

SUPREME COURT OF INDIA

Gulab Chand Bhora

Vs.

Punjab National Bank.

C.A.No.9677-9678 of 2011

(H.L.Gokhale and Ranjan Gogoi, JJ.)

11.11.2013

JUDGMENT

Ranjan Gogoi, J.

1. Delay in filing the application for substitution is condoned.
2. Application for substitution is allowed.
3. Aggrieved by the reversal of the decree passed in their favour by the learned Trial Court and the dismissal of the cross objection filed, the plaintiffs have filed the present appeals.
4. The appellants-plaintiffs are the owners of the premises which were let out to the respondent-bank. The area of the tenanted premises measures 7565 square feet located on the ground, first and second floor of a building situated in Ward No.13 of Kharagpur Town in the State of West Bengal. The aforesaid tenancy was on the basis of an unregistered agreement between the parties effective from 01.06.1978 for a period of 6 years with the option of continuance of the tenancy for a further period of 5 years. The monthly rent was agreed between the parties at Rs.2200/-. By mutual agreement, the tenancy continued on expiry of the initial 5 years thereof until 30.06.1989. Thereafter, the appellants-plaintiffs claimed enhanced rent at the rate of Rs.3/- per square feet. It appears

that the Senior Manager of the defendant Bank and the plaintiffs arrived at a mutual settlement for enhancement of the rent to Rs.2/- per square feet. This was on 12.11.1990. However, the higher authority in the Bank disowned the authority of the Senior Manager to take such a decision. Thereafter, the regional building committee of the bank in its meeting held on 05.07.1993 also recommended renewal of the lease agreement at the enhanced rent of Rs.2/- per square feet for a period of 5 years with effect from the date of expiry of the earlier agreement i.e. 01.07.1989 and, thereafter, further enhancement of rent at the rate of 45% for an additional period of 5 years. The aforesaid recommendation of the regional building committee was signed by the Manager (GAD), Senior Manager as well as the Regional Manager of the defendant-bank.

5. It appears that notwithstanding the above, the defendant-bank continued to occupy the premises on payment of rent at the old rate. This led the appellants to institute Money Suit No.143 of 1994 claiming a decree of Rs.9,46,892.50/- being the balance of the arrears of rent calculated at the rate of Rs.2/- per square feet for the period from 01.07.1989 to 30.06.1994 and, thereafter, for the period from 01.07.1994 upto the end of the month of November, 1994 (suit was filed on 23.11.1994) at the rate of Rs.2.90/- per square feet. Along with the aforesaid amount, the appellants- plaintiffs had also prayed for grant of interest at the rate of 12% per annum.

6. The claim in the suit was resisted by the defendant-bank contending that there was no fresh agreement between the parties on expiry of the earlier tenancy on 30.06.1989. According to the defendants, the demand for enhanced rate raised by the appellants-plaintiffs; the decision dated 12.11.1990 and the recommendations of the regional building committee dated 05.07.1993 did not give rise to any concluded agreement between the parties in order to entitle the appellants-plaintiffs to the reliefs claimed in the suit.

7. The learned Trial Court, after noticing the respective stand of the parties; the evidence brought on record and after specifically taking note of the stand taken before it on behalf of the defendant-bank that the bank was ready to pay the rent as per the recommendations dated 05.07.1993 of the regional building committee, by its judgment dated 11.02.1999 thought it fit to decree the suit for enhanced rent at the rate of Rs.2/- per square feet for the period from 01.07.1989 to 30.06.1994 and further at the rate of Rs.2.90/- from 01.07.1994 to 30.06.1999. However, for the reasons assigned by the learned Trial Court, the claim of interest was declined. It may be specifically noticed that the learned Trial Court while decreeing the suit as aforesaid took into account the recommendation of the regional building committee which document was duly exhibited in the suit (Exbt.20).

