

(2013) 03 KAR CK 0164

In the Karnataka High Court

Case No : Regular Second Appeal No. 2072 of 2012 c/w Regular Second Appeal No. 2071 of 2012

Smt. Bharathi Shetty

APPELLANT

Vs

B. Hanumanthappa

RESPONDENT

Date of Decision : 27-03-2013

Acts Referred:

Insurance Act, 1938 — Section 64V(b)

Transfer of Property Act, 1882 — Section 105, 108(c), 111(g), 114A

Citation : AIR 2013 Kar 165 : (2013) 4 AKR 80 : (2013) 3 KCCR 2451

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Vishwajith Shetty, for the Appellant; S.V. Prakash, for the Respondent

Judgement

B.S. Patil, J.—These two regular second appeals are preferred against the common judgment dated 09.10.2012 passed by the learned Senior Civil Judge, Sorab, in R. A. Nos. 31/2012 & 35/2012. Appellant and the respondent in these two appeals are the landlord and tenant. Plaintiff-respondent herein instituted O.S. No. 250/2008 for possession of the suit schedule property, recovery of arrears of rent and also for damages from the defendant/tenant.

2. It is not in dispute that the suit schedule property bearing Khatha No. 342/240 carved out of Sy. No. 1/3 measuring 150" North East and 110" East West situated at Sorab was leased in favour of the defendant-appellant herein for the purpose of running a petrol bunk vide registered lease deed dated 15.03.2002. The duration of the lease was 15 years. It was stipulated that annual rent shall be Rs. 10,000/- per annum for the first five years and Rs. 25,000/- per annum for the next five years and Rs. 35,000/- per annum for the remaining 5 years.

3. Though the tenant was allotted dealership to run a petrol bunk, the said allotment was cancelled in view of the judgment of the Apex Court in M/s. Sharma Metal Co's case, which had general application to all such allotments. The landlord issued a quit notice dated 07.06.2005 vide Ex.P-4 terminating the

lease and calling upon the defendant to hand over possession of the premises. The legal notice was replied contending that there was one more agreement dated 16.03.2002, whereunder a sum of Rs. One lakh had been paid by the tenant as advance deposit with a stipulation that interest accrued thereon shall be utilized as rent. The plaintiff did not institute the suit immediately. He filed the suit on 16.12.2008 alleging that the tenant did not pay any rent right from the inception and therefore, was in arrears. It was also urged by the plaintiff that tenancy having been validly terminated and the tenant having committed default in paying the rents accrued, he was liable to be evicted from the premises. The so-called second agreement dated 16.03.2002 setup by the defendant was denied.

4. The defendant contended that he was given dealership of the Indian Oil Corporation to run the outlet and therefore, he had taken the suit schedule property on lease for a period of 15 years with a right of renewal for a further period of 15 years. After taking the land on lease, she had invested more than Rs. 15 lakhs for its development and was running a petrol bunk in the land in question by constructing a building with four rooms as per the approved layout plan. It was urged by the defendant that plaintiff had no right to terminate the tenancy as per his whims and fancies and that there was no valid termination of tenancy.

5. The defendant reiterated his stand taken in the reply urging that a sum of Rs. One lakh had been paid as advance rent. She also contended that the plaintiff who owned a canter lorry in the name of his wife was purchasing diesel on credit basis from the petrol bunk of the defendant and was due to the defendant a certain sum of money towards such purchases along with interest and therefore, if any rent was found due from him the said rent could as well be adjusted in the dues owed by the plaintiff towards purchase of diesel from the petrol bunk owned by the defendant.

6. Based on the respective pleadings, the Trial Court framed the following issues and additional issues.

(i) Whether the plaintiff proves that he has entered into lease agreement dated 15.03.2002 for the period of 15 years with defendant in respect of suit schedule property?

(ii) Whether plaintiff proves that defendant has failed to pay the rent as agreed in the said lease agreement dated 15.03.2002?

(iii) Whether plaintiff proves that defendant violated the terms and conditions of the lease deed dated 15.03.2002?

