
(2012) 01 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8464 of 2009

Mahendra Kaur Arora (Smt.)

APPELLANT

Vs

Rent Appellate Tribunal, Jaipur and Another

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227
Rajasthan Rent Control Act, 2001 — Section 18, 19, 23, 51, 52
Transfer of Property Act, 1882 — Section 108

Citation : (2013) 2 RLW 1525 : (2012) 1 WLN 522

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Sharma, J.—By this petition under Art. 226/227 of the Constitution of India, the petitioner has challenged the order dt. 05.03.2009, passed by the Appellate Rent Tribunal, Jaipur in Appeal No.61/2008 filed by the respondent-tenant-Bank against the order dt. 10.04.2008, passed by the Rent Tribunal, Jaipur which had allowed the original application filed by the petitioner-landlord (hereinafter "the landlord") while directing the respondent-HDFC Bank (hereinafter "the tenant-Bank") to pay a sum of Rs. 4,73,748/- to the landlord subsequent to the adjustment of Rs. 85,875/- held by the landlord as security deposit from the Bank. The Appellate Rent Tribunal has set aside the order of the Rent Tribunal instead directed that the Bank was entitled to a refund of its security deposit of Rs. 85,875/- from the landlord along with interest for the period from 17.08.2004 to 06.07.2006 aggregating to Rs. 1,33,096/- and thereafter further interest on the principal sum of Rs. 85,875/- at the rate of 24% per annum compounded quarterly pendente lite till the refund of the said security deposit.

2. The brief facts of the case are that the landlord let out the premises shop No.485 along with the basement in House No.340, situated at Vashistha Marg, Raja Park, Jaipur effective 13.10.2000 under a lease-deed executed on the same

day for a period of nine years. Under clause 2(j) of the Indenture of Lease dt. 13.10.2000, it was provided that "on the expiry of the said period of the lease or any renewal thereof, the Lessee shall deliver the demised premises in such order and condition as is consistent with the terms, covenants and conditions on the part of the Lessee herein contained (save and except damage to the demised premises by fire unless the fire has occurred due to negligence of the Lessee), riots, earthquake, storm, war, civil commotion, acts of Gods and other conditions over which the Lessee shall have no control".

3. Under clause 6(b) of the Indenture of Lease aforesaid, it was provided that "notwithstanding anything contained in the lease, the Lessee shall always be entitled without assigning any reason to terminate the lease at any time before the expire of the tenure of the lease or any renewal period (if any) thereof, by giving to the Lessor three month"s prior notice in writing." Simultaneous to the Indenture of Lease dt. 13.10.2000, the landlord and the tenant-Bank also entered into a "deposit agreement" on the same day i.e. 13.10.2000. In terms of clause 2 of the deposit agreement aforesaid, it was provided that "the agreement shall remain in force upto the date on which the Lease Agreement or any renewal thereof expires by efflux of time or until the said Lease Agreement or its renewal is earlier determined or terminated as provided therein or comes to an end for any reason whatsoever." Clause 6 of the deposit agreement aforesaid provided that "it was agreed between the parties that on the Lease Agreement coming to an end for any reason whatsoever as provided in the Lease Agreement dt. 13.10.2000, the Lessor shall refund (without any deduction on any account and without interest) the said deposit to the Lessee simultaneously with the Lessee removing itself/its officers/employees using the leased premises from and vacating the leased premises and giving charge thereof to the Lessor (reasonable wear and tear, damages/loss to/destruction of the leased premises by fire not caused by the willful neglect on the part of the Lessee, its officers/employees using the leased premises, civil commotion, riots, air attack, act of God and anything else beyond the control of the Lessee excepted)". Clause 8 of the deposit agreement which is material to the dispute agitated before the Tribunals below and before this Court reads as under :

(8) In the event the Lessor does not refund the said deposit to the Lessee in full at the time of the said Lease Agreement or any renewal thereof comes to an end, as aforesaid, then the consequences mentioned in para nos.(i) to (iii) hereunder shall follow :

