
(2018) 03 DEL CK 0011
In the Delhi High Court
Case No : RFA No. 197 Of 2018

Veena Khanna

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Indian Contract Act, 1872 — Section 2(a)(b), (e), (h), 4
Code of Civil Procedure, 1908 — Section 96

Citation : (2018) 03 DEL CK 0011

Hon'ble Judges : VALMIKI . MEHTA

Bench : Single Bench

Advocate : Ms. Renuka Arora, Ms. Nikita Salwan

Final Decision : Dismissed

Judgement

VALMIKI J. MEHTA, J

C.M. No.7051/2018 (exemption)

1.Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.197/2018 and C.M. No.7050/2018 (stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment

of the trial court dated 12.1.2018 by which trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs.11 lacs. Trial court has not

granted any interest and costs in favour of the respondent/plaintiff. Suit has been decreed for the amount of Rs.11 lacs on account of trial court

holding by the impugned judgment that the appellant/defendant had failed to execute the lease deed of the premises of the appellant/defendant in

favour of the respondent/plaintiff in spite of an agreement between the parties and therefore the respondent/plaintiff had to take on lease another property on a higher rate of rent and hence the difference in the amount of rent was decreed against the appellant/defendant in terms of the impugned judgment.

3. The facts of the case are that the appellant/defendant is the owner of the property bearing no. M-5, South Extension-II, New Delhi. On account of the respondent/plaintiff having to vacate its existing premises at South Extension by 31.3.2004, therefore for an alternative accommodation the

respondent/plaintiff had issued an advertisement in the leading newspapers on 8.6.2003. The appellant/defendant in response had offered her property

on lease to the respondent/plaintiff in terms of the written proposal dated 9.7.2003. There was further correspondence entered into between the

parties for finalization of various terms of the lease and ultimately the last set of correspondences are the letter dated 1.1.2004 of the

appellant/defendant to the respondent/plaintiff, response of the respondent/plaintiff to the appellant/defendant dated 3.3.2004 and lastly the reply of the

appellant/defendant to the respondent/plaintiff of the same date 3.3.2004. It was the case of the respondent/plaintiff that a contract was finalized

between the parties for the respondent/plaintiff to be granted lease by the appellant/defendant of the suit property and since the appellant/defendant

failed to execute the lease deed therefore the respondent/plaintiff had to take a premises on rent by paying a higher rental amount of Rs.2,35,000/- and

therefore the subject suit was filed claiming the difference @ Rs.35,000/- per month totaling to Rs.21 lacs with an additional amount being claimed of

Rs.1 lakh towards litigation expenses for facing contempt proceedings in the contempt case filed by the previous landlord and a further sum of Rs. 2

lacs towards advertisement costs and arranging of alternative premises.

4. The appellant/defendant contested the suit by filing her written statement. She pleaded that no contract was ever finalized between the parties and

there were only unsuccessful negotiations for grant of lease and the negotiations did not fructify. Suit was therefore prayed to be dismissed.

5. After completion of pleadings, trial court framed the following issues:-

1. Whether the plaint is signed and verified and the suit is filed by a duly authorized person. If so, its effect? OPP

2. Whether there existed a concluded contract between the parties and the defendant was pursuant thereto obliged to let out the premises in question

to the plaintiff? OPP

3. Whether the defendant is liable to pay damages for breach of contract. If so, what amount? OPP

1. Whether the plaintiff is liable to pay rent to the defendant for the period from May, 2003 to March, 2004 @ 2,00,000/- p.m. as claimed in the

Counter-claim and Rs.8,00,000/- as damages along with interest?â??

6. I may note that counter-claim has been decreed in favour of the appellant/defendant for a sum of Rs.6 lacs and there is no challenge by the

appellant/defendant in this appeal for grant of a higher amount of Rs.26 lacs as claimed in the counter-claim and this appeal is therefore confined to

the decree of the suit in favour of the respondent/plaintiff for the rent differential amount.

7. Trial court has held that as a result of the last two letters, one dated 1.1.2004 of the appellant/defendant to the respondent/plaintiff and the second

dated 3.3.2004 of the respondent/plaintiff to the appellant/defendant there resulted a concluded contract between the parties. In this regard, trial court

has made the following correct observations:-

â??9. The crucial question is whether a concluded contract was formed in the instant case as per the provisions of the Indian Contract Act, 1872 so as

to create an obligation on the defaulting party to pay damages/compensation for breach of its terms, or not. The Section 2(a) (b), (e) and (h) of the

Indian Contract Act, 1872 are relevant for a better understanding and they are reproduced as under:

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to

such act or abstinence, he is said to make a proposal:

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,

becomes a promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement:

(h) An agreement enforceable by law is a contract:

10. At the outset, Ld. Counsel for the plaintiff argued that there were two ?? concluded contracts? which took place in the present case firstly on

10.11.2003 and secondly on 03.03.2004. On the other hand, the Ld. Counsel for the defendant argued that there was no acceptance of the proposal

from the side of the defendant to any of the offers of the plaintiff and rather there were offers/counter-offers from the side of the defendant and the

entire dealings between the parties were at the stage of negotiations only and no contract ever took place.

