

**Mahendra Kaur Arora**

**v.**

**HDFC Bank Ltd**

(Civil Appeals No. 6096-6097 of 2017)

08 May 2024

**[Hima Kohli and Ahsanuddin Amanullah, JJ.]**

### **Issue for Consideration**

In a petition u/Article 227 of the Constitution of India, Single Judge upheld the order passed by Appellate Rent Tribunal by which the decree passed in favour of the appellant-landlady by the Rent Tribunal was set aside and counter claim filed by the respondent-Bank seeking refund of the security amount was allowed. Appellant filed *intra* court appeal which was dismissed by the Division Bench of the High Court as not maintainable.

### **Headnotes**

**Lease Agreement – Respondent-Bank terminated the lease agreement by issuing three months’ notice in terms of clause 6 thereof – However, did not hand over the vacant possession of the premises to the appellant-landlady and continued occupying it – As per the appellant, the respondent also did not pay the use and occupation charges in respect of the subject premises, after adjusting the security deposit towards the rent payable for three months – Application filed by appellant seeking eviction and recovery of arrears of rent was decreed by Rent Tribunal, counter claim filed by the respondent was rejected – Appeal filed by respondent, allowed by Appellate Rent Tribunal – Appellant filed petition u/Article 227 of the Constitution of India before the High Court, dismissed by Single Judge – Appellant filed *intra* court appeal, dismissed by Division Bench of the High Court as not maintainable:**

**Held:** Language of Clause 6 of the Agreement made it abundantly clear that the respondent-Bank was liable to refund of the deposit amount contemporaneous to removing itself from the leased premises and handing over vacant possession thereof to the appellant and giving charge thereof to her, which procedure was not followed – Impugned order passed by Single Judge not

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sustainable – However, order passed by the Division Bench of the High Court is maintained for the reason that no intra-court appeal could have been preferred by the appellant against an order passed by the Single Judge on a petition filed u/Article 227, Constitution of India – Judgment passed by Rent Tribunal restored and the decree passed in favour of the appellant upheld. [Paras 10, 11]

**Constitution of India – Article 227 – Order passed in proceedings u/Article 227, maintainability of intra-court appeal:**

**Held:** No intra-court appeal can be preferred against an order passed by Single Judge on a petition filed u/Article 227 of the Constitution of India. [Para 11]

**List of Acts**

Constitution of India.

**List of Keywords**

Lease Agreement; Rent Tribunal; Appellate Rent Tribunal; Non-payment of rent; Eviction; Recovery of arrears of rent; Use and occupation charges; Termination of lease agreement; Vacant possession not handed over; Security deposit; Refund of deposit amount; Counter claim; *Intra* court appeal.

**Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6096-6097 of 2017

From the Judgment and Order dated 30.07.2015 in DBCSA No. 332 of 2012 and 09.01.2012 in SBCWP No. 8464 of 2009 of the High Court of Judicature for Rajasthan at Jaipur

**Appearances for Parties**

Ms. Sobha Gupta, Sr. Adv., Rishi Matoliya, Nikhil Kumar Singh, Raghuveer Pujari, Ms. Sumati Sharma, Advs. for the Appellant.

Sandeep P. Agarwal, Sr. Adv., Varun Phogat, Viresh B. Saharya, Himanshu Dagar, Nitin Sejwal, Saujanya, Ms. Tanya Chanda, Akshat Agarwal, Advs. for the Respondent.

