

(2000) 11 AP CK 0062

In the Andhra Pradesh High Court

Case No : C.C.C. Appeal No. 28 of 1997 and Cross Objections

Bank of India

APPELLANT

Vs

V. Swaroop Reddy

RESPONDENT

Date of Decision : 23-11-2000

Acts Referred:

Contract Act, 1872 — Section 70

Transfer of Property Act, 1882 — Section 116

Citation : AIR 2001 AP 260 : (2001) 2 ALT 388 : (2000) 3 APLJ 395

Hon'ble Judges : N.Y. Hanumanthappa, Acting C.J.; Ghulam Mohammed, J

Bench : Division Bench

Advocate : S. Suryaprakasa Rao, for the Appellant; S. Satyam Reddy and M. Ram Mohan Reddy, for the Respondent

Judgement

N.Y. Hanumanthappa, Acting C.J.

1. The defendant in the suit, viz. Bank of India represented by its Zonal Manager is the appellant in the present appeal whereas the plaintiff in the suit is the Cross-Objector.

2. The appeal and the Cross Objections are preferred against the judgment and decree dated 2nd September, 1996 passed by the learned First Additional Judge, City Civil Courts, Hyderabad in O.S. No. 1548 of 1993.

3. The appeal has been filed to set aside the impugned judgment and decree of the Court below by which the suit of the plaintiff was decreed in a sum of Rs. 39,461.10 paise with 24% interest per annum on Rs. 22,942.50 paise from the date of institution of the suit till realisation with proportionate costs.

4. It is to be noted here that the original claim of the plaintiff in the suit was for Rs. 7,72,710.19 paise as on the date of the suit i.e., 31-12-1993 together with interest @ 24.5% with quarterly rests on the amount of Rs. 5,48,786.50 and costs. The plaintiff filed the Cross Objections seeking for a decree in a sum of Rs. 7,33,249.19 aggrieved by the impugned judgment and decree of the Court

below. He prayed in the memorandum of Cross Objections that the Court below had decreed, the suit in a sum of Rs. 39,461 /- only whereas the suit claim was for a total sum of Rs. 7,72,710.19, and that the difference being a sum of Rs. 7,33,249.19, this Court may allow the Cross Objections to that extent and dismiss the CCCA.

5. It is apposite to narrate a few facts that are necessary for the purpose of resolving the dispute arising in the appeal and the Cross Objections, which are as under:

The plaintiff is the owner of the suit schedule property being building bearing No. 3-5-1114/8 to 10. The entire ground-floor portion of the said building was let out to the defendant-bank. There is no dispute regarding the relationship of landlord and tenant that is existing between the plaintiff and the defendant. An agreement of tenancy was entered into between the parties whereby the defendant-bank agreed to pay the plaintiff a monthly rent of Rs.2,294.25 paise for the let-out floor-space admeasuring 2100 square feet. While so, the period of tenancy came to an end on 15-5-1988. Well before the expiry of the lease, i.e., on 4-10-1987, the plaintiff got issued a legal notice terminating the tenancy of the defendant with effect from 15-5-1988 on the ground that the defendant-bank had committed default in payment of rents for the period from 1-2-1986 to 31-9-1987. The defendant-bank did not give any response to the said notice till the date of filing of the suit and thus, according to the plaintiff, the termination of tenancy came into being with effect from 15-5-1998 as incorporated in the legal notice. As can be seen from the record, certain negotiations had been taken place between the parties as regards continuation of the period of lease on fresh terms and conditions. The plaintiff addressed a letter to the defendant-bank wherein he agreed that he has no objection to renew the period of lease provided rent on fresh terms is fixed at the rate of Rs. 5/- per square feet for the 2100 square feet floor-space of the suit premises or Rs. 9,805/- per month. On 25-2-1993, the defendant-bank wrote to the plaintiff that they have recommended to head office the terms that they have discussed with the plaintiff and sought for approval of the same. The terms were to the effect that the period of lease would be in force for 6 years, that the rent payable would be at the rate of Rs. 9,805/- per month with effect from 16-5-1988 for the first three years and that for the subsequent period of three years it has to be paid at the rate of 15 per cent over and above the amount of Rs. 9,805/-. The defendant-bank had informed the plaintiff that they had recommended to the head office for payment of rent at the enhanced rates and that they are awaiting for the consent of the head office in that regard. As the defendant-bank failed to pay the rent as per the fresh terms at the rate of Rs. 9,805/- with effect from 16-5-1988, the plaintiff brought the suit against the defendant-bank.

