

R.F.A. No.854 of 2010

LAHORE STOCK EXCHANGE VERSUS Haji IJAZ AHMAD MIRZA
LAHORE

21.02.2012 Mr. Abid Aziz Sheikh Advocate for Appellants.
Mian Sarfraz ul Hassan Advocate for Respondent.

Through the instant R.F.A. the judgment and decree dated 7-7-2010 passed by the learned Civil Judge Sialkot in a suit instituted by the respondent has been assailed. The learned Civil Judge has directed the recovery of Rs.40,46,713 as a rent from the appellants declaring the renewal of the lease agreement for two more terms of 11 months each. It was also directed by the learned Civil Judge in the impugned judgment and decree that the appellants are under obligation to pay lease money amounting to Rs.40,46,713 also for the 3rd term. In addition to that a decree for recovery of damages of Rs.10,00,000 has also been passed against the appellants on account of failure of the appellants to vacate the premises in question or to remove the fixtures therefrom.

2. Briefly stating the facts of the case are that 2nd floor of Cantt. Plaza Allama Iqbal Road, Sialkot Cantt. with covered area of 12500 sq.ft. was leased out to the appellant No.1 by the respondent vide lease agreement dated 1-12-2004. The monthly rent was agreed to be Rs.0.25 million with an increase of 8.5% for the next term of 11 months. The lease

agreement dated 1-12-2004 was initially for a term of eleven months renewable for further two terms of the above duration. The original lease period of the subsequent two extensions therefore expired on 31-8-2007. Later on a supplementary lease agreement dated 27-9-2007 for a period of eleven months for the term ending 31-7-2008 was executed between the parties. It was further agreed that this lease agreement is again renewable for two more terms of eleven months each. The other terms and conditions were agreed to remain the same as in the previous lease agreement dated 1-12-2004. It is also an admitted fact that upon the expiry of first term of 11 months on 31-7-2008 the appellant No.1 paid the advance rent for another period of eleven months ending on 30-6-2009 to the respondent. Before the end of the above said term of lease the appellant No.1 through a written letter dated 5-6-2009 intimated the respondent that the rented premises shall be vacated by 25-7-2009.

3. Another development which took place that the respondent filed a suit on 13-6-2009 for permanent and mandatory injunction against the appellants restraining the latter from vacating the rented premises. During the pendency of the said suit the respondent instituted a suit for declaration, specific performance and damages on 17-6-2009 against the appellants before the learned Civil Judge Sialkot. The respondent prayed in the suit for a declaration that the lease agreement between the parties is effective till

31-5-2010 and that the appellants are bound to make the payment of the lease money to the respondent for the third term as well. A decree for recovery of Rs.40,46,713 for the term commencing from 1-7-2009 till 1-7-2010 was prayed for. In addition to the above the respondent claimed the recovery of damages on account of physical, spiritual defamation and for violation of the agreement, a sum of Rs.20,00,000. The respondent also sought the cancellation of the notice of termination of tenancy dated 5-6-2009 served by the appellant No.1 to the respondent.

4. This suit was contested by the appellants by submitting a written statement. It was pleaded by the appellants: that as per supplementary lease agreement dated 27-9-2007 a period of eleven months ending on 31-7-2008 was agreed to be the lease period and that although the supplementary lease agreement was renewable/extendable for further two terms of eleven months each but the appellants intimated the respondent before the expiry of the agreed term ending on 30-6-2009, through notice/letter dated 5-6-2009 that the appellant No.1 has no intention of further renewal of the lease agreement. It was also pointed out in the written statement that it is the respondent who has been creating hurdles in the smooth vacation of the premises in question by the appellant No.1 by filing a civil suit and also by initiating other frivolous proceedings both legal and otherwise in the way of the removal of valuable fixture of the appellants from the premises in question. The appellants prayed for the

dismissal of the suit.

5. The learned Civil Judge framed the following issues in the matter:--

ISSUES

- (1) *Whether the defendants were liable to pay the rent for the third term on 1st July, 2009 as per supplementary lease agreement and Notice No.20606 dated 5-6-2009 by the defendants is void and ineffective upon the rights of the plaintiff, hence, liable to be cancelled? OPP*
- (2) *Whether the plaintiff is entitled to recovery of Rs.40,46,713 for the term from July, 2009 to May, 2010 as prayed for? OPP*
- (3) *Whether the plaintiff is entitled to decree for Rs.20,00,000 as damages for mental and physical torture as prayed for? OPP*
- (4) *Whether the plaintiff is entitled to the decree of declaration and specific performance with permanent injunction against the defendants? OPP*
- (5) *Whether the plaintiff has no locus standi and cause of action to file the instant suit? OPD*
- (6) *Whether the suit is not maintainable in its present form? OPD*
- (7) *Whether the plaintiff has not come to this court with clean hands and not entitled to any relief? OPD*
- (8) *Whether the defendants are entitled to special costs under section 35-A, C.P.C.? OPD*
- (9) *Relief.*

