

(2003) 12 DEL CK 0071
In the Delhi High Court
Case No : Suit No. 2043 of 1998

Uboeroi Sons (Machines) Ltd.

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2004) 1 AD 302 : (2003) 108 DLT 600

Hon'ble Judges : B.N. Chaturvedi, J

Bench : Single Bench

Advocate : J.P. Gupta and Harish Malhotra, for the Appellant; S.K. Pruthi and Shellen Kumar, for the Respondent

Judgement

B.N. Chaturvedi, J.—Plaint unfolds that the ground and mezzanine floors of premises bearing No.21, Community Centre, New Friends Colony, New Delhi comprising two halls and three toilets, as indicated in the site plan, were let out to New Bank of India by means of a registered lease agreement dated 21st August, 1989 for a period of nine years at a monthly rent of Rs. 1,10,000/-. The lease was to expire on 31st August, 1998. The possession of the leased premises was delivered on 1st August, 1989. With effect from 1st August, 1994, the rent of the premises was to be increased to Rs. 1,38,750/-.

2. The New Bank of India amalgamated with Punjab National Bank during the currency of tenancy period. Punjab National Bank, thus, became tenant in relation to suit premises by operation of law.

3. The lease deed did not contain any renewal clause. The defendant was thus to deliver back the peaceful and vacant possession of the suit premises after expiry of lease period on 31st July, 1998. Though the tenancy had come to an end on 31st July, 1998 by efflux of time, by way of abundant caution, the plaintiff sent a notice on 9th July, 1998 to the defendant bank requiring it to deliver the possession of the suit premises on or before 1st August, 1998. This notice was duly served on the defendant. The defendant however, failed to deliver back the

possession of the suit premises. In the notice, the petitioner claimed from the defendant bank use and occupation charges w.e.f. 1.8.1998 as an unauthorised occupant, at the rate of Rs. 7 lacs per month being the prevalent market rent at the relevant time.

4. The plaintiff filed the present suit for recovery of possession and mense profits in addition to pendente lite and future interest at the rate of 18% per annum.

5. The defendant in its written statement did not dispute that the suit premises had been let out to it for a period of nine years under a registered lease deed in that respect. Denying that the lease deed did not contain any renewal clause, the defendant asserted that it was entitled to retain possession of the demised premises by way of renewal of lease on such terms and conditions as mutually agreed upon between the parties. Though not denying the service of notice dated 3rd August, 1998 it was pleaded on behalf of the defendant that it was an illegal notice being not in accordance with the provisions of Section 106 of the Transfer of Property Act. It was accordingly sought to be maintained that its tenancy did not stand terminated and it continued to be a lawful contractual tenant under the plaintiff. It thus sought to refute the plaintiff's claim for recovery of possession and mense profits and also the interest at the rate of 18% per annum.

6. On 21st July, 1999 a statement was made on behalf of the defendant before the Court undertaking to vacate the suit premises within a period of two years from that date and also agreeing to continue to pay on provisional basis enhanced rent at the rate of 25% on Rs. 1,38,750 with effect from 1.8.1998 until determination of market rent by the Court. The suit in relation to recovery of possession of the suit premises was decreed in terms of the aforesaid undertaking on behalf of defendant bank. The issue relating to mesne profits/damages was left upon for decision after the parties adduced their respective evidence in that respect, by providing that in the meantime, the defendant bank "shall pay rent at the rate of Rs. 1,38,750/- plus 20% (25%) of this amount with effect from 1st August, 1998"

7. From either side, there is statement of a solitary witness in addition to some documentary evidence.

8. I have heard learned counsel for both parties.

9. Admittedly, the suit premises was vacated and vacant possession thereof was handed over to the plaintiff on 1st March, 2001. Payment at provisional rate with 25% increase on Rs. 1,38,750/- has been made by the defendant up to February 2002. Though the defendant in its written statement termed the legal notice terminating its tenancy in relation to the suit premises as illegal, no issue in this regard has been framed. As a matter of fact, even on mesne profits/damages no issue as such has been framed.

10. In the course of proceedings, the defendant bank opted to make a statement on 21st July, 1999 undertaking to vacate the premises within a period of two

years from that date and actually vacated the premises on 1st March, 2001. It thus appears to have had waived its objection in regard to "illegality" of the quit notice. This finds further support from the fact that after the decree of possession based on an undertaking on its behalf was passed on 21st July, 1999, no specific issue on "illegality" of quit notice was pressed on behalf of the defendant bank at any point of time. Even as per order dated 21st July, 1999 decreeing the suit for possession, the matter was limited to determination of mesne profits only. It is, thus, the rate of mesne profits alone which warrants consideration.