6. The plaintiff averred inter alia in the plaint that the defendant-bank continued in possession of the suit property without any authority of law even after the expiry of the period of lease that had already come to an end on 15-5-1988 and

that in spite of the agreement that was entered into between the parties during the negotiations to the effect that the defendant-bank would pay Rs. 9,805/- per month for the premises with effect from 16-5-1988, for the first three years and would increase the same by 15% over and above Rs. 9,805/- for the subsequent three years, it continued in possession of the suit property paying rent at the old rate of Rs. 2,294.25 paise per month, which according to the plaintiff would not only amount to illegal retention of the suit-premises by the defendant-bank without any authority of law but also unjust enrichment by it of the difference amount that the property in question would have fetched to the plaintiff had it been let out to some others at the relevant time.

7. It is pertinent to note here that prior to filing of the plaintiffs suit, the defendant-bank filed a suit in O.S. No. 318 of 1987 against one B. Krishna Reddy on the file of the First Additional Judge, City Civil Courts, Hyderabad for recovery of a loan obtained by him on the ground that he had committed default in repayment of the said loan and obtained a decree against the said Krishna Reddy. The defendant-bank instead of depositing the amount of Rs. 22,942.50 to the plaintiffs account towards rent of the suit premises, informed him that they had adjusted the said amount together with interest at 24% per annum for a period of 3 years which comes to Rs. 16,518.50 paise, the total being Rs. 39,461.10 paise towards the loan amount payable by the said Krishna Reddy since the plaintiff stood surety for him. It is the case of the plaintiff that since the said B. Krishna Reddy satisfied the decree in full by repaying the entire decretal amount with interest, the conduct of the defendant-bank in withholding the amount of Rs. 39,461.10 even after the said amount has been paid, is wholly arbitrary and the same would amount to illegal retention of the amounts by the defendant-bank payable to the plaintiff towards rents of the suit-premises and that continuance of the bank in un-authorised possession of the suit-premises, even after the expiry of the lease period would amount to "tenant holding over." He, therefore, prayed that the suit may be decreed in a sum of Rs. 7,72,710.19 paise together with 24% interest per annum on the amount of Rs. 5,48,786.50 paise from the date of suit till realisation.

8. The plaintiff also raised an alternative plea to the effect that in view of the illegal retention of the suit-premises by the defendant-bank and in view of the consequent unjust enrichment gained by it, he is entitled for damages at the rate of Rs. 7/- per square feet per month for the leased area of 2100 square feet. He also pleaded that the amount which was suggested to be paid by the defendant-bank i.e., Rs. 2,994/- per month even after the expiry of the lease period is nothing but a clear case of illegal possession and enjoyment of the plaintiffs property by the defendant. Thus, the plaintiff contends that the principle of "unjust enrichment" will apply to the facts of the case on all fours, The conduct of the defendant-bank in respect of realising the amount of Rs. 39,461.10 being the decretal amount to be paid by Shri Krishna Reddy towards loan, according to the plaintiff is incorrect and not permissible in law.

9. The suit was filed on the basis of the letter dated 25-2-1993 written by the defendant-bank to the plaintiff stating that the terms discussed with the plaintiff had been recommended to the Head Office viz. that the lease would be effective for a period (of) three plus three (6) years commencing from 16-5-1988 and that the rent would be paid at Rs. 9,805/- per month with increase on the said amount at 15% after completion of the period of first three years and that the enhanced rent would be effective for the subsequent period of three years. According to the plaintiff, these terms were agreed to by the defendant-bank though he demanded Rs. 5/- per square feet for the entire leased area of 2100 square feet. Thus, the plaintiff sought for payment of rents on the agreed terms as stated above. Since the defendant-bank failed to pay the rents at the aforesaid enhanced rates, the plaintiff laid the suit.

