vacate any floor. Furthermore, from the letter dated 01.05.2018 issued by the support service department-zonal office of the respondent nos.1 and 2, it is apparent that the respondent no.1 had only informed the petitioner and others that they would be vacating first and second floor of the suit property due to certain internal developments and they demanded the security deposits which were separate for each floor of the suit property. Therefore, it is clear that respondent no.1 had no intention to terminate the tenancy but by virtue of clause 10 of lease deed, it had surrendered the first and second floor of suit property. In case the lease had to be terminated, then the possession of the entire suit property was to be surrendered, otherwise it is not logical as to why respondent no. 1 bank will keep the basement and the ground floor of the property after termination of the lease deed.



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24. Having considered the above, no infirmity could be found in the impugned order. Consequently, the petition along with pending application is dismissed.

SHALINDER KAUR, J.

MAY 22, 2024
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