

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

REGULAR FIRST APPEAL NO.1307 OF 2019 (MON)

BETWEEN:

- 1 . PUNJAB NATIONAL BANK
A BODY CORPORATE CONSTITUTED
UNDER THE BANKING COMPANIES
(ACQUISITION AND TRANSFER
OF UNDERTAKINGS) ACT, 1970
PRESENTLY HAVING ITS HEAD OFFICE
AT PLOT NO.4, SECTOR 10,
DWARKA, NEW DELHI 110075,
(EARLIER HAVING ITS REGISTERED
AND CORPORATE OFFICE AT NO.7,
BHIKASHI KAMA PALACE, NEW DELHI)
REPRESENTED HEREIN ONE OF ITS PRINCIPAL
OFFICERS, VIZ., SENIOR MANAGER OF GENERAL
ADMINISTRATION DEPARTMENT (GAD),
CIRCLE OFFICE, BENGALURU
SHRI N SATISH.
- 2 . THE MANAGER, PUNJAB NATIONAL BANK
(FORMERLY NEDUNGADI BANK LTD., AND EARLIER
SITUATED AT 1ST FLOOR, NO.34,
ST.JOHN'S ROAD, BENGALURU)
AND PRESENTLY TRANSFERRED
TO BENGALURU BHEL BRANCH,
SITUATED AT 1ST GATE, BHEL CAMPUS,
DEEPANJALINAGAR, MYSORE ROAD,

BANGALORE 560026,
REPRESENTED BY ITS SENIOR MANAGER
OF THE BANGALORE BHEL MYSORE ROAD BRANCH,
SHRI G.V.RAO.

...APPELLANTS

(BY SRI K V SATISH, ADVOCATE FOR
SRI HARISH KUMAR S R, ADVOCATE)

AND

M/S. SRINIVASA ENTERPRISES
A PARTNERSHIP FIRM HAVING ITS OFFICE
AT NO.1, CHURCH STREET, BENGALURU,
REPRESENTED BY ITS PARTNERS:

1) SHRI K.P.NARASIMHA MURTHY,
S/O PUTTANARASIAH,
AGED ABOUT 73 YEARS,

2) SHRI S SURENDRA,
S/O LATE V SRINIVASIAH,
AGED ABOUT 73 YEARS

...RESPONDENTS

(BY SRI JANARDHAN G, ADVOCATE FOR R1
R2 SERVED)

THIS RFA IS FILED U/S.96 OF CPC 1908 AGAINST THE
JUDGMENT AND DECREE DATED 20.12.2018 PASSED IN
OS.NO.16840/2006 ON THE FILE OF THE XXVI ADDL.CITY CIVIL
JUDGE, MAYO HALL BENGALURU, DECREERING THE SUIT FOR
RECOVERY OF MONEY AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 07.03.2023, COMING ON FOR PRONOUNCEMENT
OF JUDGMENT, THIS DAY, **POONACHA, J.**, DELIVERED THE
FOLLOWING:

JUDGMENT

This appeal is filed under Section 96 of Code of Civil Procedure, 1908 (for short 'CPC') by the Defendant challenging the judgment and decree dated 20.12.2018 passed in O.S. No.16840/2006 by the XXVI Additional City Civil & Sessions Judge At Mayo Hall, Bengaluru (CCH - 20) (for short 'the Trial Court'), whereunder the suit filed for recovery of money was partly decreed.

