(2009) 08 DEL CK 0455

In the Delhi High Court

Case No : CS (OS) 1916 of 2001 and IA 13211 of 2008

Harbans Lal APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citation : (2009) 164 DLT 241 : (2010) 7 RCR(Civil) 2847

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Rohit Kumar, for the Appellant; Y.P. Chandna, for the Respondent

Judgement

S. Muralidhar, J.—The plaintiff has sued the defendant for a decree in the sum of Rs. 86,08,947 with costs along with decree for interest pendente lite and the future interest.

2. The case of the plaintiff is that the premises at A-28A, Ring Road Market, Rajouri Garden, New Delhi consisting of basement, ground floor, first floor, mezzanine floor, and second floor with total built up area of 5017.3 sq. ft. (hereafter suit premises.) was given on lease to the erstwhile New Bank of India (NBI) for their Rajouri Garden Branch by the partnership firm of M/s Plywood Palace of which the plaintiff Harbans Lal was a partner. The lease deed was dated 1st July 1983. The rent was fixed at Rs. 24,503.17p. per month. The initial lease period of five years came to an end on 30th June 1988. A term of the lease was that if any loan was availed of by the firm, NBI would be entitled to appropriate the monthly rent towards the adjustment of the loan amount. It appears that on 7th December 1982 M/s. Plywood Palace was sanctioned by the NBI a cash credit loan facility and a demand draft up to a limit of Rs. 7,50,000/. As security the title deeds of the suit premises by way of equitable mortgage were deposited with the NBI on 25th February 1983. A cash credit facility of Rs. 2,00,000/- was sanctioned in 1986. By a letter dated 2nd April 1986 addressed to the Manager, NBI, the partner of M/s Plywood Palace declared that it had no other lease or document relating to the suit premises and that the property was free from

encumbrances. With effect from 29th March 1988 the loan, and correspondingly the value of the mortgage charge, was increased to Rs. 10 lakhs. Clause 3 of the original lease deed had a renewal option. Accordingly the lease was renewed and the rent was revised from Rs. 28,175/- per month for the period from 1st July 1988 till 30th June 1993.

3. Sri Narain Dass, the father of the plaintiff, expired on 14th March 1991 and the firm was dissolved. The plaintiff became the sole proprietor of M/s Plywood Palace. By a notification dated 4th September 1993 of the central government NBI was taken over by Punjab National Bank of India (PNB) which however did not immediately exercise its option to renew the lease which expired on 30th June 1993. Accordingly to the plaintiff with effect from 1st July 1993 the rent payable by the erstwhile NBI was being adjusted against the loan amount without informing him. According to the defendant, the plaintiff demanded enhancement of rent. However, the PNB did not agree to any enhancement. Consequently the plaintiff filed Suit No. 1574 of 1994 in the civil court.

4. At this stage it requires to be noticed that on 22nd October 1996 PNB filed Suit No. 279 of 1996 against the plaintiff in the Court of the Additional District Judge (ADJ) under Order XXXIV CPC for recovery of Rs. 3,43,880.25 together with pendent lite and future interest at 22.75% per annum at quarterly rests. PNB claimed that the plaintiff had signed a bank balance and security letter on 21st October 1993 confirming that as on 30th September 1993 a sum of Rs. 7,19,621 was due to PNB. As on 19th October 1996 Rs. 3,43,880.25 was due. This was calculated by charging interest at quarterly rests at 22% per annum. In his written statement dated 27th May 1997, the plaintiff herein denied having signed any such balance and security confirmation letter dated 21st October 1993. Further it was pointed out that PNB had to give benefit of rent at the rate of Rs. 24,500 per month for the months of September and October 1983 and January and February 2004 and at the rate of Rs. 28,175 per month for the months of May and June 1990 working out to Rs. 1,54,350. If interest @16.5% was allowed for the entire period, the total amount payable to the plaintiff herein would be much more than the amount claimed in the suit.