6. The parties produced their respective evidence. The learned Civil Judge recorded crucial findings on issues Nos.1 and 2 and decreed the suit in favour of the respondent. The learned Civil Judge also granted a decree for the recovery of Rs.10,00,000 as damages to the respondent as prayed for. The relief clause of the judgment and decree dated 7-7-2010 is reproduced:--

"For what has been discussed above under my issue wise

findings on Issues Nos.1 and 2 the suit of the plaintiff for declaration, specific performance and recovery of rent amounting to Rs.40,46,713 is hereby decreed in favour of the plaintiff and against the defendant and it is hereby declared that renewal of the lease agreement was for two terms of 11 months each and lease agreement cannot be revoked before the expiry of the third term and the defendants are under obligation to pay the lease money amounting to Rs.40,46,713 for the third term; similarly in view of my findings on issue No.3 the plaintiff is also entitled to recover a sum of Rs.10,00,000 as damages from the defendants; defendant without payment of rent would not vacate the premises or remove fixtures therefrom. The cost of the suit shall be borne by the parties. File be consigned to the record room after completion."

7. Through the instant Regular First Appeal the judgment and decree dated 7-7-2010 passed by the learned Civil Judge Sialkot has been assailed.
8. The respondent has appeared to contest the R.F.A.
9. Arguments heard and record perused.
10. It is contended by the learned counsel for the appellants that the supplementary lease agreement dated 27-9-2007 has been produced as Exh.P1 which is an admitted document. The learned counsel for the appellants has argued that the supplementary lease agreement Exh.P1 was mutually agreed for a period of 11 months w.e.f. 1-9-2007 to 31-7-2008 and that its clause (B) provided for possibility of a further renewal of the lease agreement for two more terms if both the parties agree to extend the same. The learned counsel argued that there was a written intimation sent by the appellant No.1 to the respondent through a notice dated 5-6-2009 produced by the appellants as Exh.D2 that the appellant No.1 has decided not to renew the supplementary lease agreement dated 27-9-2007 for further term of 11 months and that the

premises will be vacated by 25-7-2009. The learned counsel argued that the concept of renewal of the lease agreement necessitated the consent of both the parties and this was also the true spirit of the supplementary lease agreement and as the appellant No.1 did not want the further extension of the lease agreement after the expiry of the agreed terms of lease in July, 2009 and a due intimation was also given to the respondent by the appellant No.1 through notice Exh.D2 so there was no justification for the learned Civil Judge to have decreed the suit in favour of the respondent forcing the extension of the lease period for further two terms upon the appellants. It is also argued that the grant of a decree for recovery of damages of Rs.10,00,000 to the respondent is also absolutely illegal as it is not based upon any lawful consideration nor the learned Civil Judge has applied his judicial mind for awarding said damages on the basis of some legally admissible ground to the respondent. The learned counsel for the appellants has thus prayed for the acceptance of the instant R.F.A. and the dismissal of the suit as instituted by the respondent after setting aside of the impugned judgment and decree dated 7-7-2010.

11. The learned counsel for the respondent has vehemently opposed the contentions of the learned counsel for the appellants and has contended that the appellants are continuing in possession of the subject property which according to the learned counsel for the respondent was an implied practical step adopted by the appellants for renewal

of the supplementary lease agreement for the next two terms. The learned counsel further contended that the addition of the clause (B) in the agreement Exh.P1 was itself a mutually consenting step taken by the parties for the renewal of the lease agreement for further two terms after the expiry of the 11 months mutually agreed term ending on 31-7-2008 on the same terms and conditions as incorporated in the supplementary lease agreement Exh.P1. For grant of decree for recovery of damages the learned counsel for the respondent contended that the appellants are occupying the subject premises after the expiry of the lease from the month of July, 2009 onwards and that since the appellants caused damage to the property in question and had been moving different applications against the respondent to different authorities therefore the mental torture has been caused by the appellants to the respondent and the learned Civil Judge justifiably granted the decree for recovery of damages of Rs.10,00,000 against the appellants. The learned counsel for the respondent thus prayed for the dismissal of the R.F.A.

12. The learned counsel for the respondent during the arguments informed that the respondent has instituted a separate suit for the recovery of rent against the appellants for the period the premises is continued to be occupied by the appellants.