2. For the sake of convenience, the parties will be referred to as per the rank before the Trial Court.

3. The Plaintiff has filed the instant suit in O.S. N.16840/2006 for recovery of a sum of ₹9,34,924 together with interest @ 18% per annum from the date of suit till the date of realisation. It is the case of the Plaintiff that it is the owner of the suit property and had let out the same to Nedungadi Bank (the predecessor in interest of the Appellant/Defendant) on a monthly rent of ₹13,574/- and refundable advance of ₹81,444/-. The tenancy was

renewed as per Lease Agreement dated 23.09.2002 for a period of five years on monthly rent of ₹23,144/- w.e.f. 01.09.1998 with an option to renew the same for a further period of five years by enhancing the rent @ 20% every three years and additional advance of ₹1,32,969/-; that the Nedungadi Bank merged with the Defendant-Bank and thereafter, the Defendant vide Lease Agreement dated 23.09.2002 has started to pay monthly rent of ₹23,414/- from 01.09.2002. In this regard, the Plaintiff gave a representation calling upon them to pay the rent as per the terms of Lease Agreement dated 23.09.2002. Having failed to pay the rent, as demanded by the Plaintiff, the suit was filed claiming the rent due as follows:

From 1/9/1998 to 31/8/2001	at the rate of Rs.23,414/- per month	Rs.8,42,904-00
From 1/9/2001 to 31/8/2002	at the rate of Rs.28,096/- per month	Rs.3,37,152-00
From 1/9/2002 to 31/8/2004	at the rate of Rs.28,096/- per month	Rs.6,74,304-00
From 1/9/2004 to 30/8/2006	at the rate of Rs.33,715/- per month	Rs.8,09,160-00
	Total	Rs.26,63,520-00

Amount received from the Defendant
towards the rent due for the
said period

Rs.17,28,596-00

Amount adjusting the amount paid
towards the rent balance rent
payable for 28 months

Rs.9,34,924-00

4. The Defendant entered appearance and filed its Written Statement denying the claim made by the Plaintiff. Although it admitted the fact that its predecessor in interest was in occupation of the suit premises as a tenant, the renewal and enhancement under lease agreement dated 23.09.2002 was denied. It was further contended that the alleged lease agreement dated 23.09.2002 contemplated a lease beyond one year and the same being unregistered and insufficiently stamped, the same is not recognized in law.

5. Upon the pleadings of the parties, the Trial Court framed seven issues. The Plaintiff examined its Partner as PW.1 and marked Exs.P1 to P10. The Defendant examined its Manager as DW.1. However, no documents was marked in evidence. The Trial Court, vide its judgment and decree dated 20.12.2018, partly decreed

the suit filed by the Plaintiff and ordered that the Plaintiff is entitled to recover a sum of Rs.5,19,148/- from the Defendant with interest @ 18% per annum from the date of suit till the date of realisation. Being aggrieved, the present appeal is filed.

6. Learned counsel for the Appellant-Defendant contended that:

i) That the suit of the Plaintiff is barred by limitation as the same has been filed on 25.09.2006 claiming arrears of rent from 01.09.1998.

ii) That the Lease Agreement dated 23.09.2002 is insufficiently stamped and an un-registered document, the same could not be looked into for the purpose of considering the claim of the Plaintiff.

iii) That the subsequent endorsement made in the Lease Agreement dated 23.09.2022 which contains the renewal and enhancement clause has been specifically denied by

the Defendant as being a fraudulent document.

Hence, he seeks for setting aside of the judgment and decree passed by the Trial Court and for dismissing the suit filed by the Plaintiff.

7. Per contra, learned counsel for the Respondent-Plaintiff contended:

i) That DW.1 has admitted to the terms of the enhancement in his cross-examination.

ii) That the rent which is due and payable being paid by virtue of a contractual arrangement, suit of the Plaintiff is within time.

8. We have considered the contentions put forth by the learned counsels and perused the material available on record. The questions that arise for consideration are:

1. Whether the claim of the Plaintiff is within time?

2. Whether the Plaintiff is entitled to the enhancement of rent and as claimed in the plaint?

9. After the pleadings of the parties, the Trial Court has framed seven issues, which are as follows:

"1) Whether plaintiff proves that Defendant is liable to pay rent at the rate of Rs.23,144/-?

2) Whether plaintiff proves that defendant no.1 is in arrears of rent of Rs.9,34,924/-?

3) Whether defendants prove that entire rent payable is paid to the plaintiff?