5. Meanwhile, during the pendency of the plaintiff''s Suit No. 1574 of 1994 an agreement was reached by the parties. Consequent thereto, the plaintiff withdrew the Suit No. 1574 of 1994. A fresh lease deed was entered into between the parties on 26th February 1999 in terms of which the tenancy was to be for a term of five years with effect from 1st July 1993 and the rent was to be Rs. 1,05,000/- per month. There was an option for seeking renewal of the lease from 1st July 1998 to 30th June 2004 with 25% increase in the rent.

6. On 6th March 1999 PNB informed the plaintiff that it had credited the account of M/s. Plywood Palace with a sum of Rs. 46,42,695/- plus Rs. 1,83,649/- and Rs. 240/- towards arrears of rent after deducting TDS @ 15%, i.e. Rs. 8,19,340/- on Rs. 54,62,275/. Upon the plaintiff disputing the figures and demanding to look at the calculation, a letter dated 8th April 1999 was sent by

the PNB explaining that for the period from 1st July 1993 to 30th June 1998 the rent was calculated as Rs. 1,05,000 per month less Rs. 28,175 already paid, thus working out to Rs,76825 per month. For the period from 1st July 1998 to 28th February 1999 the rent was worked out at Rs. 1,31,250/- per month minus Rs. 28,175/- per month (already paid), i.e. Rs. 1,03,075 per month. PNB further informed the plaintiff that it had also allowed arrears of rent after adjustment of cash credit loan account with Rs. 183649.80 on 27/2/99. Copy of statement is enclosed. The plaintiff replied on it is only at this point he realised that the loan instalments were being adjusted even in the past against the rent. 7. On 24th November 1999 the plaintiff wrote to the PNB questioning the correctness of the calculations given by the PNB in its letter of 8th April 1999. He enclosed a copy of the written statement filed by him in the mortgage suit filed by PNB (Suit No. 279 of 1996) and hoped that PNB would credit the entire arrears of his dues after crediting the amount of rent not credited as detailed in the written statement together with interest on the aid amount from the date on which the said rent fell due.

8. It appears that subsequently PNB filed an application in the above suit under Order XXIII Rule 3 seeking to withdraw its mortgage Suit No. 279 of 1996. While allowing the said application, the learned ADJ by an order dated 31st January 2000 noted that it is true that the plaintiff bank has not given credit to the defendant at certain amount and the suit was filed by the plaintiff without going through the account of the defendant. The suit was dismissed as withdrawn with a direction to the PNB to pay the plaintiff herein a sum of Rs. 5,000/- as costs.

9. On 5th October 2000 PNB informed the plaintiff that in terms of the order dated 31st January 2000 passed by the learned ADJ in Suit No. 279 of 1996, it had on that date credited his current account with a sum of Rs. 1,54,350/- . This was the first admission made by the PNB of not having given credit of rent for the period of six months. The plaintiff by his letter dated 21st October 2000 pointed out that this was not full compliance with the order of the learned ADJ since you have not credited the amount of rent due in the month when it fell due as agreed and have not credited the interest amount on the said amount from the date it fell due. He pointed out that PNB had also not credited the amount Constituting the difference between the excess interest charged by PNB and the agreed interest. The plaintiff sent reminders on 31st October, 16th November and 4th December 2000.

10. On 14th November 2000 PNB gave notice to the plaintiff that they would be vacating the premises on 31st December 2000 and that physical possession of the suit premises would be handed over to him on that day. The plaintiff received this letter on that day itself but under protest. PNB handed over to the plaintiff vacant possession of the suit premises on 31st December 2000 and in acknowledgment thereof the plaintiff signed on PNB''s letter dated 31st December 2000. According to PNB the plaintiff is accordingly not justified in claiming rent for any period thereafter. The plaintiff on his part handed over on

the very next date i.e. 1st January 2001 a letter dated 31st December 2000stating that he had received possession of the suit premises in a damaged condition and that certain fixtures and fittings were missing. The official of PNB endorsed this letter acknowledging receipt.