(iv) Whether plaintiff proves that tenancy of the defendant is properly revoked through the legal notice dated 07.06.2005?

(v) Whether defendant proves that plaintiff and defendant entered into an agreement on 16.03.2002 with regard to payment of rent?

- (vi) Whether plaintiff proves that defendant is in arrears of rent as stated in plaint?
- (vii) Whether plaintiff is entitled for the relief of vacant possession of the suit schedule property?
- (viii) Whether plaintiff is entitled for the arrears of rent?
- (ix) Whether suit is valued properly for the purpose of court fee?
- (x) Whether plaintiff is entitled for the relief as prayed?
- (xi) What order or decree?

Additional Issue:

- (i) Does plaintiff proves that the suit property is not being used for the purpose for which it is let out as per the agreement dated 15.03.2002?

7. Plaintiff examined himself as PW-1 and another witness as PW-2 and produced and marked as Exs.P-1 to P-19. Defendant examined her husband and power of attorney holder one Sathish Shetty as DW-1 and Exs.D-1 to D-30 were produced and marked on her side.

8. The Trial Court found that the plaintiff proved valid termination of the lease by issuing a legal notice dated 07.06.2005. In this regard, the contention urged by the defendant that six months prior notice was necessary for valid termination of the lease as annual rent was payable for the premises was negated by placing reliance on the decision of the Apex Court in the case of Jaswant Raj Soni and Jabar Lal Vs. Prakash Mal and Kan Mal, . It is relevant to notice at this stage that though notice was given on 07.06.2005, the suit came to be filed only on 16.12.2008 and therefore, the ejectment suit having been instituted after a long lapse of six months from the date of quit notice, the Trial Court found that there was no legal requirement of giving six months prior notice before filing the suit. In fact, in this appeal, no grievance is made on this aspect of the matter. Therefore, it is not necessary to dilate on this aspect and the substantial question of law does not also refer to the same.

9. As regards the other important issue pertaining to the defence urged by the defendant that the plaintiff had entered into an agreement with her on 16.03.2002 with regard to payment of rent, whereunder he had paid a sum of Rs. One lakh as advance payment towards periodical rent payable, the Trial Court negated this contention holding that such an agreement was not proved. The said agreement was not marked in evidence as it was not duly registered. In spite of a direction issued by the Trial Court on 09.08.2010 to the defendant to pay the stamp duty on the said agreement, defendant failed to pay the duty and penalty, therefore, the Trial Court held that the agreement was not proved.

10. In so far as the issue with regard to the arrears of rent payable by the defendant, the Trial Court held that defendant failed to establish her contention

that advance rent was paid in a sum of Rs. One lakh while executing the agreement dated 16.03.2002 because the agreement itself was not proved. It was further held that the defendant was in arrears of rent. However, the relief sought by the plaintiff seeking arrears of rent was dismissed holding that the said relief was barred by time. The Trial Court refused to go into the quantum of arrears of rent due and payable by the defendant, observing that such an exercise would not arise for consideration as the relief for recovery of rent was barred by time. The Trial Court inspite of taking note of the fact that no issue with regard to bar of limitation had been framed persuaded itself to hold that question of determining the arrears of rent payable and granting any relief on that basis would not arise as the said relief was barred by time.

11. In fact, the Trial Court negated the defence taken by the defendant that the plaintiff used to purchase diesel from the petrol bunk outlet of the defendant on credit for and on behalf of his wife and therefore he was due and payable a certain sum of money towards the same which could be adjusted against the future rents payable, holding that the said defence was not established by the defendant.

12. The Trial Court having held that the tenancy of the plaintiff was validly terminated granted the relief of possession directing the plaintiff to vacate and hand over possession of the suit schedule property within two months from the date of the judgment.

13. Feeling aggrieved by this judgment, the tenant filed R.A. No. 31/2012 challenging the judgment and decree of eviction. Plaintiff filed R.A. No. 35/2012 feeling aggrieved by the rejection of the relief regarding the damages payable for use and occupation of the premises during the pendency of the suit.