(i) The Lessee shall (without prejudice to its rights and remedies in law), not be obliged or bound to vacate and give charge of the leased premises to the Lessor and the Lessee shall be entitled to use or permit the leased premises to be used by any person of its choice without being liable to pay any rent, outgoings or damages to the Lessor until such time as the Lessor does not refund to the Lessee the said deposit in full; and

(ii) In addition, the Lessor shall be liable to pay to the Lessee interest @ 24%

p.a. Compounded quarterly, on the said deposit from the date of termination or expiry of the said Lease Agreement or any renewal thereof till the date of refund of the said deposit by the Lessor to the Lessee; and

(iii) In the event the Lessor is unable to return the deposit as aforesaid for a period of 30 days from the date it becomes due, the Lessee shall be liberty to further sub-let the leased premises for period of not less than 12 months at a time on such terms and conditions as the Lessee may in its absolute discretion may deem fit.

4. Vide notice dt. 10.05.2004, the tenant-Bank in terms of clause 6(b) of the Indenture of Lease dt. 13.10.2000 informed the landlord that the leased premises would be handed over to the landlord on 16.08.2004 and the notice should be treated as a notice period for vacation of the leased premises. However in terms of the deposit agreement dt. 13.10.2000, the landlord did not refund the security deposit to the tenant-Bank following the termination of the lease effective 16.08.2004 in terms of the notice dt. 10.05.2004 and consequently in terms of clause 8 of the deposit agreement, the tenant-Bank did not handover possession of the leased premises to the landlord. The obtaining situation was thus a stalemate with the landlord not refunding the security deposit to the tenant-Bank as per the deposit agreement dt. 13.10.2000 and the tenant-Bank not handing over the vacant possession to the landlord and continuing to hold the leased premises in terms of clause 8 of the deposit agreement.

5. In these circumstances, the landlord issued a notice through her Advocate to the Bank for the purported recovery of rent on or about 16.12.2005. In reply to the said notice, the tenant-Bank sent a letter dt. 19.10.2004 to the landlord stating that on payment of security deposit of Rs. 85,875/- as per the deposit agreement dt. 13.10.2000, the vacant possession of the leased premises would be handed over to the landlord.

6. The landlord thereafter filed a petition for recovery of rent before the Rent Tribunal praying that a decree of recovery of rent. The rent was claimed for the period effective 17.08.2004. At the time of filing of the petition for recovery of rent, 17 months had elapsed subsequent to the notice period expiring on 16.04.2008 and at the rate of 32,919/- per month the landlord claimed arrears of rent of Rs. 5,59,623/- and subsequent to the adjustment of the security deposit of Rs. 85,875/-, claimed a degree for Rs. 4,73,748/-. Further rent at the rate of Rs. 32,919/- per month was sought effective 17.08.2004 till the date of handing over the vacant possession by the tenant-Bank to the landlord. In para 4 of the eviction petition, it was admitted by the landlord that till 16.08.2004 i.e. the date of expiry of notice period by the tenant-Bank under its notice dt. 10.05.2004, the tenant-Bank was not in any arrears of rent.

7. In reply to the petition for arrears of rent, it was stated by the tenant-Bank that it was the tenant of leased-premises only till 16.08.2004 in terms of the

Indenture of Lease dt. 13.10.2000 and subsequently under notice of termination of lease vide its letter dt. 10.05.2004 the lease was to stand terminated effective 16.08.2004. The tenant-Bank stated that a conjoint reading of the Indenture of Lease and the deposit agreement both dt. 13.10.2000 indicated that the parties were under a duty to perform reciprocal obligations which in clear terms of deposit agreement dt. 13.10.2000 first entailed the refund of security deposit of Rs. 85,875/- to the tenant-Bank without any deduction whatsoever on any account and only thereupon the tenant-Bank would have been under an obligation to handover the vacant possession of the leased premises to the landlord. Stating that the rent as agreed under the Indenture of Lease dt. 13.10.2000 had been paid till 16.08.2004 when the tenancy had come to an end under the notice dt. 10.05.2004, the tenant-Bank denied the claim for recovery of purported rent and interest sought but by way of a counter claim sought refund of its security deposit of Rs. 85,875/- along with interest at the rate of 24% per annum as agreed between the parties.