11. In the instant case, various communications took place between the parties and the significant points of the respective documents can be extracted

as under:

12. From the aforesaid various communications/letters between the parties, it is clear that various terms and conditions of the ensuing contract kept on

adding /modifying from the one side of the other. Besides, the aforesaid written communications, the parties also had oral discussions which is

reflected from the initial operating parts of some of the letters. Thus, it shows that there was no final contract in legal sense while making offers and

counter-offers till the time the last letter was communicated. The last letter of the bank dated 03.03.2004 provides that the bank has accepted and

sanctioned the proposal on the following modifications i.e.

1. Monthly rent of Rs.2,00,000/-.

2. Rent advance of 6 months

3. Deletion of sub-clause.

13. In the said letter itself, the bank had also requested the defendant to execute the lease deed. Accordingly, the said letter communicated the final

acceptance of the proposal after having accepted the final agreed terms and conditions of the contract. In this regard, reliance can be placed on

Section 2(a) of the Indian Contract Act which provides that ??When one person signifies to another his willingness to do or to abstain from doing

anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal.? Thus, it was a complete contract

from the side of the bank when the said letter was communicated. As regards the conclusion of the contract from the side of the defendant, the

Section 4 of the Indian Contract Act, 1872 is important and the same is reproduced below for a better understanding:

Section 4. Communication when complete.- The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,

-As against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

-as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge.

14. Keeping in mind the aforesaid basic provisions of the Indian.

Contract Act, 1872 (in short, the Act), I am of the considered opinion that whatever may be the mode of communication, (be it oral or written),

and whosoever may be the initiator of negotiations (be it bank or defendant), the person who lastly gives some offer or proposes some modification of

conditions or invites deletion of some conditions, becomes the Proposer within the definition of Section 2(a) of the Act. In the instant case, it

was the defendant only who lastly communicated to the bank all her intent and terms conditions, which were ultimately accepted by the bank and

consequently the bank communicated the said assent by dispatching the letter dated 03.03.2004 to the defendant.

Illustrations to Section 4

(a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,

- as against A when the letter is posted;

- as against B, when the letter is received by A.

15. The aforesaid illustrations appended to Section 4 of the Act are squarely applicable to the facts of the present case. In the instant case, if A is

treated as the plaintiff/bank and B is treated as defendant, then everything is easily comprehensible. When the final letter dated 03.03.2004 was sent

by the bank to the defendant, as per Section 4 of the Act, the acceptance was complete from the side of bank as soon as the bank dispatched the said

letter. From the said of defendant, it was complete when the said letter came to the notice of defendant. The subsequent letter (dated 03.03.2004) of

the defendant communicating that the suit property was no longer available for giving on rent, cannot revoke the said contract. The Illustration (c) of

the Section 4 of the Act can be relied in this regard which is an under:

Illustration (c): A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is dispatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is dispatched, and as against A when it reaches him.

16. In the light of aforesaid facts, I hold that there was a concluded contract in the eyes of law after communication of letter dated 03.03.2004 by the

bank to the defendant. So far as the obligation of the defendant to pay damages/ compensation is concerned, the matter would be examined further in

the next issue. Thus, this issue is decided in favour of plaintiff and against the defendant.

8. For the sake of convenience, the letter of the appellant/defendant to the respondent/plaintiff dated 1.1.2004, letter in response of the

respondent/plaintiff to the appellant/defendant dated 3.3.2004, and the letter of the appellant/defendant to the respondent/plaintiff of the same date

3.3.2004 are reproduced as under:-

Letter dated 1.1.2004

Dated: 1st January, 04

The Chief Manger,

Indian Bank,

South Extension-1,

New Delhi

Reference: M-5, First Floor, South Extension-11, New Delhi-49.

Dear Sir,

As per earlier discussion I am agreed to let out the above mentioned premises

for the use of your bank branch. In the terms and conditions as follows:-

- 1.The area finally as per the plan measured 2900 sq.ft. Carpet area/ Plinth Area 3240 sq.ft./ Super Area 4000 Sq. ft. (plan attached).
- 2.Monthly rent of per sq.ft. is Rs.60/- for the area as per clause No.Â Â 1.
- 3.Whitewash shall be done after period of initial lease or every renewal of the lease.
- 4.After the first renewal of the lease second renewal of the lease will be discussed as mutually agreed.
- 5.Interest free security deposit of six month rent will be refunded at the time of vacation of premises at the time expiry of lease deed.
- 6.All the internal fixtures and fittings shall be done by the bank.
- 7.There is no subletting rights to any other person except any subsidiary company of your financial institution.
- 8.The notification of the use of premises for banking use has also been provided to you whereas incase of any charges/levy to use for baking purpose shall be paid by the bank. I will apply for the NOC for the same purpose as and when required. I undertake to pay the House Tax etc. to the MCD.
- 9.I am also entitled to construct the above floors as per Building By Laws without disturbing the First Floor premises.
- 10.I undertake to remove the center wall of the front portion as advisable by the structural engineer and to construct the Strong Room as per specification and also provide the grills in the windows and gleze by the glass area.
- 11.Incase you are agreed to pay us the rent on super area or on area then we undertake to pay the charges/levy to use the premises for banking purpose.