14. The lower Appellate Court after re-appreciating the evidence on record, has dismissed the appeal filed by the defendant and has allowed the appeal filed by the plaintiff directing the defendant to pay damages at the rate of Rs. 25,000/- per annum from the date of suit till possession of the suit property was handed over to the plaintiff. In this background, aggrieved by the concurrent findings recorded by both the courts below directing the appellant-defendant to hand over possession of the suit schedule premises to the plaintiff-landlord and the judgment of the court below directing payment of damages, these second appeals are filed by the defendant.

15. This Court, while admitting the second appeals framed the following substantial questions of law.

(i) Whether the courts below were right and justified in decreeing the suit in the light of absence of forfeiture clause in Ex.P3 - Agreement of Lease particularly in the face of the provisions contained u/s 111(g) of the Transfer of Property Act read with Section 114 thereof?

(ii) Having regard to the conduct of the appellant in not paying the rents right

from the inception of lease as is clear from the findings recorded and in the light of the fact that even the mesne profits/damages for use and occupation of the premises from the date of suit till the date of filing of these appeals was not at all paid and deposited and viewed in the context of the provisions contained u/s 108(c) and (l) of the Transfer of Property Act, whether the appellant is entitled for the benefit of the provisions contained u/s 111(g) of the Transfer of Property Act?

16. Learned Counsel for the appellant Mr. Vishwajith Shetty contends that Ex.P-3 - lease deed does not contain any forfeiture clause enabling the landlord to terminate the lease or re-enter the premises on default of payment of rent by the tenant. Therefore, in the absence of such forfeiture clause, lease cannot be terminated. He has placed reliance on Section 111(g) of the Transfer of Property Act, 1882 (for short, "the Act") and the judgment of the Apex Court in the case of Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, Reference is also made to Section 114 to support his contention. It is contended by him that both the courts below have held that there was no arrears of rent and that the lower Appellate Court has merely awarded damages. Therefore, the reason assigned by the lower Appellate Court that the appellant has not paid any amount towards the rent is not tenable in law. He further points out that the entire amount of damages has been deposited by way of Demand Draft before this Court after filing the appeal. He places reliance on the judgment of Gujarat High Court in the case of Somnath Trust Vs. Jamnadas Madhavji International Ltd., to contend that even when there is forfeiture clause in the lease deed and if a suit for ejectment is instituted based on the default committed by the tenant in payment of rent, if the lessee tenders the rent in arrears together with interest, the Court would consider the said action of the lessee as compliance of requirement of payment of rent and pass order relieving the lessee from the forfeiture clause. Reliance is also placed by him on the judgment in the case of Praduman Kumar Vs. Virendra Goyal (Dead) by L. Rs., to contend that in terms of Section 114 of the Act, an opportunity for making payment of rent at the hearing of the suit as a condition for exercise of the court's jurisdiction in appropriate cases be resorted to in an appeal, as appeal is the continuation of the suit, and it would be open to the Appellate Court, at the hearing of the appeal, to relieve the tenant in default against forfeiture and therefore, passing of a decree in ejectment against the tenant by the court of first instance does not take away the jurisdiction of the Appellate Court to grant equitable relief. Reliance is also placed by the Counsel for the appellant on the judgment of the Division Bench of this Court in the case of Amar Promoters and Another Vs. J.S.A. Gajendra Reddy and Others, wherein it has been held that though the clause in the lease deed provided for premature determination of lease by lessor of the land for 40 years by giving one month's notice in the event of lessee committing default in payment of rent continuously for a period of six months, where the lessor accepts arrears of rent and also rent accruing for subsequent period paid by lessee during pendency of the suit, such acceptance

operates as waiver of forfeiture of lease even though acceptance is made without prejudice to the right of forfeiture. He has invited the attention of the Court to paragraphs 14 to 16 of the judgment in this regard. Counsel for the appellant also places reliance on the judgment in the case of A.B. Mallikarjuna Vs. Jubliant Biosys Limited (Noida), Jubliant Biosys Limited (Bangalore), Clinsys Clinical Research Limited (Noida) and Clinsys Clinical Research Ltd. (Bangalore), to contend that once there is transfer of right to enjoy the property, lease stands created and in terms of Section 107 of the Act, a lease by oral agreement accompanied by delivery of possession is sufficient, though it does not fall in the first paragraph of Section 107 of the Act. He therefore contends that neither there is any need to show payment of any advance amount nor the lease becomes void and unenforceable only because no rent was paid under the lease.