11. The plaintiff addressed a letter dated 31st May 2001 to PNB reminding it about the non-crediting of the rent from the relevant dates and the charging of the excessive rate of interest. He requested that he should be given total credit of the amount withheld by PNB mistakenly. On 9th June 2001 PNB wrote to the plaintiff making a claim for certain items allegedly left behind by it. However, for the first time PNB agreed to pay interest on the six months. rent which at six per cent simple interest. The plaintiff in his reply pointed out that PNB had charged interest up to 28.25% and therefore the offer of 6% simple interest was not acceptable to the plaintiff. A lawyer''s notice was sent on 17th June 2001 demanding the payment of the amounts due to the plaintiff.

12. The present suit was filed on 11th September 2001. In para 25 of the plaint, the plaintiff gave the following break-up of the amounts due to him:

1. On account of arrears of rent, not paid or credited to the plaintiff but illegally deducted for the period from 1st July, 93 to 28th Feb., 1999 Rs. 18,87,725.00 Plus: interest @ 18% Rs. 7,92,884.00

2. Lease money for the period from Jan., 2001 to August, 2001 @ Rs. 1,31,250/- Rs. 10,50,000.00

Plus: Interest @ 18% on the lease money from Jan., 2001 to June, 2001 on Rs. 7,87,500/- Rs. 29,531.00 3. Payment of interest illegally recovered by the bank Rs. 48,48,807.00 ----------------- Total Rs. 86,08,947.00 -------------------

13. In its written statement, PNB has denied that a sum of Rs. 18,82,725/- is due to the plaintiff. According to it the rent for the period 1st July 1993 till 28th February 1999 at the rate of Rs. 28,175/- per month already stood credited to the account of the plaintiff. Consequently, interest at 18% per annum thereon was also not tenable. As regards the rent at the rate of Rs. 1,05,000/- per month for the period from 1st July 1993 to 30th June 1998, it was stated that this amount minus Rs. 28,175/- per month already credited had been paid by PNB on 27th February 1999. Likewise, the rent for the period from 1st July 1998 to 28th February 1999 at Rs. 1,31,250/- per month minus Rs. 28,175/- per month had been paid. Consequently for this period also, no amount was recoverable. It is submitted that inasmuch as the possession was handed over as on 31st December 2000, the rent for the future months from January 2001 to August 2001 was also not payable. As regards the claim of Rs. 48,48,807/- being interest on the amounts wrongly not credited by the bank, it is submitted by the bank that since there was no contract between the parties to pay interest on the rent and arrears thereon, no amount was payable towards interest thereon.

14. In his replication the plaintiff pointed out that the mortgage Suit No. 279 of

1996 filed by the defendant against the plaintiff for recovery of Rs. 3,43,880.25 was dismissed as withdrawn and therefore nothing was payable by the plaintiff on that count. The other contentions of the plaintiff were reiterated.

15. On the basis of the pleadings of the parties, the following issues were framed by this Court on 20th July 2004:

1. Whether the suit of the plaintiff is within time since the rent claimed is for the period commencing from 07.01.93 to 30.06.98 which otherwise stands paid? OPD

2. Whether plaintiff is entitled to claim the rent in view of the compromise arrived between the parties and the previous suit instituted by the plaintiff has been compromised as withdrawn? OPD

3. Whether plaintiff is entitled to claim rent commencing from January 2001 to August 2001 in view of the fact that the premises has already been vacated on 31st December, 2000? OPD

4. Whether the plaintiff is entitled to claim a sum of Rs. 1,54,350/- which has already been adjusted/credited to the account of the plaintiff? OPP

5. Whether the plaintiff is entitled to claim interest of Rs. 48,48,407/- on the above amount of Rs. 1,54,350/-, if so at what rate? OPP

6. Whether plaintiff is entitled to claim Rs. 86,08,947/-? OPP

7. Relief.

16. On behalf of the plaintiff Shri Harbans Lal examined himself as PW1 and filed his affidavit by way of examination-in-chief. He was cross- examined on several dates. On behalf of the defendant, affidavit of Shri A.K. Jain, Chief Manager, PNB (DW1) filed an affidavit by way of examination-in-chief and he was cross-examined. It may be mentioned that the plaintiff Harbans Lal died on 14th March 1991. By an order dated 30th April 2007 his wife, son and daughter were substituted as plaintiffs.