10. The defendant-bank filed its written statement wherein it had admitted the relationship existing between itself and the plaintiff and that according to it, a summary suit for recovery of money is not maintainable. It is the case of the defendant-bank that no cause of action had arisen for the suit. According to it, the agreed rate of rent was only Rs. 2,294.25 paise, that the same had been paid regularly and that it had not committed any default in payment of the rents. The legal notice dated 4-10-1987, according to the defendant, is not valid and binding on the defendant as the period of lease was effective up to 15-5-1988. It was further stated in the written statement that the Bank was justified in adjusting the amount of Rs. 22,942.50 paise together with 24% interest per annum payable by Shri Krishna Reddy towards the loan he was due to the Bank since the plaintiff stood as a surety for the said loan.

11. The defendant further took a stand in the written statement that the plaintiff is not entitled to the suit-claim because there was no concluded contract that was existing between them. It had further stated in the written statement that the defendant-bank is a nationalised bank and that if it had to enter into terms with the plaintiff the same have to be necessarily approved by the Reserve Bank of India as per the guidelines that are in force. The so-called letter dated 25-2-1993, according to the defendant, did not convey any commitment on the part of the bank having been made to the plaintiff and that the same cannot be called an agreement having been entered into by the defendant-bank with the plaintiff for payment of rent at the higher rate of Rs. 9,805/- per month. The defendant further stated that the suit was not maintainable as the plaintiff cannot file a single suit for different transactions unconnected with each other relating to different offices of the defendant-bank. Thus contending, the defendant-bank prayed that the suit may be dismissed with costs.

12. On the basis of the above pleadings, the trial Court framed the following issues :

"1. Whether the plaintiff is entitled to get the amounts as prayed for by him in the plaint?

2. To what relief?

13. In support of the rival contentions, both the parties have adduced oral and documentary evidence. On behalf of the plaintiff, the plaintiff was examined himself as P.W. 1 and marked 34 documents Exs. A1 to A34. On behalf of the defendant-bank three witnesses DWs. 1 to 3 were examined and 9 documents, Exs. B1 to B9 were marked.

14. The Court below after considering the entire evidence brought on record found that as there was no concluding contract between the parties in the absence of approval having been accorded by the head office for payment of rents at the enhanced rates with effect from 16-5-1988, the plaintiff was not entitled to the entire suit-claim. However, the trial Court held that the defendant-bank had no power or authority in law to make adjustment of the amount of Rs. 39,461/- payable to the plaintiff by the bank towards rents for the suit-premises merely because the plaintiff stood surety for the loan amount obtained by the said Krishna Reddy notwithstanding the fact that a suit was decreed in favour of the bank against the said Krishna Reddy. The learned trial judge, however, disallowed the entire claim and only granted the amount of Rs. 39,461.10 together with interest at 24% per annum on Rs. 22,942.50 paise from the date of suit till the date of realisation. Accordingly the suit of the plaintiff was decreed in a sum of Rs. 39,461/-. In respect of the remaining suit claim the suit was dismissed. As already stated earlier, aggrieved by the same both the CCCA and Cross Objections are filed.

15. Shri Surya Prakash Rao, learned counsel appearing on behalf of the defendant-bank contend that when the Court below came to the conclusion that there was no concluded contract existing between the parties for the payment of rents at the enhanced rates i.e., at the rate of Rs. 9,805/-per month for the first three years and with an increase of 15% on the said amount for the subsequent three years, the trial Court erred in passing decree in a sum of Rs. 39,461.10 paise holding that the defendant-bank, without having any authority in law, adjusted the amount of Rs. 22,942.50 together with interest towards decree debt due to the Bank by Krishna Reddy. Relying on the decisions of this Court and the Supreme Court reported in Canara Bank and others Vs. M/s. Taraka Prabhu Publishers Pvt. Ltd., and others, and Punjab National Bank and others Vs. Surendra Prasad Sinha, , Shri Surya Prakash vehemently argued that the trial Court erred in ignoring the legal position to the effect that the Banks would be having lien on the amounts available with them and that the defendant-bank thus had the right of appropriation of the loan amount by making such an adjustment with the available amount of the plaintiff and that too it was done on the strength of a decree of the Court passed in O.S. No. 318 of 1987. He further contended that the plaintiff cannot raise any grievance on this aspect since the amount had been deducted by service of a notice on him and, therefore, consent or authorisation of the plaintiff in this regard is not a legal requirement. The learned counsel also contended that the trial Court erred in not taking notice of

the fact that the suit itself was hopelessly barred by time as it was filed in the year 1993 claiming the rents pertaining to the period from 16-5-1988.