11. The plaintiff seeks to substantiate its claim for mesne profits on the basis of statement of Sh. Maninder Singh (PW-1) coupled with lease deeds (Exhibits P-11, P-12 and P-13) relating to three separate premises located in the same community centre. The defendant on the other hand, banks upon the testimony of its witness namely Sh. Dharam Pal and on a letter vide Ext. D-2 from a Real Estate Consultant pertaining to an offer for an alternative accommodation in the vicinity. According to Sh. Maninder Singh (PW-1), the leased area on the ground and mezzanine floors, is 2500 sq. feet each. In the lease deed (Ext. P-1), there is no mention of the specific area on the respective floors of the suit premises which had been let out to the defendant bank. The defendant got an architecture's certificate (Ext. D-1), stating the covered area as well as the carpet area of the suit premises, placed on record. The certificate (Ext. D-1) is not being questioned on behalf of the plaintiff. This is so evident from the order dated 17th January, 2001 containing the statement by learned counsel for the plaintiff, which he made on instructions, that the covered area as indicated in Ext. D-1 i.e. 1990 sq. feet on the ground floor and 2050 sq. feet on the mezzanine floor, totaling 4040 sq. feet which was accepted on behalf of the plaintiff and the parties' counsel agreed that the mesne profits was to be determined on the basis of that covered area. Though in the course of final arguments, learned counsel for the defendant bank contended that the mesne profits should be granted on the basis of carpet area only, in view of the aforesaid statement on behalf of the parties, made on 17th January, 2001, such argument is no longer available to the defendant bank and is, Therefore, unacceptable.

12. On the rate of mesne profits apart from questioning the admissibility of the three lease deeds (Exhibits P-11, P-12 and P-13) on the ground of not being duly proved, it was contended by learned counsel for the defendant bank that the properties in respect of which these lease deeds are being relied upon, are not comparable with the suit property, and, Therefore, the same could not constitute a valid basis to adjudge the quantum of mesne profits in relation to suit premises. With reference to the letter Ext. D-2 it was sought to be maintained on behalf of the defendant bank that an alternative accommodation was available at the rate of Rs. 65 per sq. feet and, Therefore, the claim of the plaintiff for mesne profits at a rate higher than that did not represent the prevailing market rate of rent during the relevant time. Further contention on behalf of defendant bank

was that up to 31st July, 1998, the plaintiff was getting rent for the suit premises at the rate of Rs. 1,38,750/- per month only and overnight, enhancement w.e.f. 1.8.1998 at the rate of Rs. 4 lacs which represents an increase of almost 300% could not be allowed to him by way of mesne profits. A reference was made to a decision of this Court in Suit No.3016/1989 between M/s Nina International Pvt. Ltd. Vs. M/s Saraswati Industrial Syndicate Ltd. in relation to a property bearing No. 6 Shopping Commercial Complex, New Friends Colony, New Delhi, which was decided on 1.3.1999, to point out that under similar circumstances, mesne profits at the rate of Rs. 19 per sq. feet only was awarded observing that the lease deed in respect of premises in the vicinity could not be conclusive proof of the market rent in the locality and that in such like matters certain amount of guess-work is inevitable. It was pleaded that increase by 25% in terms of order dated 21st July, 1999 would meet the ends of justice and no further increase in the rate of damages is warranted. According to the defendant bank in any case the rate of mesne profit should not be increased at a rate higher than Rs. 45-50 per sq. feet and Rs. 30-35 per sq. feet in respect of ground and mezzanine floors respectively and the amount already paid is liable to be adjusted.

13. The relevant period for which mesne profits is payable to the plaintiff is from 1st August, 1998 to 28th February, 2001. Though in the plaint, the plaintiff has claimed mesne profits at the rate of Rs. 7 lacs per month, without specifying the rate per sq. feet in relation to the ground and mezzanine floors separately, on the basis of lease deeds (Exts. P-11, P-12 and P-13), he seeks the mesne profits at a monthly rate of Rs. 125 per sq. feet (Rs. 2,48,750) for the ground floor and at a monthly rate of Rs. 80 per sq. feet (Rs. 1,64,000) for the mezzanine floor.

