

(2015) 04 DEL CK 0022
In the Delhi High Court
Case No : CS(OS) 2525 of 2011

Amarjeet Singh Bindra and Others

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 10, 151

Citation : (2015) 149 DRJ 320

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : P.K. Sharma, for the Appellant; Harish Katyal, Renuka Katyal, Vinny Shangloo, Advocates and Party-in-Person, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Hima Kohli, J.

I.A. 19659/2013 (by the plaintiffs under Order XXXIX Rule 10 CPC) and I.A. 4092/2015 (by the defendant/Bank under Section 151 CPC)

1. I.A. 19659/2013 has been filed by the plaintiffs under Order XXXIX Rule, 10 CPC praying inter alia that the defendant/Bank be directed to pay the plaintiffs a sum of Rs. 81,10,265/- and further, Continue paying use and occupation charges @ Rs. 2,40,000/- per month. IA No. 4092/2015 has been filed by the defendant/Bank for clarification of the order dated 7.1.2015.

2. Counsel for the plaintiffs states that the suit premises was let out by the plaintiffs to the defendant/Bank for a period of three years w.e.f. 14.12.1998, at a monthly rent of Rs. 76,798/-, with two Options of renewal of three years and four years respectively on the same terms and conditions alongwith 20% increase, after expiry of every option. The terms and conditions of the lease were reduced into writing by virtue of a registered Lease Deed dated 19.09.2001. It is submitted that the period of three years reckoned: from 14.12.1998 had expired on 13.12.2001 and thereafter, the defendant/Bank had exercised the first option

of renewal for a period of three years w.e.f. 14.12.2001 to 13.12.2004 with the rent enhanced by 20%, thus increasing the monthly rent from Rs. 92,158/- after exercising the second option of renewal, for a period of four years w.e.f. 14.12.2004 to 13.12.2008, the monthly rent was once again enhanced by further 20%, from Rs. 92,158/- to Rs. 1,10,590/-.

3. Though no such averment has been made in the, present application, learned counsel for the plaintiffs submits that during the second renewal period of four years, the defendant/Bank had additionally taken on lease the front veranda portion of the suit premises, measuring 160 sq. yards and the combined rent that was being tendered for the entire area under its occupation was Rs. 1,15,393/- p.m.

4. It is the stand of the plaintiffs that as the extended lease period of four years was to expire on 13.12.2008 by efflux of time, the plaintiffs had served a legal notice dated 13.08.2008 well in advance on the defendant/Bank calling upon it to hand over vacant peaceful possession of the suit premises, on or before 13.12.2008. Though the aforesaid notice was duly received by the defendant/Bank, it did not vacate the suit premises. The plaintiffs have averred in para 16 of the application, that the defendant/Bank has admitted that the proposed rent was agreed to be paid @ Rs. 2 lacs w.e.f. 14.12.2008 and based on the said admitted figure, the plaintiffs have made certain calculations of the amounts that are due and liable to be paid by the defendant/Bank towards the use and occupation charges of the suit premises.

5. Counsel for the plaintiffs states that the figure of Rs. 2 lacs has been derived from the letter dated 16.05.2011, addressed by the Assistant General Manager to the Chief Manager of the Bank, wherein it was conveyed that the Competent Authority had approved renewal of monthly rent of Rs. 2 lacs in respect of the suit premises inclusive of service tax for a period of three years with one option of three years and further one option of four years as below:-

"In this context, we wish to inform you that the Competent Authority has approved to allow you for renewal of Lease of your branch for occupied carpet area 1491 Sq.Ft. in basement and 1392 Sq.Ft. on Ground Floor, Verandah 160 Sq. Ft. And 270 Sq.Ft. (additional) at the backside of premises for Generator, at a monthly rent of Rs. 2.00 Lacs (lumpsum) inclusive of Service Tax w.e.f. the current date for a period of 3 years with one option of 3 years and further one option of 4 years (3 + 3 + 4) with increase in rent @ 20% on each option. However, the arrears of rent till execution of a fresh lease deed be paid 50% of Rs. 2.00 Lacs (Revised Rent) per month minus Rs. 1,15,393/- (Present Rent) pm w.e.f. 14.02.2008."