8. On the matter coming up before the Rent Tribunal, the Rent Tribunal came to a conclusion that the tenant-Bank was not in a position to handover the vacant possession of the leased premises in the condition in which the premises had been handed over to the tenant-Bank except for normal wear and tear and consequently, the landlord was not under an obligation to refund the security deposit as per the clauses of the deposit agreement dt. 13.10.2000. So holding, the Rent Tribunal found the tenant-Bank not absolved of its obligation to pay rent under the Indenture of Lease dt. 13.10.2000 in spite of its notice of termination dt. 10.05.2004 under clause 6(b) of the Indenture of Lease dt. 13.10.2000 and directed the tenant-Bank to pay the rental for the 17 months as claimed in the petition for recovery of arrears by the landlord and further directed the tenant Bank to pay to the landlord rent at the rate of Rs. 32,919/- per month thereafter till the date of handing over the actual possession of the leased premises to the landlord.

9. Aggrieved of the order dt. 10.04.2008, passed by Rent Tribunal, the tenant-Bank filed an appeal under Sec. 19 of the Rajasthan Rent Control Act, 2001 (hereinafter "the Act of 2001") before the Appellate Rent Tribunal, Jaipur.

10. On the matter coming up before the Appellate Rent Tribunal, the Appellate Rent Tribunal held that the Rent Tribunal had completely misdirected itself in misconstruing the effect of clause 8 of the deposit agreement dt. 13.10.2000 whereunder the landlord was under an immutable obligation to first refund the security deposit without any deduction on any account whatsoever before being entitled to possession of the leased premises. The Appellate Tribunal held that on notice of termination of the Indenture of Lease dt. 13.10.2000 having emanated from the Bank dt. 10.05.2004, the tenancy under the Indenture of Lease dt. 13.10.2000 as indicated in the said notice has come to an end on 16.08.2004 with reference to clause 6(b) of the Indenture of Lease dt. 13.10.2000. The Appellate Tribunal further held that consequently in terms of clause 8 of the

deposit agreement dt. 13.10.2000, even though the parties to the lease-deed had reciprocal obligations, with reference to the agreed order of sequence in which the transaction between the parties was to close. It was first the duty of the landlord to refund the security deposit of Rs. 85,875/- without any deduction on any account whatsoever to the tenant-Bank before the tenant-Bank was obliged to handover the vacant possession of the leased premises to the landlord.

11. The Appellate Tribunal held that in this view of the matter, when admittedly the landlord had received the notice dt. 10.05.2004 indicating the termination of tenancy effective 16.08.2004 in full compliance of clause 6(b) of the Indenture of Lease dt. 13.10.2000, the tenancy had come to an end and the tenant-Bank thereafter only in continued occupation of the premises not as tenant liable to pay rent but in terms of clause 8 of the deposit agreement without liability to pay any rent therefor. The Appellate Tribunal thus held that in this view of the matter, the Rent Tribunal had misdirected itself in addressing the purported alleged state of unreadiness of the tenant-Bank to handover the possession of the leased premises to the landlord as the question of handover of the leased premises to the landlord was to arise as an obligation only subsequent to the receipt of the whole of the security deposit without any deduction on any account whatsoever as agreed under the deposit agreement dt. 13.10.2000.

12. I have heard the counsel for the petitioner and the respondent-Bank as also perused the order dt. 10.04.2008, passed by the Rent Tribunal, Jaipur and the order dt. 05.03.2009, passed by the Appellate Rent Tribunal, Jaipur setting aside the order dt. 10.04.2008.