13. We have considered the arguments of the learned counsel for the parties.

14. The relationship between the appellant No.1 and the respondent as lessee and lesser respectively is based upon a supplementary lease agreement Exh.P1 and its Paragraph No.7 in the introductory section reads as follows:-

"AND WHEREAS the period of previous lease agreement have expired on 31-8-2007 and the parties have mutually agreed to extend the terms of rent agreement of demised premises for a further period of 11 months w.e.f. September 01, 2007 to. July 31, 2008, both dated inclusive, on agreed 25% enhanced monthly rent from Rs.294306 to Rs.367883."

Clause (B) of the terms and conditions agreed between the parties as incorporated in the agreement Exh.P1 is very relevant and is reproduced below:--

"On the expiry of terms of eleven months on July 31, 2008, the deed of lease is renewable for two more terms of eleven months each at monthly rent of Rs.3,67,883 agreed between the parties. Therefore, the parties may extend the terms of the deed for further period and on such rent as mutually agreed by the parties. Thereafter, the parties may extend the terms of this deed for further period and on such rent as mutually agreed by the parties. Under this deed the Lessee has, therefore, made a payment of Rs.4,046713 through a Cheque No.42236989 @ Rs.367883 per month as an advance rent for 11 months for the demised premises and the payment of next two terms of 11 months shall be at the same rent and will be paid during the first month of each extended term. The parties may renew this agreement after May 31,2010, on the terms and conditions to be mutually agreed between the parties."

The reading of the terms and conditions of the supplementary lease agreement Exh.P1 leave no doubt about the fact that the parties through the supplementary lease agreement agreed to the leasing of the premises in question for 11 months from 1-8-2007 to 31-7-2008 and this period was further renewable for two more terms of 11 months. It is not claimed by the respondent that any further agreement of renewal was executed between the parties for extending the terms of the lease for further two more periods of 11 months each. The appellant No.1 admittedly served a notice Exh.D2 upon the

respondent No.1 on 5-6-2009 before the expiry of the next term of 11 months which was to end in July, 2009. The parties cannot be forced to enter into an agreement. Section 10 of the Contract Act specifically provides that all agreements or contracts if they are made by the free consent of the parties attain the status of an enforceable contract. Use of the term renewable in clause (B) of the supplementary lease agreement signifies that an option has been given to both the parties not to renew the term for further period of 11 months each on the expiry of the agreed term of lease. The serving of notice Exh.D2 by the Appellant No.1 to the respondent is sufficient to establish that the appellant No.1 did not intend to continue the lease after the expiry of the 11 months term ending by 31-7-2009. The respondent cannot compel the appellant No.1 unilaterally to further extend the period of lease. The learned Civil Judge has illegally construed the agreement Exh.P1 and its clauses to hold that the lease agreement stood automatically renewed for the next two terms and even for the third term as well after the expiry of the period of lease agreed between the parties. The learned Civil Judge by passing the judgment and decree in favour of the respondent has interpreted the term "renewable" as "to have been renewed" which placing of interpretation by the learned Civil Judge we do not approve of. The findings recorded by the learned Civil Judge in Paragraphs Nos.10, 11, 13 and 14 are therefore not sustainable in the eye of law and are set aside.

15. The learned Civil Judge also illegally passed a decree in favour of the respondent for the recovery of Rs.10,00,000 as damages. There is no legal or factual basis for the learned Civil Judge to have granted this recovery of Rs.10,00,000 as damages to the respondent. Neither the factum of mental torture to the respondent by the appellants has been proved by any medical evidence nor causing of any damage to the subject property by the appellants has been established. The learned Civil Judge has taken note of the filing of different applications by the defendants/appellants for initiating criminal proceedings against the respondent and it is the moving such applications which persuaded the learned Civil Judge to grant a decree of damages of Rs.10,00,000 to the respondent. In the first instance no, particulars of such applications have been taken note of by the learned Civil Judge nor the ingredients for the case of malicious prosecution has been made out in the evidence by the Respondent while recording his finding on issue No.3. No bifurcation of the amount of Rs.10,00,000 qua the grounds urged by the respondent for recovering the amount has been given by the learned Civil Judge. The awarding of the damages to the respondent of Rs.10,00,000 by the learned Civil Judge on the basis of finding recorded on issue No.3 is thus not sustainable in the eye of law and is also set aside.

16. For whatever has been discussed above the instant R.F.A. is accepted and the impugned judgment and decree

dated 7-7-2010 passed by the learned Civil Judge Sialkot is set aside. The suit of the respondent as instituted is ordered to be dismissed with no orders as to costs.

17. Since the parties are already in litigation with respect to the recovery of rent for the period for which the premises in question remains in possession of the appellants, nothing said hereinbefore shall cause any prejudice to the disposal of the said litigation on the basis of the evidence to be produced before the courts of law and the decision of the same in accordance with law..

(Sh. Azmat Saeed)
Chief Justice

(**NASIR SAEED SHEIK**)
Judge