4) Whether suit of the plaintiff is bad for mis-joinder of parties?

5) Whether suit of the plaintiff is maintainable u/s.69 of the Indian Partnership Act?

6) Whether plaintiff bank is entitled for relief sought for?

7) what decree or order?"

10. The Defendant in the Written Statement has specifically contended that the claim of the Plaintiff is time barred and the suit was liable to be dismissed as such.

However, no issue with regard to the limitation has been framed by the Trial Court.

11. Although in normal circumstances, in the absence of the Trial Court framing an issue for consideration, the matter ought to have been remanded to the Trial Court, having regard to the admitted claim of the Plaintiff as is forthcoming from the plaint, the admitted dates on which the aspect regarding limitation is to be considered, in view of the fact that the present Appeal is a First Appeal under Section 96 of the CPC and the claim of money being an old one, the question of limitation is being considered in the present Appeal.

12. It is forthcoming from the plaint that the Plaintiff has claimed the arrears of rent from the year 1998 to 2006. Article 52 of Limitation Act, 1963, specifies the period of limitation for arrears of rent as three years "*when the arrears become due*". Hence, the claim of the Plaintiff ought to have been made in three years from when the rent payable is due. The plaint having been filed on

25.09.2006, the claim of the plaintiff, could have been from 26.09.2003 and not prior to it. Hence, the claim of the Plaintiff from any date prior to 25.09.2006 is barred by the law of limitation and cannot be considered.

13. A copy of the Lease Agreement has been marked as Ex.P10. When the said document was sought to be marked, the same was objected by the Defendant, consequent to which the document was impounded and the Plaintiff has paid the duty and penalty on the same.

14. Section 17(1) of the Registration Act, 1908 states as follows:

"17. Documents of which registration is compulsory. - (1) The following documents shall be registered,

(a)

(b)

(c)

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;"

(emphasis supplied)

15. Section 49 of the Registration Act, 1908 states as follows:

"49. Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument. "

(emphasis supplied)

16. Notwithstanding the fact that the duty and penalty under the said Lease Agreement was paid, the period of tenancy under the said Agreement being more than eleven months, the same ought to have been registered as contemplated under Section 17(1) of the Registration Act. In the absence of the said Lease Agreement dated

23.09.2002 being registered, having regard to Section 49 of the Registration Act, the same can be looked into only for collateral purposes and not for considering the terms of the said agreement. Hence, the said agreement cannot be looked into for the purpose of considering the claim made by the Plaintiff for enhanced rent.

17. It is the contention of the learned counsel for the Respondent that the relevant term under the Lease Agreement regarding enhancement has been admitted by DW.1 in his cross examination. The relevant portion of the said cross-examination is extracted hereunder for ready reference.

"It is true to suggest that in the lease agreement dtd. 23.09.2002 rate of rent per month is fixed as Rs.23,414/-. It is true to suggest that there is enhancement clause to enhance the rent periodically at the rate of 20% once in three years."

18. It is forthcoming from a perusal of Ex.P10, that the parties had entered into an earlier Lease Agreement

dated 01.09.1993 for a period of five years and the same being due for renewal, the said Lease Agreement dated 23.09.2002 was entered into whereunder it was agreed that the Lease would be for a period of five years on a monthly rent of Rs.23,414/-. However, in a separate typed sheet which was appended to the said lease agreement, clause (m) has been mentioned wherein it is stated that the renewal shall be effective from 01.09.1998 and the rent shall be Rs.23,414/- per month with a further increase of 20% in the rental every three years. Further, it is mentioned that the balance amount of rental deposit is to be paid.

19. The Defendant has disputed the said last inserted page of the said agreement. The Trial Court noticing that the said lease agreement dated 23.09.2002 was not a registered one and that only the deficit stamp duty and penalty has been paid by the Plaintiff, relying upon the judgment reported in the case of **Chandrakala Vs.**

Soman¹ held that the Plaintiff cannot be permitted to claim an enhanced rate of rent in terms of the unregistered Lease Deed. Having regard to Section 17(1) of the Registration Act and having regard to the settled proposition of law regarding effect of non registration of a compulsorily registerable document as contemplated under Section 49 of the Registration Act (see: **Anthony v. K.C.Ittoop & Sons**²; **Smt. G. Kusuma Devi Vs. Smt. Gouramma and Others**³), the finding of the Trial Court is just and proper.