8. Aggrieved by the decree of the learned Trial Court dated 11.02.1999 the Bank filed an appeal before the High Court. In the said appeal the appellants filed their cross-objections as against the refusal of interest. The High Court by its impugned judgment and decree dated 08.02.2008 and 28.01.2008 respectively set aside the decree passed by the learned

Trial Court leaving it open to the appellants-plaintiffs to move the Rent Controller for fixation of fair rent for the premises in question. Consequently, the cross-objection filed by the appellants was dismissed. In doing so, the High Court came to the conclusion that as there was no concluded contract between the parties with regard to enhanced rent on expiry of the period of the lease, it is only the Rent Controller under the Tenancy Act who could have determined the fair rent of the premises. The High Court, therefore, left it open to the appellants-plaintiffs to move to the Rent Controller. Aggrieved by the aforesaid reversal of the decree passed in their favour and the dismissal of the cross-objection, the present appeals have been filed.

9. We have heard learned counsel for both the parties.

10. From the several documents exhibited in the suit by the appellants-plaintiffs, it is clear that prior to the expiry of the lease the appellants-plaintiffs had given notice(s) for continuance of the tenancy at the enhanced rate(s) claimed therein. The rent, as claimed, was on the basis of the rent prevailing in the locality where the premise was located. Of particular significance would be the minutes of the meeting held between the Senior Manager of the bank and the appellants-plaintiffs on 12.11.1990 wherein the rent of premises was agreed at the rate of Rs.2/- per square feet with effect from 01.07.1989. Though the Bank appears to have denied the authority of the Senior Manager to sign the said minutes, as already noticed, the regional building committee of the Bank in its meeting held on 05.07.1993 had, once again, favoured renewal of the tenancy at the rate of Rs.2/- per square feet for the initial period of 5 years and thereafter at an enhanced rate of 45% for an additional period of 5 years. The aforesaid admitted documents proved in the course of trial of suit were relied upon by the learned Trial Court to come to the finding that the appellants-plaintiffs were entitled to enhanced rent in terms of the recommendation of the regional building committee dated 05.07.1993. Accordingly, the suit was decreed, however, without any interest.

11. The demand raised by the appellants-plaintiffs for enhanced rent and acceptance thereof by the bank authorities as evident from the documents dated 12.11.1990 and 05.07.1993, in our considered view, reflects a clear understanding between the parties that the tenancy agreement would continue at an enhanced rent of Rs.2/- per square feet for the period from 01.07.1989 to 30.06.1994 and thereafter at further enhanced rent of 45% for the next 5 years. Abundant materials had been brought on record by the appellants-plaintiffs to show that the claim for enhanced rent for the premises and the understanding reached was in tune with or even less than the prevailing market rate of rent in respect of similar premises. If the above is the basis on which the Trial Court had thought it fit to decree the suit of the appellants-plaintiffs we do not see how the High Court can be found to be justified in reversing the said decree and requiring the appellants-plaintiffs to move the Rent Controller for fixing the fair rent of the premises. The exercise directed by the High Court was, therefore, wholly unnecessary besides being inequitable and litigious. It should have been best avoided. We, therefore, consider it proper to set aside the judgment dated 08.02.2008 and the decree dated 28.01.2008 passed

by the High Court of Calcutta and restore the decree dated 11.02.1999 of the learned Trial Court. The appellants-plaintiffs would now be entitled to the amount decreed by the learned Trial Court and also rent at the enhanced rate of Rs.2.90/- with effect from 01.07.1999 till the present date and until mutually altered. In so far as the claim of interest is concerned, in the peculiar facts of the case, we decline the same.

12. Before parting, we would like to observe that during the course of hearing of the appeals it became known that the bank has no further need to retain the second floor of the tenanted premises in view of certain subsequent facts and events that have occurred during the pendency of present appeals. In the above situation we do not consider it necessary to require the appellants-plaintiffs to approach the court, once again, to recover possession of the second floor of the tenanted premises which the bank admittedly is ready and willing to surrender. We, therefore, direct the respondent-bank to act accordingly in so far as the second floor of the tenanted premises is concerned within a period of three months from the date of receipt of this order.

13. With the above observations, both the appeals shall stand disposed of in the manner indicated above.