13. Mr. M.M. Ranjan, Sr. Counsel appearing for the petitioner-landlord would argue that the order passed by the Appellate Rent Tribunal on 05.03.2009 is liable to be set aside on the ground that the Appellate Rent Tribunal was failed to take in account the effect of Section 108 of the Transfer of Property Act, 1882, more particularly clause (m) thereof which inter alia provides that the lessee is bound on the termination of the lease for whatever reason to restore, the property in as good a condition as it was in at the time when the lease was put in possession, subject only to the changes caused by reasonable wear and tear. Mr. Ranjan has also relied upon clause 2(j) of the Indenture of Lease dt. 13.10.2000 for the submission that on expiry of the period of the lease or its termination for whatsoever reason, the Lessee was under an obligation to handover the demised property to the landlord in such condition as received subject to normal wear and tear. The submission is that until the Lessee was in a position to return/hand over the leased premises in as good a condition as it was received subject of normal wear and tear, the landlord was not under an obligation to refund the security deposit in spite of the specific provisions of clause 6 to 8 of the deposit agreement dt. 13.10.2000. The further submission of the counsel is that the tenant-Bank having paid rent only upto 16.08.2004, and having continued in the use and occupation of the premises thereafter, it was bound to pay the monthly rent agreed for the duration of its occupation and the security deposit of Rs.

85,875/- was liable to be adjusted against the said rent-again notwithstanding the clear terms of the deposit agreement dt. 13.10.2000 to the contrary. Mr. Ranjan further argued in the alternative that deposit agreement and its conditions 6 and 8 were onerous and contrary to public policy and therefore void under Sec. 23 of the Act of 1872 and therefore could not be enforced against the landlord by the tenant-Bank and the Appellate Rent Tribunal had erred in resorting to the said conditions 6 and 8 of the deposit agreement dt. 13.10.2000 to hold against the landlord and in favour of the tenant-Bank. It was also agreed that the findings of the Appellate Rent Tribunal was perverse and liable to be quashed and set aside by this Court and that of the Rent Tribunal rendered in its judgment dt. 10.04.2008 deserved to be restored. Mr. Ranjan has further argued that the Tribunals under Rajasthan Rent Control Act, 2001 do not have the jurisdiction to entertain any counter claim and on this count also the order of the Appellate Rent Tribunal is liable to be quashed and set aside in so far it directs refund of security deposit with interest on the tenant-Bank's counter claim.

14. Mr. Anant Bhandari appearing on behalf of the HDFC Bank has submitted that the contracts have a sanctity which must be upheld and protected by Courts and are to be enforced as entered into between the parties with the eyes open. Counsel submits that the Indenture of Lease and the deposit agreement entered simultaneously on 13.10.2000, even though separate agreements, and are to be read conjointly as they relate to the same transaction. Counsel submits that in this view of the matter, under clause 6(b) of the Indenture of Lease dt. 13.10.2000, the tenant-Bank was entitled to terminate the lease on three months prior and this was done vide notice dt. 10.05.2004 bringing to an end the tenancy effective 16.08.2004. Counsel submits that following the termination of lease as aforesaid, the consequent order of discharge of obligation by the parties would be determined as per conditions 6 and 8 of the deposit agreement also dt. 13.10.2000. Counsel for the tenant-Bank also referred to Sections 51 and 52 of the Act of 1872. According to the counsel, Section 51 of the Act of 1872 inter alia provide that when a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Counsel submits that under Sec. 52 of the Act of 1872, it has been provided that where the order in which reciprocal promises are to be performed is expressly fixed by a contract, they shall be performed in that order, and where the order is not expressly fixed by the contract, they shall be performed in an order which the nature of transaction requires. The submission is that admittedly in the contract between the parties as deduced from the Indenture of Lease dt. 13.10.2000 and the deposit agreement also of the same date, it is apparent that the parties had the reciprocal obligations of refund of security deposit being simultaneous to the handing over of vacant possession of the leased premises by the tenant-Bank to the landlord and yet the order in which the reciprocal promise was to be performed was expressly fixed under clauses 6 and 8 of the deposit agreement dt. 13.10.2000 under which the security deposit had to be first refunded to the

tenant whereupon vacant possession of the premises would be handed over to the landlord. Counsel submits that admittedly the security deposit was not refunded by the landlord to the tenant-Bank following the termination of the tenancy effective 16.08.2004 following the notice dt. 10.05.2004 and consequently with reference to Sections 51 and 52 of the Act of 1872, the tenant-Bank was not under an obligation to hand over the vacant possession of the leased premises to the landlord. The further submission is that in terms of deposit agreement dt. 13.10.2000, in view of termination of the tenancy by notice dt. 10.05.2004, effective 16.08.2004 the tenant-Bank continued to hold the leased premises and use them effective 17.08.2004 without any liability to pay any rent. In this view of the matter, counsel submits that the order of the Appellate Tribunal is a legal order founded upon the admitted facts of the case and the conditions of the agreement amongst the parties reflected in the two agreement both dt. 13.10.2000 as also the provisions of Sections 51 and 52 of the Act of 1872.