6. Learned counsel for the plaintiffs states that in view of the admissions made by the defendant/Bank in the aforesaid letter, they be directed to deposit in Court the amount of Rs. 2 lacs as revised rent/occupation charges w.e.f. 14.02.2008, till the suit premises is vacated and the said amount may be

released in favour of the plaintiffs after a final decision is taken with regard to the mesne profits due and payable to the plaintiffs.

7. A reply in opposition to this application has been filed by the defendant/Bank, wherein it has been stated that the Bank has not made any admission for paying enhanced rent to the plaintiff. Learned counsel for the defendant/Bank submits that the Lease Deed dated 19.09.2001 having expired by efflux of time on 13.12.2008, it loses its sanctity and cannot bind the defendant/Bank for calling upon it to pay enhanced rent by 20% for the period beyond 13.12.2008. He contends that after 13.12.2008, at best the defendant/Bank can be described as a tenant at sufferance and only at the end of the trial in the suit can the Bank be called upon to pay any amount beyond the amount that was being paid by it as on 13.12.2008.

8. In other words, it is/the stand of the defendant/Bank that there is no admission made by it for the plaintiffs to seek directions to it under Order XXXIX Rule 10 CPC and the defendant/Bank has been regularly paying the rent @ Rs. 1,15,393/- p.m. to the plaintiffs w.e.f. 13.12.2008. Nor can the plaintiffs be permitted to rely on the intra departmental correspondence dated 16.05.2011, as a copy thereof was never marked to them for their consumption.

9. In rejoinder, learned counsel for the plaintiffs refutes the submission made by the counsel for the defendant/Bank and points out that vide letter dated 26.05.2011 addressed by the Chief Manager of the defendant/Bank to the plaintiffs, he had informed them that the Competent Authority had allowed renewal of the lease on the terms and conditions contained in the letter dated 16.05.2011 and a copy thereof was enclosed with the said letter.

10. It is pertinent to note that on 12.11.2014, it was recorded that the lease period of four years had expired on 13.12.2008, by efflux of time in accordance with the terms and conditions of the Lease Deed dated 19.09.2001. As the defendant/Bank had failed to hand over possession of the suit premises to the plaintiffs and nor was it ready and willing to pay the market rent after expiry of the lease period, the Manager of the Bank was directed to remain present on the next date of hearing, i.e., on 28.11.2014.

11. On 28.11.2014, Mr. Subhash Arora, Manager of the defendant/Bank was present and he had informed the Court that the Bank had decided to hand over possession of the suit premises to the plaintiffs within 6-9 months. He had, however, added that final instructions were awaited from the Chairman of the defendant/Bank and the Bank would be filing an affidavit in this regard before the next date of hearing. As to the grievance of the plaintiffs for payment of enhanced rent by 20% w.e.f. 13.08.2008, Mr. Arora had sought time to obtain instructions. At the request of the defendant/Bank, the case was adjourned to 07.01.2015.

12. On 07.01.2015, the Court was informed that the counsel for the defendant/Bank was unavailable as he was confined to bed having undergone a surgery and

Mr. Arora, the Manager of the Bank had failed to turn up. On the said date, at the request of the proxy counsel appearing for the counsel for the defendant/Bank, the case was adjourned to 22.04.2015, i.e., today and in the meantime, the defendant/Bank was directed to file an affidavit reflecting inter alia the amount payable towards enhancement of rent as claimed by the plaintiffs w.e.f. 13.08.2008. Counsels for the parties state that the correct date is 13.12.2008 and not 13.08.2008 as mentioned in the order dated 07.01.2015.

13. Counsel for the defendant/Bank adds that he has filed I.A. 4092/2015 for seeking exemption from filing the affidavit in terms of the order dated 07.01.2015 on the ground that no such affidavit is required to be filed since the defendant/Bank has not admitted to paying enhanced rent to the plaintiffs for the period after 13.12.2008. Instead, he states that this issue should be left open for adjudication after the trial is concluded in the case.

14. It may be noted that the Manager, of the defendant/Bank had filed an affidavit dated 07.01.2015, stating inter alia that in compliance of the order dated 28.11.2014, the Bank was willing to hand over the possession of the suit premises to the plaintiffs within nine months. Counsel for the defendant/Bank states that no instructions have been received from the competent authority with regard to payment of the enhancement amount of rent and it is not for the Bank to make any such statement as the matter should be left to the Court for a decision.