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### Judgment / Order of the Supreme Court

#### Order

1. The appellant-landlady is aggrieved by the judgment dated 30<sup>th</sup> July, 2015 passed by the Division Bench<sup>1</sup> as also the order dated 09<sup>th</sup> January, 2012 passed by the learned Single Judge in a writ petition<sup>2</sup> filed before the High Court of Judicature for Rajasthan at Jaipur Bench, preferred by her under Article 227 of the Constitution of India.
2. The facts of the case reveal that the appellant-owner of a commercial premises at Vashistha Marg, Raja Park, Jaipur had leased out a part of the said premises<sup>3</sup> to the respondent-Bank for a period of nine years in terms of the lease agreement dated 13<sup>th</sup> October, 2000, executed between the parties. The relevant clauses of the said lease agreement are reproduced hereinbelow :

**“LESSEE’S COVENANTS:**

*2 (j) 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 in consistent with the terms, covenants and conditions on the part of the Lessee herein contained (save and except damage to the demised premises by the fire unless the fire has occurred due to negligence of the Lessee), riots, earthquake, storm, war, civil commotion, acts of God and other conditions over which the Lessee shall have no control) SUBJECT ALWAYS to what is stated hereinafter.*

**ASSIGNMENT/TERMINATION/RENEWAL**

*6 (a) The Lessee shall be entitle to assign or sub-let or otherwise allow use and occupation of the demised premises or any part thereof to its business associates, affiliate companies but not beyond the tenure of this lease or renewal thereof (if any) , as mentioned hereunder.*

*(b) Notwithstanding anything contained herein, the Lessee shall always be entitled, without assigning any reason, to*

<sup>1</sup> D.B. Civil Spl. Appeal (Writ) No.332 of 2012

<sup>2</sup> S.B. Civil Writ Petition No.8464 of 2009

<sup>3</sup> Shop No.485 and basement

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*terminate this lease at any time before the expiry of the tenure of this lease or any renewal period (if any) thereof, by giving to the Lessor three months' prior notice in writing.*"

3. In terms of the lease agreement, the agreed monthly rent of the premises was fixed at ₹28,625/- (Rupees Twenty eight thousand six hundred twenty five only). Vide letter dated 10<sup>th</sup> May, 2004, the respondent-Bank terminated the lease agreement by issuing a three months' notice in terms of clause 6 thereof. The said notice period was made effective from 16<sup>th</sup> August, 2004.
4. It is the version of the appellant-landlady that the respondent-Bank did not hand over the vacant and peaceful possession of the leased premises to her and instead, continued occupying the subject premises upto 18<sup>th</sup> June, 2006, when the keys were finally handed over to her. It is also the stand of the appellant-landlady that the respondent-Bank did not pay her the use and occupation charges in respect of the subject premises from 16<sup>th</sup> August, 2004 till 20<sup>th</sup> February, 2006, after adjusting the security deposit of ₹85,875/- (Rupees Eighty five thousand eight hundred seventy five only) towards the rent payable for three months.
5. Aggrieved by the non-payment of rent by the respondent-Bank, the appellant filed an application before the Rent Tribunal, Jaipur City, Jaipur on 20<sup>th</sup> February, 2006 seeking eviction and recovery of the arrears of rent. It was after institution of the aforesaid petition by the appellant-landlady that the respondent-Bank handed over the keys of the premises to her before the Presiding Officer of the Rent Control Tribunal on 18<sup>th</sup> June, 2006. The petition filed by the appellant-landlady was contested to the hilt by the respondent-Bank who also filed a counter claim seeking refund of the security amount along with interest @ 24% per annum compounded quarterly, w.e.f. 17<sup>th</sup> August, 2004, till realization. Vide judgment dated 10<sup>th</sup> April, 2008, the rent application filed by the appellant-landlady was decreed in her favour and the counter claim filed by the respondent-Bank was rejected.
6. Aggrieved by the aforesaid decision, the respondent-Bank filed an appeal before the Appellate Rent Tribunal which was allowed vide order dated 05<sup>th</sup> March, 2009. As a consequence thereof, the decree passed in favour of the appellant-landlady was set aside and the counter claim filed by the respondent-Bank was allowed. The said order was challenged by the appellant-landlady by filing a petition

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under Article 227 of the Constitution of India before the High Court which was dismissed by the learned Single Judge *vide* order dated 09<sup>th</sup> January, 2012. Instead of approaching this Court for relief against the said order, the appellant filed a misconceived intra court appeal that has been dismissed by the Division Bench of the High Court as not maintainable *vide* order dated 30<sup>th</sup> July, 2015. Both the orders are under appeal before us.