16. As an answer to these contentions Shri P.R. Prasad, learned counsel appearing for the plaintiff Cross-Objector submits that originally the suit was laid by the plaintiff claiming recovery of a total amount of Rs. 7,72,710.19 paise whereas the trial Court decreed the suit only to the extent of Rs. 39,461.10 paise and the difference being a sum of Rs. 7,33,249.19 the Cross Objections have been preferred by the plaintiff before this Court claiming the said amount. He further submits that when once the lease period came to an end with effect from 15-5-1988, there was a fresh proposal for enhancement of rents by the plaintiff and such a proposal was received by the defendant-bank and if the said proposal was not acceptable to the bank, it should have vacated the suit-premises with immediate effect and handed over the vacant possession of the suit property to the plaintiff instead of keeping the same in its possession and enjoyment till 1993. He further submitted that the defendant-bank was unfair in informing the plaintiff on 1-10-1993, after a long lapse of more than five years" time that the proposal is not acceptable to its head office. He further stated that the Court below committed a mistake in not taking into consideration the notice issued by the plaintiff to the defendant-bank informing it that the lease period came to an end with effect from 15-5-1988. Thus, according to Shri Prasad, the defendant-bank is liable to pay the admitted rent at the rate of Rs. 9,805/- per month for the first three years from 16-5-1988 and thereafter an increased rent at the rate of 15% over the said amount of Rs. 9,805/-. According to him, mere receipt of Rs. 2,294.25 paise per month as rent by the plaintiff does not mean that the plaintiff had given up the entire claim for the rents at the enhanced rates as indicated by the plaintiff in the legal notice. He also added that the defendant-bank cannot plead a set-off from payment of the rents at the enhanced rates, especially in view of the fact that the plaintiff had received the rents at the rate of Rs. 2,294.25 paise per month under protest. Shri Prasad further submits that originally the period of lease came to an end on 15-5-1988 but the respondent-bank continued to occupy the suit premises without paying the rents at the enhanced rates. He, further contended that if the offer made by the plaintiff was not acceptable to the defendant-bank it would not have continued in possession subsequent to the expiry of the lease period. Shri Prasad further contended that the trial Court was justified only in respect of that part of the impugned order wherein it had held that defendant had no right to withhold the payment of Rs. 22,942.50 paise plus interest by adjusting the said amount from out of the amount payable towards rent to the plaintiff for the suit-premises on the ground that the plaintiff stood as guarantor for the loan sanctioned to "one Krishna Reddy although it had obtained a decree in O.S. No. 318 of 1987 in its favour. He relied upon the decision of the Apex Court reported in State of West Bengal Vs. B.K. Mondal and Sons, for this contention. He, therefore, prayed that the Cross Objections may be allowed and the CCCA may be dismissed with costs.

17. It is the admitted case of the defendant that even after expiry of the lease

period, it had continued in possession and enjoyment of the suit-premises as a tenant. It had further admitted that the plaintiff had been making demands to the (defendant) for payment of the rents at the enhanced rate, of Rs. 9,805/- per month. However, it had resisted the suit-claim pleading that the plaintiff is not entitled for the same.

18. The conclusion arrived at by the Court below to the effect that the suit is a mere suit for recovery of the rents and that it is not a suit for damages for occupation and use of the suit-premises by the defendant-bank is erroneous for the simple reason that when once the period of lease expires, continuance of the defendant-bank's possession in the suit premises for the period subsequent to the expiry of the lease will be an unauthorised one and in such a situation the tenant, the defendant-bank in the instant case, can be called as a "tenant holding over." It was not a case where there were no negotiations between the parties as regards payment of enhanced rate of rents. In fact there were negotiations which fact is evident from the correspondence that took place between the plaintiff and the defendant-bank as regards payment of rents at the enhanced rates subsequent to the expiry of the lease period. The plaintiff sufficiently demonstrated by way of oral and documentary evidence that the defendant-bank made him to believe bona fide that it is going to pay the rents at the enhanced rates. When once the defendant is not entitled to continue in possession of the suit-property subsequent to expiry of the lease period, its continuance in possession of the same as already stated is invalid. Similarly, the plaintiff had demonstrated by ample evidence, oral and documentary, that a demand was made to the Bank on his behalf demanding payment of rents at the enhanced rates. Thus, both retention of the suit-premises by the defendant-bank unauthorisedly as well as its unjust enrichment are factually proved by ample evidence.