15. It is trite that it is the primary duty of the Courts to uphold the sanctity of contracts except in cases of valid legislative interference. Sanctity of contracts has been recognized to form the basis of civilized societies. This proposition has been upheld by the Hon"ble Supreme Court in the context of the Arbitration and Conciliation Act, 1996 in para 73 of the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., In the present case, the terms and conditions of the lease (contract) between the landlord and tenant-Bank are quite clear on a holistic reading of the Indenture of Lease and the deposit agreement both dt. 13.10.2000. The parties had clearly agreed that the security deposit was to be refunded in the first instance without any demur and without any deduction whatsoever following which the landlord was entitled to vacant possession of the tenanted premises. A plain reading of Section 51 of the Act of 1872 read with Section 52 thereto make it clear that when the issue is of the performance of reciprocal promises the order which has been set out by the parties to the contract for the performance of such reciprocal promises shall be determinative. In the facts of the present case, the landlord was thus under a contractual obligation to refund the security deposit following the termination of the lease under clause 6(b) of the Indenture of Lease and thereafter claim the possession of the leased premises with reference to the deposit agreement also dt. 13.10.2000. The landlord completely misdirected herself in insisting upon the holding of the security deposit without any just cause and contrary to terms of the contract. The tenant-Bank was thus within its contractual right to hold of tenanted property till the refund of security deposit and was not liable to the payment of any rent over the property following the expiry of notice dt. 10.05.2004 and termination effective 16.08.2004. It is an admitted case that the tenant-Bank had paid all rent due as payable upto 16.08.2004 (Para 4 of the landlord's application). In this view of the matter, the suit for recovery of rent filed before the Rent Tribunal by the landlord was without any substance and the Rent Tribunal completely misconstrued the contract between the parties and

came to a perverse conclusion that the tenant-Bank was liable to pay any rent to the landlord subsequent to the expiry of the notice period on 16.08.2004 effective when the lease was terminated with reference to clause 6(b) of the Indenture of Lease dt. 13.10.2000.

16. I find no substance in the argument of Mr. Ranjan, Sr. Advocate in seeking to invoke Section 108 of the Act of 1882 in the facts of the present case. In view of the clauses of the Indenture of Lease dt. 13.10.2000 read with clause 6 and 8 of the deposit agreement also dt. 13.10.2000, the tenant-Bank was under a contractual obligation to hand over the possession of the property as agreed or as otherwise provided under Sec. 108 clause (m) of the Act of 1882 only subsequent to the receipt of the security deposit from the landlord. The right of the landlord to the vacant possession of the leased premises was thus to arise only on the refund of the security deposit to the tenant-Bank. For the reasons detailed hereinabove the submission of Mr. Ranjan based on Section 108 and clause 2(j) of Indenture of Lease dt. 13.10.2000 made in a vacuum with reference to the operating contract in consideration in the present case is of no consequence.

17. Similarly I find no substance in the submission of the counsel for the landlord that the landlord was entitled to rent of Rs. 32,919/- per month or any rent at all subsequent to the termination of the lease effective 16.08.2004 in terms of the Bank's notice dt. 10.05.2004. The deposit agreement dt. 13.10.2000 specifically provided that in consequence of non-refund of security deposit, the tenant-Bank was entitled to hold on to the property in issue without any liability towards the payment of rent. This was under clauses 6 to 8 of the deposit agreement dt. 13.10.2000 entered between the parties with the eyes open and the landlord could not have set up a case contrary thereto for arrears of rent and the Rent Tribunal committed a gross perversity and error of law in coming to a finding contrary to the agreed terms between the parties.