17. The arguments of learned Counsel for the parties have been heard and the record perused. The decision of the court issue wise is as under:

18. Issue No. 1:

Whether the suit of the plaintiff is within time since the rent claimed is for the period commencing from 7th January 1993 to 30th June 1998 which otherwise stands paid?

Pursuant to the settlement between the parties, CS (OS) No. 1574 of 1994 filed by the plaintiff, suit stood withdrawn. A fresh lease deed dated 26th February 1999 was executed to cover the period from 1st July 1993 till 30th June 1998 with one renewal thereafter from 30th June 2004 with 25% increase in rent. PNB made payment of arrears of rent to the plaintiff for the period of six years from 1st July 1993 to 28th February 1999 on 27th February 1999. While making this payment, PNB deducted Rs. 28,175/- per month from monthly rent of Rs. 1,05,000/- of which credit had already been given to the plaintiff''s account. It is apparent that the cause of action for the plaintiff to make a claim for the difference in the amount as calculated by him arose on 27th February 1999 when PNB purported to pay the arrears of rent for the aforementioned period. The present suit was filed on 11th September 2001. The suit, insofar as this head of claim is concerned, has therefore been filed by the plaintiff within the statutory period of limitation which is three years with effect from 27th February 1999. This claim is therefore not time barred. This issue is, therefore, decided against the defendant and in favour of the plaintiff.

19. Issue No. 2:

Whether plaintiff is entitled to claim the rent in view of the compromise arrived between the parties and the previous suit instituted by the plaintiff has been compromised as withdrawn?

Para 25 of the plaint shows that Rs. 18,82,725/- is being claimed as arrears of rent not being paid or credited to the plaintiff but illegally deducted for the period from 1st July 1993 to 28th February 1999. According to the plaintiff, the defendant illegally recovered Rs. 28,175/- per month from the rent of Rs. 1,05,000/- which had been agreed between the parties. The fresh lease deed dated 26th February 1999 incorporated this. The letter dated 6th March 1999 written by PNB in this regard is significant. This is marked as PW1/8 and reads as under:-

Shri Harbans Lal Bhambhani,

Prop,

Plywood Palace,

A-4, Rajouri Garden, New Delhi.

Reg: Lease Deed of Premises No. A-28, Rajouri Garden,

New Delhi.

Dear Sir,

We are thankful to you for complying with your part regarding the execution of Registration of the Lease Deed of the aforesaid premises as agreed between us. On our part we have credited your account with a sum of Rs. 46,42,695/- Rs. 183649.80 & Rs. 240/- towards arrears of rent after deducting T.D.S @15% i.e. Rs. 8,19,340/- on Rs. 54,62,275/-. The amount of monthly TDS deducted from the rent has since been remitted on the arrear of rent of Rs. 1,83,649/-. We also confirm that we have debited your Current account with Rs. 23,645/- on a/c of 50% of the cost of stamp papers for the lease deed.

Thanking you,

Yours faithfully,

Sd/-

(Sr. Manager)

20. In response thereto on 8th March 1999, the plaintiff protested since according to him the amount calculated by the defendant was incorrect and in not in accordance with the agreement. The bank again wrote to the plaintiff on 8th April 1999 Ex. PW1/D17 (explaining the calculation) as under:

Shri Harbans Lal

Prop.

M/s Plywood Palace

A-2 Rajouri Garden,

New Delhi.

Dear Sir,

Reg: Arrears of Rent Credited to M/s Plywood Palace

CA with us.

We have paid you the arrears of Banks. Bldg. rent (A-28A Rajouri Garden New Delhi) w.e.f. 1.7.93 to 28.2.1999 as under:-

1 1.7.93 to 28.2.99

(i) 1.7.93 to 30.6.98: Rs. 1,05,000 Already Paid Rs. 28,175 Balance due Rs. 76,825 76,825 X 60 46,09,500/-

(ii) 1.7.98 to 28.2.99 @ Rs. 1,31,250 PM Already Paid @ Rs.28,175 PM Balance due 1,03,075/- 1,03,075 X 8 8,24,600/- Plus Feb.99 28,175/- 54,62,275/- Less TDS 8,19,340/- Total Arrear Rs. 46,42,935/-

The arrear of rent was credited in the Current A/c of M/s Plywood Palace on the following dates:- Amount

Amount (1) 27.2.1999 46.42,695

(2) 4.3.1999 240 --> less paid on 27/2/99 -------------------------- Total Rs. 46,42,935 --------------------------

We have also allowed arrear of rent after adjustment of cash credit loan account with Rs. 1,83,649.80 on 27/2/99. Copy of statement enclosed.