17. Learned Senior Counsel Mr. Ashok Harnahalli appearing along with Mr. S.V. Prakash, learned Counsel for the respondent strongly supports the concurrent findings recorded by both the courts below and submits that in the absence of any defence regarding forfeiture found in the pleadings, it is not open for the appellant to contend that the land owner was not entitled to terminate the lease which is for a fixed period of 15 years. He points out that the conduct of the tenant in not paying a single paise from the date of occupation of the premises renders the entire lease transaction void and inoperative as there is no consideration forthcoming from the tenant nor any reciprocal promise on his side. He particularly points out that a person like the appellant who does not pay the rent right from the inception and intends to squat on the premises for years together cannot be heard to say that the duration of fixed term cannot be terminated by a quit notice. His submission is that there is no payment of any advance rent or deposit nor is there any payment of rent periodically, annually or otherwise, therefore, the defendant-tenant is not entitled to resist the claim made by the plaintiff. He places reliance on the judgment of the Apex Court in the case of National Insurance Co. Ltd. Vs. Seema Malhotra and Others, , Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., to contend that when the lessee does not come forward to pay any rent, there will be failure of consideration, in as much as, there is default in complying with reciprocal promise made by the lessee and that such a contract is void. He has placed reliance on the judgment in the case of A. Ravishankar Shetty & Another vs. Suresh Chadaga P.S. & Others - 2009(4) KCCR 2922, to contend that nonpayment of rent entails determination of lease. Inviting the attention of the Court to Sections 108(c) & 108(l) of the Act, it is contended by him that if the lessee does not pay the rent, he cannot hold on to the lease without interruption by the landlord.

18. The matter is required to be examined keeping in mind the findings recorded by the courts below and with reference to the relevant statutory provisions contained under Sections, 105, 107, 108(c), 108(l), 111(g), 114 & 114A of the Act and the judgments on which reliance is placed by both the parties, in the light of the twin substantial questions of law that are framed for consideration.

19. Admittedly lease is created by the plaintiff in favour of the defendant of the immovable property which is let out for the purpose of running a petrol bunk. The duration of lease is 15 years. Ex.P-3 provides for payment of annual rent. The lessee had selected the suit schedule plot in view of the dealership offered by the Indian Oil Corporation Ltd., to the defendant under the "Open (Women)" Category Marketing Plan 1999-2000 for running the petrol bunk, whereunder the defendant was asked to procure a suitable plot for establishing a bunk at Soraba. Annual rent fixed was Rs. 10,000/- for the first five years from 01.04.2002 onwards and Rs. 25,000/- for the next five years with effect from 01.04.2007 and Rs. 35,000/- for the remaining five years with effect from 01.04.2012. In Clause (8) of the lease deed, the lessor and the lessee have agreed that all other terms and conditions which are not specifically mentioned shall be governed by the provisions of the Act.

20. As per the findings recorded by the courts below, the defendant has not paid any rent after the occupation of the premises. In fact, the defence taken by the defendant that he had entered into an unregistered agreement on 16.03.2002 with the plaintiff, whereunder he had paid a sum of Rs. One lakh to the plaintiff as advance rent to be adjusted for the rents accrued periodically has been negatived, holding that such an agreement was not proved. The further defence setup by the defendant that plaintiff was purchasing diesel from the defendant's petrol bunk and in that regard, he was due in a sum of Rs. 69,105.36 and the plaintiff himself was, therefore, liable to pay to the defendant certain sum is also negatived. Thus, it is clear that there are concurrent findings of fact holding that the defendant has not paid any rent whatsoever for the premises in question although she occupied the same during 2002 and the suit itself came to be instituted during the year 2008.