18. Mr. Ranjan faced with the aforesaid inexorable effect of fact and law on the case of the landlord has submitted that the deposit agreement dt. 13.10.2000 was an onerous agreement void, against public policy and could not be invoked by the tenant-Bank to negative the case of the landlord this is only an argument of desperation without anything more. I am of the opinion that this submission by the counsel for the landlord is of no consequence for more than one reason. For one, the present petition is one under Art. 227 of the Constitution of India and this Court in the exercise of the said jurisdiction has a very narrow jurisdiction as detailed by the Hon''ble Supreme Court recently in the case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, . Second, the question of the deposit agreement dt. 13.10.2000 being void for alleged contravention of public policy has been argued for the first time before this Court and no such argument to advance at any time before the tribunal or appropriate proceedings for such a declaration taken before the civil Court. Third, HDFC Bank is not a State under Art. 12 of the Constitution of India and if at all the landlord

was aggrieved of the nullity of the deposit agreement dt. 13.10.2000, it was for the landlord to take her remedy before a competent civil Court. The landlord far from taking her remedy under the competent civil Court benefited from the said agreement in obtaining a security deposit and in fact the very lease itself, as the deposit agreement executed simultaneous to the Indenture of Lease was a integral part of the overall agreement between the parties for the tenancy of the premises in issue. The landlord has taken benefit of the tenancy agreement and obtained lakhs of rupees as rent on the premises let out and cannot in law and equity be allowed to abandon the inconvenient part thereof on second wind. It is conceivable that the tenant-Bank would not have entered into the Indenture of Lease itself in the event the deposit agreement was not acceptable to the landlord.

19. Hence apart from the unsustainability of the argument for the above reasons, issue of estoppel against the landlord would also arise.

20. Mr. Ranjan further argued that the counter claim by a tenant against the landlord was not maintainable in a suit for arrears of rent by the landlord. This is also without substance. Section 18 of the Act of 2001 provides for the jurisdiction of the Rent Tribunal and states that notwithstanding anything contained in any other law for the time being in force, in the areas to which this Act extends only the Rent Tribunal and no civil Court shall have jurisdiction to hear and decide the petition relating to disputes between landlord and tenant and matters connected therewith and ancillary thereto. In view of plain reading of Section 18 of the Act of 2001, all disputes between the landlord and tenant being confined by law to the jurisdiction of Rent Tribunal to the exclusion of civil Court, the claim by the tenant to the refund of security deposit made under the deposit agreement dt. 13.10.2000 was indeed a dispute between the landlord and the tenant-Bank. On a plain reading of Section 18 of the Act of 2001, such a dispute could not be laid before the civil Court and it had to perforce be filed before the Rent Tribunal. In this view of the matter, I find no substance in the argument of the counsel for the landlord that the Appellate Rent Tribunal had no jurisdiction to entertain a counter claim laid by the tenant-Bank for refund of security deposit in relation to a tenancy.

21. Mr. Ranjan has finally argued that the order of the Appellate Tribunal is perverse. The argument is vacuous without anything more. Having perused the order of the Appellate Tribunal, I find that the Appellate Tribunal has taken into consideration the terms of the Indenture of Lease and deposit agreement both dt. 13.10.2000 and the factum of the termination of the tenancy vide notice dt. 10.05.2004 sent by the tenant-Bank whereunder the tenancy dt. 13.10.2000 was brought to an end on three months notice effective 16.08.2004. These were the facts for consideration of the dispute between the parties. The Appellate Tribunal has also confined itself to the terms of the Indenture of Lease and deposit agreement both dt. 13.10.2000 and the applicable law i.e. Sections 51 and 52 of the Act of 1872. Far from being perverse, the consideration of the matter by the

Appellate Tribunal is absolutely well directed and wholly legal and proper. The Appellate Tribunal has not taken into consideration any extraneous facts or overlooked any relevant material in coming to its conclusion that the tenant-Bank was not liable to pay any arrears of rent in view of the tenancy being lawful terminated effective 16.08.2004 under the notice dt. 10.05.2004 and the possession of the landlord subsequent to 16.08.2004 was protected without any liability for rent under conditions 6 and 8 to the deposit agreement dt. 13.10.2000. The Appellate Tribunal has also rightly come to a conclusion that the tenant-Bank was entitled to refund of security deposit along with contractual rate of interest as agreed @ 24% per annum.