21. The statement of accounts placed on record show that the said sum of Rs. 28,175/- has in fact been credited from 1st May 1993 onwards in the account CC No. 356 of M/s Plywood Palace. Sometimes rent for two months was credited in one go. From 31st July 1999 onwards the rent was being deposited after

deducting TDS. It is not as if the plaintiff was unaware of this aspect. This is apparent from his cross-examination. The only statement made by the plaintiff was that the rent had not been given to him personally but that it had been deposited in the account without informing him.

22. The relevant question and answer in this regard reads as under:

Q. Is it correct that the bank had paid the rent w.e.f. from 1st of July 93 to February 99 at the rate agreed in the lease deed dated 26.02.99.

A. It is not correct that entire rent was paid to me. The bank did not hand over the money to me payable to me as rent but on the contrary the bank deposited the rent amount in the account of my firm M/s. Plywood Palace without informing me.

It is correct I was operating the bank account in the name of my firm M/s. Plywood Palace in the Raja Garden Branch where the bank was operating the banking business and was occupying as a tenant.

23. Likewise in his cross-examination on 5th October 2005 the plaintiff made the following statements:

The bank has been throughout crediting the rent of the tenanted premises A-28A in the said cash credit account of our partnership firm M/s. Plywood Palace from the inception of the tenancy. The correspondence and letters exchanged with the New Bank of India and Punjab National Bank are Exhibits PW1/D-2 to PW1/D-14 are signed by me. The rent has been deposited by the bank without informing me in my cash credit account opened in the name of M/s. Plywood Palace. I and my father during his life time were operating the aforesaid account of our firm. It is incorrect to suggest that we were receiving the statement of bank account regularly and or that we were aware about the deposit of rent in respect of the lease premises.

24. The plaintiff had been writing to the PNB on several dates till 1st August 1996 asking for the complete statement of account. By its letter of that date (Ex. P13) PNB enclosed the statement of account for the period from April 1993 till July 1996. The statement of account which is marked as Ex P14 clearly shows the credit of Rs. 28,175 for the initial months of this period and thereafter the amount as reduced by the TDS. That the plaintiff received these accounts is plain from his letter dated 10th August 1996 to PNB (Ex P15) although he protested against the excess interest being charged. Then there is the letter dated 26th August 1998 (Ex P24) written by PNB to the plaintiff giving him the details of the change in the interest charged by NBI in his loan account. Therefore by the time the fresh lease deed was executed on 26th February 1999 the plaintiff was aware of the above facts.

25. It appears to this Court that in view of the fact that the rent was being adjusted against the loan account by PNB through the period 1st July 1993 to 30th June 1998, and thereafter till 28th February 1999, no fault can be found in

PNB deducting the said amount while making payment of the enhanced rent of Rs. 1,05,000/- for the said period on 6th March 1999. If it was the intention of the parties that this amount should not be deducted then the plaintiff should have got this clarified at the stage of the execution of the fresh lease deed. The correspondence between the parties preceding the execution of the fresh lease deed does not show that the plaintiff raised this point with the PNB. It was therefore not open to the plaintiff to thereafter claim that the amount of rent already adjusted against the loan account should not be deducted from the payments of the enhanced rent for the period during which the adjustment had already taken place. Consequently this does not appear to this Court that the plaintiff is entitled to recover the differential sum of Rs. 18,87,725/- or interest thereon at 18%.

26. Accordingly, the issue No. 2 is decided against the plaintiff and in favour of the defendant bank.

27. Issue No. 3:

Whether plaintiff is entitled to claim rent commencing from January 2001 to August 2001 in view of the fact that the premises has already been vacated on 31st December, 2000?