21. No doubt, there is no forfeiture clause in the agreement enabling the plaintiff to re-enter the premises in case of breach of any express condition. It is in this background this Court has to examine the effect of non-payment of rent right from the inception by the defendant for the occupation of the premises keeping in mind the nature of obligation cast on him in this regard and the right of the land owner to determine the lease and to seek possession.

22. Section 108 of the Act deals with the rights and liabilities of lessor and lessee. Section 108(c) reads as under:

the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

23. Section 108(1) of the Act which deals with the liability of the lessee states as under:

the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in his behalf.

24. Section 111 of the Act deals with determination of lease. It provides the circumstances under which the lease of immovable property determines namely, by efflux of time provided in the lease or in the happening of some event upon which the parties had agreed that the lease shall be determined including by way of forfeiture as provided u/s 111(g). As the contention now advanced before this Court is on the basis of Section 111(g), it is useful to extract the said provision as well.

111. Determination of lease.- A lease of immovable property determines-

(a)....

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.

25. u/s 114 of the Act, even where a lease of immovable property is determined by forfeiture for nonpayment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrears, together with interest thereon and his full costs of the suit, or gives security as the Court thinks sufficient for making such payment within 15 days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against forfeiture and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

26. u/s 108(A)(c) of the Act, it is the lessor's obligation to ensure that leased property is enjoyed by the lessee when the lessee pays the rent agreed and performs the contract binding on him as enacted u/s 108(1) of the Act. As per Section 108(1) of the Act, the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf.

27. By reading these provisions, it is clear that lessee has an obligation to pay the rent and the lessor has the obligation to ensure peaceful enjoyment of the leased property without interruption in case rent is paid. Therefore, these provisions, read together, make it clear that the lessor is entitled to re-enter the premises under certain circumstances. If the lease is for a fixed term, then the determination of the lease takes place as per the provisions of Section 111 of the Act. The lease is determined by efflux of time limited in the contract as is provided u/s 111(a) of the Act.

28. In the instant case as the period of lease is for 15 years, the duration of the lease has not yet expired. The other contingencies and circumstances mentioned under Sections 111(b) to (f) of the Act, admittedly, do not apply to the instant case. Therefore, the only debatable question is whether Section 111(g) of the

Act, which states that if express condition of the lease regarding payment of rent is breached as provided in law, the lessor may re-enter the leased premises, as the lease comes to an end, is applicable.

29. The terms of the lease do not stipulate that, if rent is not paid as agreed upon, the lessor has a right to re-enter the leased premises. Both parties while entering into the lease agreement have agreed, as regards the terms and conditions, stipulating that such of the conditions that are not specifically mentioned therein shall be governed by the principles of Transfer of Property Act as the case may be". No doubt as per Section 108(c) & (l) of the Act, the lessor has the right for due payment of rent. The lessee without paying the rent cannot enjoy uninterrupted possession of the demised premises. But, this right which is introduced by the statute and which the lessor is deemed to possess in the absence of contract or local usage to the contrary cannot be brought within the four corners of the forfeiture clause spelt out u/s 111(g) of the Act clothing the lessor with a right to re-enter, in case where the lease is for a fixed duration. The language of Section 111(g) admits of no other interpretation. Therefore, unless the lease provides that on breach of the condition regarding payment of rent, the lesser may re-enter, the parties cannot be said to have agreed for the forfeiture clause. Judgment of the Apex Court in the case of Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, supports the appellant in this connection. Provisions contained in Section 114 of the Act which enables the court to relieve the tenant from the rigor of forfeiture clause also lends support to the conclusion that there can be no foreclosure by inference or implication.

30. A lease is a contract where both parties i.e. the lessor and the lessee will agree for certain conditions, covenants and stipulations. If they have not chosen to make breach of condition to pay the rent as an express stipulation entailing forfeiture of the lease with a right vested in the landlord to re-enter, this Court cannot, apply the forfeiture Clause to evict the tenants on the ground that the tenant has defaulted in paying rents.