19. The plaintiff, inter alia, relied on Exs. A6, A19 and A20 for the suit-claim. Ex. A6 is an offer made by the plaintiff dated 27-8-1990 claiming rent for the suit-premises at Rs. 5/- per square feet. Ex. A19 is the letter dated 25-2-1993 addressed by the defendant-bank to the plaintiff wherein it was stated that they had recommended to their head office for approval of rent at Rs. 9,805/- per month from 16-5-1988 for three years with increase in rent by 15% for the subsequent three years, whereas Ex. A20 is a letter from the plaintiff addressed to the defendant-bank agreeing to the proposal made in Ex. A19. The trial Court elaborately dealt with these three documents and came to the conclusion:

"But these three documents cannot be termed as concluded contract and there is no consensus between the parties with regard to quantum of rent after 16-5-1988."

20. Therefore, the controversy in the matter mainly centers round the quantum of rent payable by the bank after 16-5-1988 and certain other ancillary questions. For the purpose of resolving the controversy and disposing of this appeal, we would only refer to some of the important documents, which throw

some light on the subsequent negotiations that took place between the parties without resorting to repeating the pleadings, contentions and evidence of the parties brought on record. We would also take note of the, fact whether there is any acceptance at all on the part of the defendant-bank in regard to the offer made by the plaintiff. It is also necessary for us in this context to take note of the conduct of the parties. For this purpose, it is appropriate to extract the relevant portions of the documentary evidence adduced by the parties wherein there is demand for payment of enhanced rents on the part of the plaintiff which was acknowledged by the defendant-bank and there was a positive reaction on the part of the defendant-bank intending to pay rents to the plaintiff at the enhanced rates. Ex. A2, dated 9-8-1988 is a letter addressed by the plaintiff to the defendant-bank demanding rents at the enhanced rates pursuant thereto and in furtherance thereof, the plaintiff was invited by the defendant-bank to have negotiations with it as can be seen from Exs. A3 and A4. Ex. A2 reads:

"You have occupied my house bearing No. 3.5.1114/8.9 and 10 since 1972 and the lease expired by June, 1982 and I have issued notices for vacation of the building as I am proposing to reconstruct the building. Moreover, the Municipal Corporation of Hyderabad has given "Demolition Notice" for 20 feet set back. In this regard the lawyer has already issued notice to you to vacate the premises.

To my surprise the Bank has not responded to any of my notices. You have also not shown any Interest to vacate the premises during my visits to your office.

Now I request you once again to immediately vacate the house without any further delay.

I may mention that I am losing the damages at the rate of Rs. 7/- (Rupees seven) per square feet since long time for use and occupation of the premises. This letter is addressed to you without prejudice to my notice of termination already served on you."

21. Ex. A3 dated 19-3-1990 is a reply given by the defendant-bank to the plaintiff expressing its willingness to have negotiations with the plaintiff as regards renewal of lease on fresh terms. It reads thus:

"Your above mentioned premises is under our occupation. You are aware that the lease agreement for the premises has expired.

2. Please call on us for discussions to arrive at terms and conditions for renewal of the lease for the premises.

Sd/- Zonal Manager."

22. Ex. A4 dated 11-6-1990 is again a letter addressed to the plaintiff by the defendant-bank on the same subject wherein also the defendant-bank expressed its inclination to have talks with the plaintiff as regards entering into a fresh lease of agreement on revised rents.

"We refer to our letter (Ex.A3) and request you to call on us for discussions to

arrive at terms and conditions for renewal of the lease for the premises occupied by us.