15. Having regard to the fact that the defendant/Bank has overstayed in the suit premises for the past six and a half years and that too while continuing to pay rent @ Rs. 1,15,393/- p.m., an amount that it had agreed to pay for the period w.e.f. 14.12.2004 to 13.12.2008 and further, taking into consideration the defendant/Bank's own admissions in the correspondence dated 16.05.2011, wherein it was recorded that the Competent Authority had agreed for renewal of the rent of the bank for a period of three years, with one option of three years and further option of four years with enhancement in the rent @ 20% on each option and on the monthly rent of Rs. 2 lacs per month, the defendant/Bank cannot be heard to state that there is no admission on its part with regard to the enhancement in the rent.

16. It is relevant to note that the aforesaid letter dated 16.05.2011 refers to the approval of the Competent Authority for renewal of lease for a period of 3 + 3 + 4 years @ Rs. 2 lacs with 20% enhancement on each option but goes to state that, "However, the arrears of rent till execution of a fresh lease deed be paid 50% of Rs. 2.00 Lacs (Revised Rent) per month minus Rs. 1,15,393/- (Present Rent) pm w.e.f. 14.02.2008."

17. In fact, the tone and tenor of the letter dated 16.5.2011, makes it clear that the last sentence contained in the para reproduced in para 5 above cannot be completely tied with the option to extend the lease. It is for this reason that the said sentence starts with the word, "However" and goes on to note that the

arrears of rent till execution of a fresh lease deed shall be paid @ 50% of Rs. 2 lacs p.m. (revised rent) less Rs. 1,15,393/- w.e.f. 14.2.2008. This shows that dehors the extension of lease, the defendant/Bank had expressed its willingness to pay enhanced charges for the use and occupation of the suit premises w.e.f. 14.2.2008.

18. The contention of the counsel for the defendant/Bank that ever since the year 2011, the parties have continued to remain in a negotiation mode and nothing has been formalised so far, can hardly be of any assistance in the light of the letter dated 16.05.2011, which is a clear pointer in the direction that the defendant/Bank had made up its mind that it would pay 50% of Rs. 2 lacs to the plaintiffs till the execution of a fresh lease deed w.e.f. 14.02.2008. In the opinion of this Court, the aforesaid admission is considered sufficient to direct the defendant/Bank to deposit in court the use and occupation charges @ Rs. 2 lacs per month, w.e.f. 14.12.2008, minus the amount of Rs. 1,15,393/- already paid to the plaintiffs on a month to month basis.

19. It is therefore deemed appropriate to allow I.A. 19659/2013, by directing the defendant/Bank to deposit in the Registry, the difference in the rent/use and occupation charges computed @ Rs. 2 lacs p.m., after deducting a sum of Rs. 1,15,393/- p.m. already paid to the plaintiffs, w.e.f. 14.12.2008 to 13.03.2015 within two weeks from today. Upon receiving the said amount, the same shall be placed in a FDR, initially for a period of six months, to be renewed thereafter from time to time, till further orders. The aforesaid amount shall be released in terms of the final decision in the suit.

20. Further the statement of Mr. Subhash Arora, Manager of the defendant/Bank as contained in the affidavit dated 07.01.2015, wherein the Bank has undertaken to hand over vacant peaceful possession of the suit premises to the plaintiffs within nine months, i.e., on or before 30.08.2015, is taken on record. The defendant shall remain bound by the said undertaking given to the court.

21. As for the use/occupation charges payable in respect of the suit premises, for the period w.e.f. 01.04.2015 till 30.08.2015, the defendant/Bank is directed to continue paying an amount of Rs. 1,15,393/- directly to the plaintiffs but the difference, calculated @ Rs. 2 lacs p.m. shall be deposited in the Registry, on a month to month basis, starting with the month of April, 2015 which shall be deposited, on or before 30.04.2015 and for the remaining months, on or before the 7th day of each calendar month. As and when the amounts are deposited by the defendant/Bank, the Registry shall prepare FDRs. of the said amounts for a period of six months, to be renewed thereafter from time to time, till further orders.

22. Both the applications are disposed of.