We hope your early decision to give the consent.

Thanking you,

Yours truly,

(VEENA KHANNA)

Letter dated 3.3.2004 (letter of respondent to the appellant)

Mrs. Veena Khanna,

D-199, Defence Colony,
New Delhi,
Madam,

Dated:03-03-2004

Sub: Premises at M-5, NDSE-II offered to the Bank

With reference to your offer dated 04-05-2003 offering us the premises at M-5, NDSE-II, New Delhi, The Bank communicated you the sanction vide

our letter dated 28-10-2003. The sanction letter duly received and accepted by you on 10-11-2003 was sent to us.

However you had vide your letter dated 01-01-2004 submitted certain modifications in your proposal as such we submitted the revisions in the proposal to our Head office, Chennai.

We are pleased to inform you that the Bank has sanctioned the premises at M-5, NDSE-II, New Delhi with the following modifications:

- a)Monthly rent of Rs.2,00,000
- b)Rent advance of 6 months
- c)deletion of sub ,lease clause from the lease deed Kindly execute the lease deed at the earliest.

Yours faithfully,

Sd/-

Branch Manager

Letter dated 3.3.2004 (letter of appellant to the respondent)

March 3, 2004.

THE BRANCH MANAGER

Indian Bank

G-6, N.D.S.E.-I

New Delhi-110049.

Sub: M-5, N.D.S.E.-II.

Dear Sir,

With reference to your letter dated March 3, 2004, I regret to inform you that the above mentioned real-estate is no longer available for rent. Sincerely

VEENA KHANNA

BHAWANI HOUSE

Proprietorâ??

9. It is seen that after the earlier correspondence entered into between the parties, and at the stage of appellant/defendant writing her letter dated

1.1.2004, there remained three disagreements; firstly with respect to deletion of the right of the respondent/plaintiff of its claim to entitlement to sub-

lease the premises, secondly of entitlement of the appellant/defendant to advance rent of six months and thirdly of rate of rent. I have put it to the

counsel for the appellant/defendant that what was the subject matter which remained which was not agreed upon after the letters dated 1.1.2004 and

3.3.2004, but the counsel for the appellant/defendant could not point out to me any point of disagreement which remained. Obviously no point of

disagreement remained because respondent/plaintiff deleted its claim for it being entitled to sub-lease the premises, it also accepted the claim of the

appellant/defendant for six months advance rent and also that there was no dispute that rate of rent of Rs.2 lacs would be in accordance with the

paras 1 and 2 of the letter dated 1.1.2004 by the appellant/defendant to the respondent/plaintiff. It is extremely relevant and important to note that

appellant/defendant in her letter dated 3.3.2004 in reply to the letter dated 3.3.2004 sent by the respondent/plaintiff to the appellant/defendant, did not

mention in her letter dated 3.3.2004 as to what point of disagreement remained because this letter dated 3.3.2004 of the appellant/defendant to the

respondent/plaintiff does not talk of any clauses which have yet to be agreed upon and this letter only states that the premises of the

appellant/defendant was no longer available for being leased to the respondent/plaintiff. Even in pleadings of the appellant/defendant filed in the trial

court it is only generally stated that no concluded contract was arrived at without pleading which was the term on which there was no agreement. So

for rent figure of Rs. 2lacs it is not pleaded or shown as to how this figure of rent is not in accordance with paras 1 and 2 of the letter dated 1.1.2004

of the appellant/defendant to respondent/plaintiff. I therefore hold that the trial court has not committed any illegality in holding that there was a

concluded contract between the parties as in terms of the final correspondences between the parties dated 1.1.2004 and 3.3.2004 there remained no

other points on which and at the end of which there remained disagreement or

lack of consensus ad idem.

10.I may for the sake of completion of narration note that the respondent/plaintiff has been held entitled by the impugned judgment to differential rent

totaling to an amount of Rs.17 lacs for the four years lease period of the new premises. To this amount decreed in favour of the respondent/plaintiff

there is adjustment granted to the appellant/defendant with respect to its counter-claim decreed for a sum of Rs.6 lacs resulting in a decree being

passed for the net amount of Rs.11 lacs in favour of the respondent/plaintiff and against the appellant/defendant. As already stated above no interest

or costs have been awarded in favour of the respondent/plaintiff.

11.In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.