20. Despite the said finding, the Trial Court held that the Plaintiff was entitled to monthly rent of ₹23,414/- for the period 01.09.1998 to 30.08.2006 amounting to sum of ₹26,63,520/- out of which ₹22,47,744/- was paid and hence, decreed the suit of the Plaintiff directing the Defendant to pay a sum of ₹5,19,148/- together with interest @ 18% per annum.

¹ (2004) 3 KLJ 432

² (2000) 6 SCC 394

³ 2006 (6) Kar. L.J. 120

21. It is relevant to note that the Defendant has been paying rent of ₹23,144/- from the date of it taking over Nedungadi Bank i.e., from February 2003 till February 2013. The Plaintiff vide letter dated 11.08.2003 sought for the arrears of rent as follows:

<u>Calculation</u>	<u>Actual Rent</u>	<u>Paid</u>	<u>Difference</u>
1. From 1-9-98 to 31-8-01	₹23,414/-	13,574/-	₹9,840/-X 36 months ₹3,54,200/-
2. From 1-9-01 to 31-08-02	₹23,414/-	13,574/-	₹14,522/-X 11 months ₹1,59,742/-
3. From 1-9-01 to 31-08-02	₹23,414/-	13,574/-	₹4,682/-X 9 months ₹42,138/-
(₹3,54,200/- + ₹1,59,742/+ ₹42,138/- =₹5,56,120/-)			

22. As per the Lease Agreement dated 23.09.2002, the parties had contracted to renew the lease for a further period of five years on a monthly rent of ₹23,414/-. It is by virtue of the last page of the said agreement which has been alleged by the defendant to be 'inserted' which sets out clause (m) that the said rent of ₹23,414/- is being made effective from 01.09.1998 and a further increase of 20% every three years is contemplated.

23. Having recorded a finding that the said agreement dated 23.09.2002 being an unregistered one and cannot be looked into, it was not open to the Trial Court to hold that the Defendant is liable for payment at Rs.23,414/- per month from 01.09.1998, by relying on the said agreement.

24. Admittedly, the Defendant has also not paid the balance amount of rental deposit. Apart from producing a copy of the Lease Agreement dated 23.09.2002, the Plaintiff has not adduced any evidence to demonstrate that it is entitled for payment of enhanced rent.

25. The statement made by DW.1 in the cross examination which is extracted at para No.17 hereinabove, will not aid the case of the Plaintiff, inasmuch as, the witness merely admits a suggestion that there is an enhancement clause in the Lease Agreement dated 23.09.2002. If the said sentence is understood from the context with which it has been stated by the witness, the

same cannot be the basis to accept the claim of the Plaintiff for enhanced rent.

26. In view of the aforementioned, the Plaintiffs have failed to demonstrate that it is entitled to enhanced rent as claimed for in the plaint. The finding of the Trial Court that the Defendant is liable to pay the enhanced rent from 01.09.1998 is erroneous and liable to be set aside. The questions framed for consideration are answered in the negative against the Plaintiff.

27. In view of the aforementioned, we pass the following:

ORDER

i) The above Appeal is allowed;

ii) Judgment and decree dated 20.12.2018 passed in O.S. No.16840/2006 by the XXVI Addl. City Civil & Sessions Judge at Mayo Hall, Bengaluru is set aside.

iii) The suit filed in O.S. No.16840/2006 on the file of XXVI Addl. City Civil & Sessions Judge at Mayo Hall, Bengaluru is dismissed.

Parties to bear their respective costs.

**SD/-
JUDGE**

**SD/-
JUDGE**

BS