22. Apart from the aforesaid facts, it is also to be noted that the jurisdiction of a Court under Article 227 of the Constitution of India is extremely narrow and limited. The present petition is quite clear one under Article 227 of the Constitution of India even though it purports also to be under Article 226 of the Constitution of India also. The Hon''ble Supreme Court in the case of Shalini Shyam Shetty (Supra) has distinguished between jurisdiction under Articles 226 and 227 of the Constitution of India and held that Articles 226 and 227 of the Constitution of India stand on substantially different footings and operate in different fields. It has been held that a writ under Article 226, is a proceedings under the original jurisdiction of the High Court. The jurisdiction under Article 227 on the other hand is neither original nor appellate but is a jurisdiction of superintendence both for administrative and judicial matters. It has been held that a proceedings under Article 227 can never be governed under the Original Side Rules of the High Court where such rules applied and the relief under Article 226 of the Constitution of India is available where there is infringement of a legal or fundamental right and in such situation the said remedy can be claimed *ex debito justitiae* and as a matter of right. The Hon''ble Supreme Court has held that contrarily where the High Court exercises its jurisdiction under Article 227 of the Constitution of India such exercise is entirely discretionary and not claimable as a matter of right.

23. The present proceedings are quite plainly not original proceedings. The present proceedings seek to impugn orders of fact findings authorities arrived at in accordance with the substantive law and the procedure as prescribed by the statute. Consequently in my considered opinion, the present petition is fundamentally one under Article 227 of the Constitution of India. In the exercise of its jurisdiction under Article 227 of the Constitution of India the High Court is bound to follow the regime of law as settled. The Hon''ble Supreme Court has held that the power under Article 227 of the Constitution of India being a reserved and exceptional power of judicial intervention is to be exercised not on any technical ground, but only is to be directed for promotion of public confidence in the administration of justice. It has been held that such power is to be exercised very sparingly on equitable principles even though the power under Article 227 may be unfettered. The object of the exercise of such power is to maintain efficiency, smooth and orderly functioning of the entire machinery of

justice in such a way as it does not bring it into any disrepute. The Hon''ble Supreme Court has held that the power of interference under Article 227 is to be kept at the minimum to ensure that fountains of justice remain pure and unpolluted in order to maintain public confidence in the functioning of tribunals and Courts subordinate to the High Court. In the case of Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S. Viswanathan, , the Hon''ble Supreme Court has held that where the findings arrived at by Tribunal are not perverse and based on cogent evidence, there should be no interference. In the case of Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others, , it has been held by the Hon''ble Supreme Court that in proceedings Articles 226 and 227 of the Constitution of India, a Court cannot review, reappraise or reweigh the evidence upon which determination has been arrived at by the final Court of fact. In the case of T.G N. Kumar Vs. State of Kerala and Others, the Hon''ble Supreme Court has held that the power under Article 227 of the Constitution of India is to be utilized by the High Court only to keep the authorities under its jurisdiction within the four corners of the statute. In the case of Jai Singh and Others Vs. Municipal Corporation of Delhi and Another, , the Hon''ble Supreme Court has held that the High Court ought to interfere in the exercise of power under Article 227 only in cases where the conclusions are not reached on evidence and all material not taken into consideration.

24. However even if the petition is to be treated as one under Article 226 of the Constitution of India as set out in the caption of the petition without anything more, I find no ground in the facts of the case to exercise the said power of this Court under Article 226 of the Constitution of India.

25. In the conspectus of the enunciation of law by the Hon''ble Supreme Court, I am of the view that the Appellate Rent Tribunal being the final authority for both law and fact has acted reasonably and properly in setting aside the order dt. 10.04.2008 passed by the Rent Tribunal and in directing that the tenant-Bank was entitled to refund of security deposit along with interest @ 24% per annum with quarterly rests as contracted under the deposit agreement 13.10.2000, from the date of termination of the tenancy i.e. 16.08.2004 till the date of refund by the landlord.

26. In this view of the matter, the writ petition is without force and dismissed as such with cost of Rs. 11,000/- to be paid to the tenant-Bank.

Stay application is also dismissed.