Sd/- Zonal Manager"

23. We will now examine in detail the conduct of the parties as could be seen in the documents extracted above with reference to the statutory provisions incorporated in the Transfer of Property Act, 1882 as also Indian Contract Act, 1872. Section 106 of the Transfer of Property Act, 1882 reads:

"106. Duration of certain leases in absence of written contract or local usage:--

In the absence of a contract or local law or usage to the contrary a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year terminable, on the part of either lessor or lessee, by six months" notice expiring with the end of a year of the tenancy and a lease of immovable property for any other purpose, shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice expiring with the end of a month of the tenancy,, Every notice under this section must be In writing signed by or on behalf of the person giving It, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property." Section 70 of the Indian Contract Act, 1872 reads:

"70. Obligation of person enjoying benefit of non-gratuitous act--Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

24. We will now examine the point at issue further with reference to certain relevant decisions of the Apex Court and other High Courts. The question as to in what circumstances a person can be said to be a "tenant holding over" has been explained by the Apex Court with reference to Section 70 of the Indian Contract Act, 1872 in State of West Bengal Vs. B.K. Mondal and Sons, .

4. However, G. K. Mitter, J., who tried the suit, framed five material issues on the pleadings and recorded his findings on them. He held that having regard to the provisions of Section 175(3) of the Act there was no valid and binding contract between the respondent and the appellant for the construction of huts and sheds at Khanakul and Arambagh. This finding was in favour of the appellant. He held that the respondent"s claim against the appellant was, however, justified u/s 70 of the Indian Contract Act, and he came to the conclusion that the said claim was not barred by limitation. He also rejected the plea of the appellant that the liability of the province of Bengal had not devolved upon the appellant under the provisions of the Indian Independence (Rights, Property and Liabilities) Order,

1947. Thus, on these three points the findings of the trial Judge were against the appellant. It appears that at the trial the respondent had also relied upon Section 65 of the Indian Contract Act in support of its claim. The learned Judge held that Section 65 did not apply to the facts of the case and so the finding on this point was in favour of the appellant. The result was that the respondent's claim was upheld u/s 70 of the Contract Act and a decree for the amount claimed by it was accordingly passed in its favour."

25. Thus, the statutory provisions set out above as interpreted by the Apex Court clearly demonstrate that whoever continues in possession of the property subsequent to the period of lease can be called as a tenant holding over.

26. The aspect of tenant holding over was also subject-matter of another decision before the Patna High Court in a decision reported in Ramsunder Tewari v. Dulhin Bataso Kuer AIR 1935 Pat 271 wherein it is explained thus:

". . . It is argued that if the provisions of Section 116, T. P. Act, are to be held to apply to the occupation of this land by the defendant, it must be proved that the defendant holding over, in this fashion, has agreed to pay the rent which he paid, and that the landlord has expressly consented to this holding over. If a tenant holds over after the expiry of His lease he ordinarily becomes a trespasser, unless the landlord in some manner signifies his intention of recognising the continuance of the tenancy, which in the present instance is sufficiently indicated by the fact that the suit for rent has been instituted. If the plaintiff had sued the defendant for damages on account of his wrong occupation of his land, it would have been necessary, if the defendant wished to deny that he was a trespasser, that he should indicate that the landlord had in some way or the other signified his intention of the continuance of the tenancy, but that question does not arise when by the very form of his plaint the landlord recognizes the tenancy."

27. Similar view was taken by the Apex Court in M. Vijayalakshmi v. G. Goverdhan Reddy (1996) 3 ALT 32, holding that once the tenancy for the fixed period expired which came to an end by efflux of time, no notice for terminating the tenancy u/s 106 of the T. P. Act was required for the purpose of filing the suit after expiry of the lease. Even if the notice was not a valid notice, it could be regarded as a notice indicating that the tenancy would not tie continued after the term of the tenancy comes to an end.

28. Thus we may, on the strength of the authoritative pronouncements discussed above, say that the status of the defendant-bank subsequent to the period of lease is that of a trespasser who can further be described as a "tenant holding over".