This claim is for rent for the period subsequent to the defendant vacating the suit premises. There was no implied or express term in the lease deed permitting the plaintiff to be paid rent for the period subsequent to the termination of the lease by the defendant. A copy of the lease deed dated 26th February 1999 has been marked as Ex. PW1/4. The relevant clause in the lease deed is clause i) which reads as under:

i) That the period fixed for the lease is 5 years commencing from 1.7.1993 with an option for continuing the lease for a further period of six years w.e.f. 1.7.1998 expiring with 30.06.2004 subject to increase of 25% on the agreed rate of rent of Rs. 1,05,000/- on the same terms and conditions as herein contained and the lessor shall not be entitled to refuse the extension of six years, if the lessee exercises that option within one month before the expiry of the original terms of five years, provided that in the absence of notice for the exercise of option, the lessee will be deemed to have exercised the same.

28. On14th November 2000, the defendant bank wrote to the plaintiff giving him final notice of the vacation of the suit premises. This notice was received on that date itself by the plaintiff although under protest. The fact remains that as per the terms of the aforementioned clause in the lease deed PNB had given advance notice to the plaintiff. The following statement by the plaintiff in his cross examination on 16th November 2005 is relevant:

It is correct that the bank had delivered me a letter dated 14.11.2000 that the bank shall vacate and hand over the possession of the premises No. A-28A Rajouri Garden, New Delhi latest by 31.12.2000 and shall pay the rent upto

31.12.2000 and similarly shall pay the electricity & water charges to the concerned authorities upto 31.12.2000. The said letter was received by me on 14.11.2000 at 4:00 pm. under protest which bears my signature at Mark A. The said letter dated 14.11.2000 is exhibit PW1/D-21. The possession was handed over on 31.12.2000 by Shri A.K. Jain vide Ex. PW1/D- 22 which bears my signature at Mark B on the said letter dated 31.12.2000.

Volunteered: That this possession letter was delivered to me at Rajouri Garden Branch at 6 pm.

29. In view of the aforementioned admission and in the absence of any specific clause in the lease deed, the claim for rent for the period beyond the date of handing over of the possession of the suit premises to the plaintiff is not tenable. This issue is, accordingly decided against the plaintiff and in favour of the defendant.

30. Issue Nos. 4 and 5:

The issues 4 and 5 are taken up together and they read as under:

4. Whether the plaintiff is entitled to claim a sum of Rs. 1,54,350/- which has already been adjusted/credited to the account of the plaintiff?

5. Whether the plaintiff is entitled to claim interest of Rs. 48,48,407/- on the above amount of Rs. 1,54,350/-, if so at what rate?

The sum of Rs. 1,54,354.35, Constituting the aggregate of six months. rent which was mistakenly not credited by PNB to the plaintiff''s account, was thereafter credited to his account on 5th October 2000. The following statement made by the plaintiff in his cross-examination on 10th November 2005 is significant:

It is correct that I was furnished with the statement of account of my firm M/s. Plywood Palace bearing cc 356 in the year 1999 wherein the deposit of rent commencing from 12.04.93 to 27.02.99 wherein the rent had been credited from May 93 to January 99. It is further correct that our firm M/s. Plywood Palace had another current account with the Punjab National Bank bearing CA No. 3648. It is correct that the arrears of six months rent pertaining to Sept. & Oct. 1983, January & February 1984, & May & June 1990 were duly credited vide letter dated 05.10.2000 (Ex PW-1/D-19) without informing me.

31. The issue therefore is not about the payment of the arrears of rent as much it is about the payment of interest on the said amount by PNB. Counsel for the plaintiff has handed over to the court a detailed calculation to justify the claim for interest in the sum of Rs. 48,48,407/- on the aforementioned sums. Unfortunately, this calculation handed over in court during arguments was never put to PNB''s witness in the course of his cross-examination. It is unfortunate that the plaintiff did not avail of this opportunity even though he made a claim in the plaint which has been denied in toto in the written statement by the

defendant. As such therefore the said calculation cannot be looked into. Nevertheless this Court has attempted to understand the logic behind those calculations.