7. Ms. Shobha Gupta, learned Senior counsel appearing for the appellant-landlady submits that the learned Single Judge has erred in upholding the order passed by the Appellate Rent Tribunal whereby the decree passed in favour of the appellant-landlady was set aside inasmuch as the Court failed to appreciate the fact that the notice dated 10<sup>th</sup> May, 2004 issued by the respondent-Bank referred to its proposal to handover possession of the subject premises on 16<sup>th</sup> August, 2004. It is urged that the security deposit could have been refunded to the respondent-Bank contemporaneous to handing over vacant and peaceful possession of the premises to the appellant-landlord, which in the instant case was not done. It is therefore, submitted that the obligation cast on the appellant-landlady to refund the security amount in terms of the lease agreement did not arise till the respondent-Bank actually vacated the subject premises which admittedly remain in its possession till 18<sup>th</sup> June, 2006.
8. *Per contra*, Mr. Sandeep P. Agarwal, learned Senior counsel appearing for the respondent-Bank seeks to rely on the terms and conditions of the lease agreement and, in particular clauses of the Deposit Agreement dated 13<sup>th</sup> October, 2000. Clauses 6 and 8 of the Deposit Agreement read as follows :

*“6. It is agreed by and between the parties hereto that on the said Lease Agreement of any renewal thereof expiring by efflux of time or coming to an end for any reason whatsoever as provided in the said Lease Agreement 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*

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*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)."*

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 Lessee 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"*

9. It is the stand of the respondent-Bank that in terms of the aforesaid clauses of the Deposit Agreement, the appellant-landlady was under an obligation to refund the security deposit to the respondent-Bank at the time of handing over vacant and peaceful possession of the leased premises, which she failed to do and therefore, the aforesaid clauses entitle the respondent-Bank to continue using the leased

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premises itself or by any other person of its choice without any liability to pay any rent/outgoings/damages.

10. We are afraid, the aforesaid argument advanced by learned counsel for the respondent-Bank is not persuasive. The language of Clause 6 of the Deposit Agreement makes it abundantly clear that the respondent-Bank was liable to refund the deposit amount contemporaneous to the Bank removing itself from the leased premises and handing over vacant possession thereof to the appellant-landlady and giving charge thereof to her, which procedure in the instant case, had not been followed. There is nothing on record to demonstrate that any steps were taken by the respondent-Bank calling upon the appellant-landlady to remain present at the subject premises for purposes of handing over/taking over possession of the leased premises on a particular date and time and giving charge thereof to her for her to refund the security deposit simultaneously to the respondent-Bank.
11. For the aforesaid reasons, we are unable to sustain the impugned order dated 09<sup>th</sup> January, 2012 passed by the learned Single Judge that has upheld the order dated 05<sup>th</sup> March, 2009, passed by the Appellate Rent Tribunal, Jaipur. However, the order dated 30<sup>th</sup> July, 2015 passed by the Division Bench of the High Court is maintained for the reason that no intra-court appeal could have been preferred by the appellant-Landlady against an order passed by the learned Single Judge on a petition filed under Article 227 of the Constitution of India. As a result, Civil Appeal No. 6096 of 2017 is allowed, the judgment dated 10<sup>th</sup> April, 2008 passed by the Rent Tribunal is restored and the decree passed in favour of the appellant-landlady is upheld. Civil Appeal No. 6097 of 2017 is however dismissed as there is no error in the finding returned by the Division Bench of the High Court regarding maintainability of an appeal against the order dated 09<sup>th</sup> January, 2012, passed in proceedings under Article 227 of the Constitution of India. Parties are left to bear their own expenses.

*Headnotes prepared by:* Divya Pandey

*Result of the case:*

Civil Appeal No. 6096 of 2017 allowed;  
Civil Appeal No. 6097 of 2017 dismissed.