31. It is true, in the instant case, the tenant has not paid rent right from the beginning. What is worse about his conduct is, he does not even pay the damages as awarded by the Court below. He does not pay the rent/damages even during the pendency of the first appeal. Further, even after he suffered a decree from the Appellate Court which has directed him to pay damages at the rate of Rs. 25,000/- p.a., he has not paid the same. Instead, he has filed this appeal without even depositing the said amount. Only during the course of arguments he has deposited the damages by way of Demand Draft before the Registry and a memo is filed in this regard. Therefore, the conduct of the appellant-tenant is unbecoming of a tenant. He has violated the terms and conditions agreed upon for payment of rent. Therefore, this has to result in imposition of cost, interest and such other consequences against him. But, it cannot be a ground to evict him as such a right can be claimed by the landlord

only if there is forfeiture clause in the agreement of lease.

32. It is a well established principle that there can be no forfeiture either by inference or by implication. The contract must contain an express condition that non-payment of rent will enable the land lord to re-enter the premises regardless of the duration of the lease.

33. In the instant case, the lessor has failed to establish that there was an express condition regarding payment of rent and breach thereof would result in forfeiture. On careful consideration of Ex.P.3-lease deed, it does not lend support to any such conclusion. Both the Courts below were in clear error in not considering this important aspect.

34. The lower Appellate Court has expressed its anguish over the conduct of the appellant observing that when the defendant did not pay any rent from the beginning of the lease, the Court could not show leniency to her. It has further observed that even before the Court, no attempt was made for payment of arrears of rent. Under such circumstances, the plaintiff could not as of right continue in the premises till the expiry of lease, as otherwise, it would amount to granting free and permanent lease to the defendant.

35. A statute has to be interpreted keeping in mind the express words used and the intention of the legislature as manifested there. As already adverted to above, the lessor and lessee have not agreed for forfeiture on account of any breach of payment of rent. They have not chosen to incorporate such a clause. In the absence of such a clause, no doubt the land owner has a right to recover the rent. The tenant has to pay for his omissions. But the lessor cannot claim any further right, which are not conceived and contemplated in the provisions of the Transfer of Property Act.

36. Though learned counsel for the petitioner contends that there is a failure of consideration and contract of lease itself is void because of lack of consideration, this contention cannot be accepted. Parties have entered into a registered lease deed. Consideration for the lease is the rent payable to the premises which becomes due after the expiry of the 1st year. If the tenant failed to pay the rent, it does not mean that there is failure of consideration or that the contract stands vitiated due to absence of consideration. It only means that the lessee has committed breach of contract by not paying the rent, which is actionable.

37. Reliance is placed by the learned counsel for the respondent on the judgment of the Apex Court in the case of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., wherein a question arose with regard to the liability of the Insurance Company to pay the assured amount under the policy wherein the premium amount paid by way of cheque was dishonoured. In such a situation, referring to the provisions under Sections 64V(b) of the Insurance Act, 1938, the Apex Court found that the policy of Insurance becomes valid only on payment of the premium, and therefore, when the premium amount was admittedly not paid there was no valid contract between the Insurance Company

and the Insurer. These facts involved in the said case and the provisions of law, which fell for consideration before the Hon'ble Supreme Court in the aforesaid case have no application to the facts of the present case.

38. It is further urged by Sri Prakash, learned counsel for the respondent that the tenant has not taken any defence referring to Section 111(g) of the Act, therefore, on a new plea taken up by him in the second appeal the concurrent findings recorded by both the Courts below cannot be disturbed. Reliance is placed in this regard on the judgment of the Apex Court in the case of C. Mackertich Vs. Steuart and Co., Ltd, . In the said case, the appellant, for the first time, wanted to take a plea before the High Court that the tenancy was for manufacturing purpose, therefore, six months notice was required. In that context, the Apex Court found that as the said defence was not taken in the written statement, the High Court should not have allowed the party to raise such a question. In the instant case, the plea that the appellant has taken has nothing to do with the facts in controversy. The entire question is based on the legal principle contained in Sections 111(g), 108(c) and (l). Therefore, this Court cannot shut off the parties from raising such a plea which is purely a question of law. In fact, the lower Appellate Court has indeed dealt with this question while holding that such an interpretation regarding the forfeiture clause could not be accepted, therefore, it doesn't become a new plea before this Court.