14. On behalf of defendant bank evidentiary value of the lease deeds (Exts. P-11, P-12 & P-13) is being questioned on the plea that since the executors of the said documents or witnesses thereof have not been examined by the plaintiff to prove the same, inspire of exhibiting these documents without proof of contents thereof, no reliance can be placed thereon. According to the learned counsel for the defendant bank though the certified copies of said documents could be admitted in evidence, being public documents, the authenticity of contents thereof could not be free from doubt without formal proof of contents thereof. To meet the challenge regarding admissibility of the lease deeds (Exts. P-11, P-12 & P-13) in evidence, the learned counsel for the plaintiff referred to decisions in Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, , Md. Saimuddin Sheikh Vs. Abejuddin Sheikh AIR 1979 Gau 14 , Tata Chemicals Limited, Bombay Vs. Sadhu Singh and others, and State of Haryana Vs. Ram Singh, to contend that a certified copy of a document registered under the Registration Act may be accepted as evidence of the transaction recorded in such a document and it is open to the Court to accept the certified copy as reliable evidence without allowing the parties to look into the documents. In P.C. Purushothama Reddiar Vs. S. Perumal, where admissibility of certain police reports which had been marked as exhibits came to be questioned on the ground that the Head Constables who covered the meetings as reflected in the police reports were not

examined to prove such reports, the Supreme Court laid down :

".....these reports were marked without objection. Hence, it is not open to the respondent now to object to their admissibility."

15. In the instant case, no objection was raised in regard to mode of proof and these lease deeds being marked as exhibits P-12 and P-13, now it is too late to question the admissibility thereof on the ground that the executors or witnesses of these documents having not been examined, the contents thereof cannot be held proved to render the same admissible in evidence.

16. The other argument is that no overnight increase in the rental value of the suit property at a rate of almost 300% could be justified when until the previous day i.e. 31st July, 1998 the premises could fetch rent at the rate of Rs. 1,38,750/- per month only. This argument is however difficult to accept. It was rightly pointed out on behalf of the plaintiff that the rent of Rs. 1,38,750/- up to 31st July, 1998 did not really represent the rent fetching potential of the suit premises and the plaintiff had to rest content with that amount by virtue of the same being contractual rate of rent. The rate of rent having once been agreed upon by the plaintiff at the time of letting of the premises, he was under a contractual obligation to abide by the same and could not have had sought any increase in rent beyond the terms of the lease deed notwithstanding spiral spurt in rental value of the suit premises during the currency of tenancy of the defendant bank.

17. As against the rate of rent reflected in the lease deeds (Exts. P-11, P-12 & P-13), the defendant bank sought to press in service a letter Ext. D-2 from a Real Estate Agency quoting rate of ground floor in DDA Commercial Complex, New Friends Colony, New Delhi at Rs. 65 per sq. feet which was further negotiable. This letter purports to have been issued on 1st September, 1999. According to the defendant bank Ext. D-2 was received in response to a newspaper advertisement put forth by it for a rented alternative accommodation. Confining to the letter (Ext. D-2) one gets no indication of the same having been written in response to any news paper advertisement on behalf of the defendant bank. No copy of the newspaper carrying such an advertisement. as claimed by the defendant bank, has been placed on record to substantiate the aforesaid plea. More over, the letter Ext. D-2 quotes the prevailing rental rate in respect of ground floor located in DDA Commercial Complex and not in Community Centre, New Friends Colony, New Delhi. Sh. Dharam Pal in the course of his cross examination sought to make it appear that the Community Centre, New Friends Colony, New Delhi was also known as Commercial Complex. There is, however, not enough evidence in this regard to find that the Community Centre where the suit premises are situated, is also known as DDA Commercial Complex. In any case, even the witness of the defendant bank himself admits that he had no occasion to see the alternative accommodation in DDA Commercial Complex which was offered at a rental of Rs. 65 per sq. feet subject to further negotiations and, Therefore, he was obviously not in a position to state much

which would help in comparing the offered alternative accommodation with the suit property from its rental point of view. Ext. D-2 is, thus, hardly of any help in finding the prevailing market rate of rent of the comparable properties located at Community Centre, New Friends Colony, New Delhi.

18. Lease deeds Exts. P-11, P-12 and P-13 are the only relevant documents which await consideration for adjudging the rate of mesne profits in regard to the demised premises. Lease deed Ext. P-11 relates to ground floor with super area of 2100 sq. feet of premises bearing No.43 Community Centre, New Friends Colony, New Delhi which was executed on 6.3.1997, though the tenancy in respect thereto had already commenced w.e.f. 16.12.1996. The rental of this property in terms of lease deed Ext. P-11, according to the plaintiff, works out at the rate of Rs. 120 per sq. feet per month.

19. There is another lease deed Ext.P-12 in relation to the adjoining premises being No. 42, Community Centre, New Friends Colony, New Delhi whereby mezzanine floor admeasuring 700 sq. feet was let out w.e.f. 1.4.1997 for an initial period of 3 years at the rate of Rs. 56,000/- per month towards the rent. It was stipulated that on expiry of every three years in case of renewal, there shall be 25% increase in the rental.

