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IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No. 291/1997

9th December, 2010

THE BANK OF MADURA LTD.

..... Appellant

Through: Mr. Puneet Agarwal and
Mr. Shivsant Singh,
Advocates.

VERSUS

ISHERDAS SAHNI & BROS.

.... Respondents

Through: Mr. V.K.Sharma,
Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The appellant-bank by the present appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree dated 31.07.1997 whereby the suit of the respondent/plaintiff was decreed for recovery of an amount which was stated to be the difference of the agreed rent and the mesne profits. The Trial Court has determined the mesne profits payable at Rs. 15 per sq. ft. The period for which the mesne profits have been granted is from

14.08.1988 till the date of the filing of the suit on 10.10.1990.

2. The only issue which is required to be addressed by this Court is whether there exists any legal notice validly terminating the tenancy so as to entitle the respondent to claim mesne profits.

3. The facts of the case are that the appellant-bank became a tenant in the premises being a portion of the mezanine floor comprising of a Hall, two rooms and bathroom-cum-lavatory situated on a area approximately 1825 sq. ft. in Odeon Cinema Building, Connaught Place, New Delhi under the registered lease dated 23.07.1976. Lease commenced w.e.f. 15.08.1976 and the monthly rent was Rs.7,300/- per month. The lease period was of five years initially and it was thereafter renewable for another period of two years without any enhancement in rent. Thereafter, the lease could be renewed for a period of seven years broken up as five years plus two years subject to an increase of rent of 12.5%. I may note at this stage that after the first registered lease deed no further lease deeds were executed between the parties and though the so called option was exercised the relationship between the parties was basically month to month inasmuch as the premises was covered under the Delhi Rent Control Act, 1958 till 01.12.1988 from which date the premises went outside the purview of the Rent Act as the rent payable was more than Rs.3500/- per month. In terms of the said various extensions, the last

of which came to an end on 14.08.1988. Thereafter, even any of the so called renewal was not there.

4. Since after 01.12.1988 there was no registered lease deed between the parties, the respondent could have terminated the tenancy of the appellant and thereafter the appellant would have been consequently liable to pay mesne profits. The respondent sent three notices to the appellant for terminating the tenancy and which three notices are Ex. PW-1/7 dated. 01.05.1990, Ex.PW-1/9 dated 27.06.1990 and Ex.PW-1/8 dated 26.07.1990. By Ex.PW-1/7 dated 01.05.1990 tenancy was terminated from 23.07.1990, by Ex.Pw-1/9 dated 27.06.1990 the tenancy was terminated from 22.07.1990 and by Ex. PW-1/8 dated 27.07.1990 lease was terminated from 14.08.1990. Therefore, there are three separate dates given in each of the notices for terminating the tenancy. The question which arises is what is the tenancy month for terminating the tenancy for serving of a notice terminating the tenancy at the end of the tenancy month. A reference to the lease deed Ex.PW-1/1 shows that what is the tenancy month is not stated therein. All that has been stated is that the rent will be payable every month in advance. Ordinarily month is understood to be the English calendar month. It is an admitted fact emerging from the record as accepted by both the parties that rent was payable and was in fact paid as per the English calendar month from 1st of the month to

the end of the month. Thus, the conclusion which emerges is that the tenancy month was the English calendar month. None of the notices had terminated the tenancy at the end of the English calendar month and which was the pre-requisite in terms of Section 106 of the Transfer of Property Act, 1882 which reads as under:-

“106. Duration of certain leases in absence of written contract or local usage.-

In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or if such tender or delivery is not practicable affixed to a conspicuous part of the property.”

5. Clearly Section 106 required a 15 day notice expiring with the end of the tenancy month for the same to be valid for terminating tenancy. It has already been referred to above that none of the notices have terminated the tenancy at the end of the English calendar month.

6. In view of the above, since the tenancy was not validly terminated and the appellant continued to be a month to month tenant there cannot arise any question of payment of mesne profits for the

period for which the appellant-bank occupied the subject premises from 14.8.1988 to 10.10.1990.

7. In view of the above, the impugned judgment and decree is, therefore, liable to be set aside and the appeal is entitled to be allowed. I accordingly, set aside the impugned judgment and decree by accepting the appeal and dismiss the suit of the respondent/plaintiff for recovery. Let a decree sheet be drawn up accordingly. Trial Court record be sent back.

DECEMBER 09, 2010
mr

VALMIKI J. MEHTA, J