29. We may now examine the legal position as regards "unjust enrichment". A Division Bench of Madras High Court in a similar fact-situation as the one in the instant case in a decision reported in The Union of India (UOI) and Another Vs. Andhra Bank Limited, held:

24. In *Bhagwan Das v. Union of India* AIR 1961 J & K 39, a Division Bench of that Court consisting of the Chief Justice and S. Murtaza Fazl Ali, J. said-- "Where the tenant after the expiry of the lease remains in occupation of the premises in spite of the fact that the landlord served a notice on him to vacate and warned him that if he remains in occupation he will have to pay a specified sum as damages for wrongful use and occupation of the building, the defendant-tenant will be liable to pay that amount provided it is not penal and unconscionable." The Supreme Court in *State of West Bengal Vs. B.K. Mondal and Sons*, , to put it in our own words, felt that in such circumstances, though there is no contract as is ordinarily understood, the conduct of the parties creates a relationship that arising out of a contract. This is based on the well known principle of avoidance of unjust enrichment on the part of the lessee.

25. In a case where the rent has not been fixed or agreed upon between the landlord and the tenant, the Court can intervene and fix a fair and equitable rent, has been stressed upon by the Supreme Court in *Damodhar Tukaram Mangalmurti and Others Vs. The State of Bombay*, ."

30. Shri Surya Prakash, learned counsel for the defendant-bank vehemently contended and resisted the entire suit-claim of the plaintiff on the ground that for that purpose he has to file a separate suit praying for fixation of rent and that same shall be determined by a fresh inquiry and trial. A latest Division Bench decision of this Court in *Naveenchand and another Vs. Nagarjuna Travels and Hotels (P) Ltd., Basheerbagh Hyderabad*, wherein the Bench presided by one of us (N. Y. Hanumanthappa, J.) dealing with a similar situation, held:

"30. Then coming to the mesne profits, what is the amount the landlord is entitled to. It is not in dispute that the lease premises is situated in most valuable and commercial area of Basheerbagh, Hyderabad. Since the premises was in occupation of the defendants-tenants and due to certain disputes between the landlord and the tenant, an understanding was reached and entered into between the parties and the same was culminated into lease deed dated 3-7-1970 in which the lessor agreed to lease the premises for a period of 25 years. On expiry of the lease, the defendants-tenants have to vacate and hand over the possession of the suit schedule premises. The landlord who issued quit notice, it is specifically stated that he is entitled to mesne profits at the rate of Rs. 15,000/- per month for the use and occupation of the demised premises from 1-11-1995. Having issued notice specifying the damages at a particular rate, the landlord claimed the damages at the rate of Rs. 40,000/- per month for use and occupation of the demised premises and the lower Court awarded a sum of Rs. 20,000/- per month. Learned counsel for the defendants-tenants strenuously urged that the agreed rent was Rs. 1,300-00 per month and it has been enhanced exorbitantly and at any rate the landlord cannot claim more than the rent specified in the suit notice. As the plaintiff has not claimed at square feet basis, but he claimed the rent at Rs. 15,000/- per month.

31. On the other hand, learned counsel for the plaintiff-landlord submitted that

mere fact that he specified a sum of Rs. 15,000-00 in the quit notice, it does not disentitle the plaintiff to claim Rs. 40,000/- per month.....The suit was instituted as early as in the year 1996 and the same was disposed of within three years and the area in occupation of the defendants-tenant is also reduced in its extent to 1/4th due to road widening and in view of the same, the ends of justice will be met if the mesne profits will be--awarded at the rate of Rs. 12,000/- per month from the date of termination of tenancy till the date of vacating the demised premises. However, the defendants-tenants are granted eight months" time for vacating and handing over the vacant possession of the demised premises from today....."