39. Now, coming to the relief to be granted to the appellant, no doubt, in the light of the consideration of the legal aspect as death with above, the decree of eviction passed requires to be set aside. But, the fact remains that the tenant has not paid any rent right from the beginning. The tenant cannot get away with a bounty without performing his part of the contract. In this case, unfortunately for the landlord, though he had made a claim seeking arrears of rent for three years prior to the filing of the suit the same was negated by the Trial Court even after recording a finding that the tenant had failed to establish that he had paid the rent on the ground that the said relief sought for recovery of rent was barred by time. Though this finding was patently illegal, the respondent herein did not challenge this portion of the finding. Perhaps, the landlord was satisfied with the decree of eviction passed by the trial Court. The Appellate Court has found that the tenant had not paid any rent from the beginning and therefore, directed him to pay a sum of Rs. 25,000/- p.a. from the date of suit till the date of handing over possession towards the use and enjoyment of the property.

40. As held above, the plaintiff cannot evict the defendant and get possession of the property. The tenant will, therefore, continue to enjoy the property. But, he has to make payment of rent along with interest and costs. It is not in dispute that, the agreed rent payable from the date of lease for a period of five years was Rs. 10,000/-. Thereafter, for the next 5 years the agreed rent was Rs. 25,000/- and for the last 5 years, the rent payable is Rs. 35,000/-. The liability to pay Rs. 25,000/- p.a. commenced from 01.04.2007 to 30.03.2012. Therefore, from the date of suit till today the appellant was required to pay annual rent of

Rs. 25,000/-. By way of Demand Draft, he has deposited a sum of Rs. 1,00,000/- before the Registry of this Court, the appellant has not paid this amount to the tenant nor it was paid periodically as and when it accrued. Therefore, he is liable to pay interest at the rate of 18% p.a. on this amount.

41. With regard to the arrears of rent for a period of 3 years prior to filing the suit, as already adverted to above, the trial court has committed illegality in dismissing the suit as the plaintiff was entitled for recovery of arrears of rent for the said period. Merely because, the plaintiff has not chosen to include the said claim while filing the first appeal it cannot result in the appellant getting away with the protection of his possession as otherwise, it will amount to approving his conduct in not paying the arrears of rent. At this stage, counsel for the appellant fairly submits that the defendant will pay arrears at the agreed rate for the period of three years which will come to Rs. 30,000/- (Rs. 10,000/- per year). In the light of this submission, without entering into the question whether the respondent is indeed entitled in law in this proceeding for recovery of the said amount, keeping in mind the ends of justice and the judgment passed reversing the findings recorded by the courts below directing eviction of appellant-tenant, I find it just and appropriate to direct the appellant to pay a sum of Rs. 30,000/- towards arrears of rent for the period of three years prior to the institution of the suit. In addition, as already held above, with effect from 01.04.2007 till the date of this judgment, the appellant shall pay rent at the rate of Rs. 25,000/- per annum along with 18% interest on the said amount. The entire amount as ordered above shall be paid within one month from the date of receipt of a copy of this judgment. The appellant is entitled to withdraw the amount of Rs. 1.00 lakh deposited before this Court. Accordingly, R.S.A. No. 2072/2013 is allowed. The judgment and decree passed in R.A. No. 31/2012 is set aside. The suit O.S. No. 250/2008 in so far as the relief of eviction of the tenant-appellant is dismissed. R.S.A. No. 2071/2013 is dismissed, but there shall be a decree drawn regarding the arrears of rent, interest and costs as ordered. The suit O.S. No. 250/2008 is partly decreed in terms directed above. Though the appellant partly succeeds in this case, his conduct is such that he has illegally denied the landlord the rent to which he is legally entitled. Hence, though the appellant succeeds he has to bear the costs of this proceedings which are quantified at Rs. 5,000/- payable to the land owner-respondent.