20. The third lease deed Ext. P -13 pertains to premises bearing No.13, Community Centre, New Friends Colony, New Delhi which was let out w.e.f. 23.11.1998 for a period of 9 years consisting of three terms of three years each and the monthly rent agreed upon was at the rate of Rs. 1,50,000/- per month with 25% increase after every three years. The lease related to super covered area of 3600 sq. feet including 1200 sq. feet at ground floor and 2400 sq. feet at the basement. In terms of this lease deed monthly rent was payable at the rate of Rs. 125 per sq. feet while in respect of mezzanine floor, in terms of lease deed Ext. P-12, it was at the rate of Rs. 80 per sq. feet per month.

21. It was contended on behalf of defendant that rental value of none of the properties detailed in lease deeds Exts.P-11, P-12 and P-13 is relevant for determining the mesne profits in respect of the suit property as the suit property is in no way comparable with any of the said properties, in terms of location and facilities available therewith.

22. Exhibit DW-1/1 which is lay out plan of Community Centre Complex, New Friends Colony, New Delhi indicates the location of premises No.13, 42 and 43. In front of premises No.42 and 43 there is a spacious parking site and thereafter there is a 100 feet wide road known as Okhla Road with pavement in between the parking site and the road. Both these premises carry a clear front view. Similarly, premises No.13 also appears to be by the side of a wide road running in front of it with an adjoining parking site. Like premises No.42 and 43, premises No.13 also appears to have a clear front view with parking facility near it. From its location point of view, the suit premises does not enjoy the same advantageous position as premises No.13, 42 and 43. There is a building in front

of it and the road leading to it is not as wide as in front of the said premises. Similarly, parking site is also at some distance from it as there are premises No.22 on its right side and premises No.19 and 20 on its left side. Thus, in terms of its location, availability of parking site and the width of the road running in front of it, the suit premises is at a lesser advantageous position than premises No.13, 42 and 43. Therefore, its rent fetching value cannot be equaled with that of the aforesaid premises. Inspire of incomparability of suit premises with premises No.13, 42 and 43, the letting value of premises No.13, 42 and 43, which are also situated in the same complex, as reflected in lease deeds P-11, P-12 and P-13, can certainly to an extent, provide a basis in rough estimation of the letting value of the suit premises during the relevant period. The amount of rent as such in the lease deeds exhibit P-11, P-12 and P-13 in respect of premises No.13, 42 and 43 has not been questioned on behalf of the defendant bank and the only defense raised on its behalf has been that the premises No.13, 42 and 43 being not comparable with the suit premises, rent fetching value thereof can be no guide to determine the rental value of the suit premises.

23. Premises No. 43 had been let out w.e.f. 16th December, 1996 though formal lease deed Ext. P-11 with respect to ground floor, was executed on 6th March, 1997 at the rate of Rs. 120/- per sq. feet per month. Mezzanine floor in premises No. 42 was let out w.e.f. 1st April, 1997 at the rate of Rs. 80 per sq. feet per month vide Ext.P-12, while ground floor and basement of premises No.13 were let out w.e.f. 23rd November, 1998 vide Ext. P-13. The relevant period for the purpose of present suit is from 1.8.1998 to 28.2.2001. Taking a cue from the rate of rent as reflected in the lease deeds Ext. P-11, P-12 and P-13 in respect of premises located in the same complex, even though not exactly comparable with the suit premises, and keeping in view its location and availability of parking facility at a little distance, the rental value of the suit premises during the relevant period is determined at Rs. 95 per sq. feet per month in respect of ground floor(1990 sq. ft.) and @ Rs. 45 per sq. feet per month in respect of mezzanine floor (2050 sq. ft.). The plaintiff is accordingly held entitled to mesne profits at the aforesaid rates besides pendente lite and future interest at the rate of 6% per annum.

24. In the result, the suit is decreed with proportionate costs, in favor of the plaintiff and against the defendant holding the plaintiff entitled to mesne profits in respect of ground floor and mezzanine floor of premises No. 21, New Friends Colony, New Delhi at the rate of Rs. 95 per sq. feet per month and Rs. 45 per sq. feet per month respectively from 1st August, 1998 to 28th February, 2001 with pendente lite and future interest at the rate of 6% per annum. The amount of rent already paid with provisional increase of 25% in terms of Court order dated 21st July, 1999 shall be adjusted against the decretal amount and the differential amount together with interest at the aforesaid rate shall be paid to the plaintiff by the defendant bank within a period of 30 days from the date of this judgment failing which it would be open to the plaintiff to recover the amount by way of execution.

25. A decree be drawn accordingly.