31. In the light of the authoritative pronouncements made by the Supreme Court and the different High Courts, we have examined the precedents cited by Mr. Surya Prakash, learned counsel appearing on behalf of the defendant-bank and we are of the considered opinion that on the facts and in the circumstances of the instant case, those decisions have no relevance. In the Punjab National Bank and others Vs. Surendra Prasad Sinha, the question that was debated was as to whether the exercise done by the bank in adjusting the loan amount from out of the Fixed Deposit Receipts deposited by the guarantor on the failure of the principal debtor in repaying the loan would constitute an offence. The Apex Court answered the question in the negative. The facts of the case before the Supreme Court and that of the instant case thus, in our considered opinion, are totally different. We may now State the facts of the Punjab National Bank's case briefly. In that case, the principal debtor committed default in payment of loan to the Bank for which, the respondent before the Supreme Court and his wife stood as guarantors. The principal debtor paid a part of the loan amount and committed default in respect of the rest of the loan. The Bank in such circumstances operated the Fixed Deposit Receipt of the respondent and upon maturity of the same paid only Rs. 14,254.40 to him instead of Rs. 41,292 / - by adjusting the difference amount towards the loan account. Respondent, lodged a private complaint against the Bank Officers inter alia on the ground that they had not taken steps to recover monies from the principal loanee towards the loan and allowed the period of time for recovery of the said loan to (be) bar by limitation with dishonest intention and thereby committed offences punishable under Sections 409, 109 and 114, I.P.C. In such a factual backdrop, the Supreme Court upheld the exercise done by the Bank and allowed the appeal filed by the bank quashing the complaint declaring the same as gross abuse of Court process. In the instant case, as already discussed by us above, the loan amount has fully been repaid by the loanee in full satisfaction of the decree that was obtained by the bank in O .S. No. 318 of 1987. Admittedly, the relationship of the bank and the plaintiff in the instant case is that of the landlord and tenant. We, therefore, of the considered opinion that the facts of the precedent cited by Shri Surya Prakash are not relevant to the facts of the present case. We may now discuss the Division Bench decision of this Court in Taraka Prabhu Publishers relied upon by Shri Surya Prakash. This is a case where the Canara Bank filed a writ appeal

against an interlocutory order made by a learned single Judge restraining it from transferring any amount deposited by Canara Bank and others Vs. M/s. Taraka Prabhu Publishers Pvt. Ltd., and others, in its current account to the loan account and to allow the company to operate the current account. Both the writ petition and the appeal were clubbed together and disposed of by a common judgment by the Bench holding that the matter falls within the domain of the law of contract and the right of set-off claimed by the Banks cannot be denied on the pretext that the transfer of the amounts in the current account will result in the negation of the activities of M/s. Taraka Prabhu Publishers in publishing the newspapers weeklies etc. Thus the Bench, in a different set of circumstances from the one arising in the case on hand, held that the enforcement of doctrine of set-off for the amounts to be realised by the bank cannot be said to be an action which is arbitrary or exercise in a mala fide manner. We are unable to comprehend as to how the facts of this precedent can be applied to the facts of the case on hand.

32. Shri Surya Prakash Rao's further contention that the plaintiff is not entitled to claim damages or mesne profits subsequent to the termination of lease unless a separate inquiry and a fresh trial is held for the said purpose cannot be sustained for the simple reason that the defendant-bank was made known about the fresh terms of the lease clearly much earlier to the expiry of the lease as also after the expiry of the lease period. Therefore, by once again directing the plaintiff to go to the civil Court for seeking fresh trial and inquiry into the mesne profits would cause him unnecessary hardship, which he had undergone all these years. Therefore, the contention of Shri Surya Prakash in this regard cannot be sustained.

33. Further, the stand taken by the defendant-bank that it is not liable to pay the rents at the enhanced rates because the proposal made by the plaintiff was not agreeable to the head office of the defendant-bank also cannot be sustained in view of the fact that the earlier lease that was existing between the plaintiff and the defendant-bank for the period prior to 16-5-1988 was entered into between the parties without the involvement of the head office.

34. Having due regard to the law laid down in various decisions of the Supreme Court and the High Courts on the principle - of "tenant holding over" and its consequential effect making the tenant liable to pay damages or mesne profits to the landlord for continuing in possession without any authority of law and similarly in view of the legal position already discussed hereinbefore as regards the principle of "unjust enrichment" under the provisions of Section 70 of the Indian Contract Act, 1872, we come to the irresistible conclusion that the defendant-bank is liable to pay the plaintiff the entire amount of suit-claim. Having regard to the discussion above, we have no other go but to dismiss the appeal filed by the defendant-bank as the same is devoid of any merit.

35. The judgment and decree of the Court below and its observations are liable to be set aside and they are set aside. Insofar as the plaintiffs prayer for

recovery of the entire suit-amount is concerned, the same is allowed. The CCCA is dismissed. The Cross Objections are accordingly allowed as prayed for with costs throughout payable by the defendant-bank to the plaintiff.