32. The argument runs like this. According to the plaintiff the rent of Rs. 24,500/- per month for the months of September and October 1983 and January and February 1984 ought to have been paid as and when they fell due and corresponding adjustment had to be made in the an account on those dates. Likewise for the two months of rent in 1990. As a result the loan amount was not reduced by these amounts and interest on the said component at the rate of 15.5 per cent or even more continued to be charged. In other words, had these amounts of rent duly been credited to in the plaintiff''s account, the outstanding of the plaintiff''s account would have been less and the corresponding interest charged could also have been less. In its letter dated 9th June 2001 PNB had offered to pay six per cent simple interest upon the said sums. The relevant portion of the said letter dated 9th June 2001 which is an admitted document and marked as

Ex. P29 reads as under:

In order to facilitate you in the matter of calculation of interest on the credit of delayed rent as stated above, we may inform you that we have calculated the interest as under upto Sept. 2000 because the payment of rent was made to you in the month of October, 2000 by the then BO Raja Garden:

From To Period Amount Intt.06%

Sept.1983 Sept.2000 17 Yrs. 24500 24990.00

Oct. 1983 -do- 16 yrs-11-M 24500 24867.50

Jan. 1984 -do- 16 yrs. 9-M 24500 24622.50

Feb. 1984 -do- 16 yrs-8-M 24500 24500.00

May 1990 -do- 10 yrs-4-M 28175 17468.50

June 1990 -do- 10 yrs-3-M 28175 17327.62 -------------------- Total : Rs. 133796.12 ---------------------

Please note that the above payment will be subject to your furnishing an unconditional letter with respect to full and final settlement of pending issues with respect to the premises of BO Raja Garden, New Delhi.

33. Counsel for the defendant did not deny this letter. He stated that PNB was still willing to pay this amount to the plaintiff. Counsel for the plaintiff on the other hand points out that even while acknowledging that these amounts were due for the period ranging from ten to seventeen years, the offer of PNB bank to pay only six per cent interest thereon for the entire period and that therefore the offer was not reasonable. It is pointed out that PNB was charging interest on the loan amount at a range of rates from 16.5 to 28.25 %.

34. This Court finds that the plaintiff did not institute any proceedings earlier for the recovery of the rents for the months of September and October 1983, January and October 1984 and April and May 1990. The earliest he made a claim for these sums was when he filed on 27th May 1997 a written statement in reply to the mortgage suit filed by PNB. Even after the said suit dismissed as withdrawn, the plaintiff did not institute recovery proceedings till the filing of the present suit. On its part, PNB must be taken to have acknowledged its debt in this regard on 5th October 2000 when it credited the plaintiff''s account with the said sum. The limitation for making the plaintiff to make a claim in respect of the said sum should be held to have commenced on that date.

35. It appears to this Court that it would be unreasonable to permit the plaintiff to claim the interest for the period earlier than three years preceding the date of the filing of the present suit, i.e., earlier than 11th September 1998.

36. The next issue concerns the rate at which interest should be made payable by PNB on the said sum. From the calculations provided by the plaintiff, it appears that during the period September 1983 to February 1984 the NBI was charging interest @ 15.5%. From the statements provided by the PNB to the plaintiff (Ex.P24) it appears that during the months of April and May 1990 PNB was charging 19.5% on the balance in the loan account. This Court finds justification in the contention of the plaintiff that what is sought to be claimed is the amount (inclusive of interest thereon) which was wrongly not given credit by being adjusted against the outstanding loan amount as on those dates. Keeping in view the facts and circumstances of the present case, it appears to this Court to be in the interests of justice to order that PNB should pay the plaintiff simple interest at 16.5 % on the sum of Rs. 1,54,350/- from 11th September 1998 till the date of payment. The issue Nos. 4 and 5 are decided accordingly.

37. Issue No. 6

Relief:

In the net result, the suit is partially decreed by directing that the defendant PNB will pay to the plaintiff a sum equivalent to simple interest at 16.5 % on the sum of Rs. 1,54,350/- from 11th September 1998 till the date of payment.

38. Suit stands disposed of in the above terms. Decree sheet be drawn up accordingly. The pending application is disposed of.

