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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on :22nd May, 2018

Date of decision :1st June,, 2018

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RFA 207/2015

JAY KOCHHAR

..... Appellant

Through: Dr. Arun Mohan, Senior Advocate with
Mr. Arvind Bhatt, Mr. Kuber Giri and
Mr. Sarupreet Singh, Advocates
(M:9810354101) with Appellant in
person.

versus

UCO BANK

..... Respondent

Through: Mr. Rajesh Rattan, Advocate.
(M:9810218488)

AND

RFA 208/2015 & CM No.5768/2015

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UCO BANK

..... Appellant

Through: Mr. Rajesh Rattan, Advocate.
versus

JAY KOCHHAR

..... Respondent

Through: Dr. Arun Mohan, Senior Advocate with
Mr. Arvind Bhatt, Mr. Kuber Giri and
Mr. Sarupreet Singh, Advocates
(M:9810354101) with Respondent in
person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. These are cross appeals filed by Mr. Jay Kocchar and UCO Bank, who was a tenant in the suit property, against the judgment and decree dated 22nd January, 2015. Mr. Jay Kocchar was the Plaintiff (*hereinafter, 'Plaintiff'*) in the subject suit, and UCO Bank was the Defendant (*hereinafter, 'UCO Bank'*). The only question that survives in the present

appeals is in respect of the mesne profits/damages payable by UCO Bank to the Plaintiff.

2. A suit for possession and mesne profits was filed by the Plaintiff in respect of property consisting of Ground Floor of property bearing No.27, South Patel Nagar, New Delhi (*hereinafter 'suit property'*). According to the Plaintiff, a registered lease deed was entered into for a period of five years w.e.f. 1st May, 2003 to 30th April, 2008 at a monthly rent of Rs.48,000/-. The last paid rent at the time of termination of the tenancy was Rs.57,600/- per month. The lease deed was executed between Late Mr. Saran Singh Kocchar, who expired on 11th March, 2007. The Plaintiff is the son of Late Mr. Saran Singh Kocchar, and claims that as per the Will dated 3rd August, 2006 of his father, the premises had fallen in his share after the demise of his mother, in whose favour life interest qua the rent of the property was created, on 3rd September, 2008. The Plaintiff also pleaded that UCO Bank had attorned to the Plaintiff and had released the entire arrears of rent @ Rs.57,600/- per month. Since the Plaintiff did not wish to continue with the bank as a tenant, the tenancy was terminated by means of notice dated 1st October, 2009. The Plaintiff claimed Rs.3 lakhs per month as damages for user and occupation charges of the property. Reliefs prayed in the suit are as under:

"(i) pass a decree for possession in favour of the plaintiff and against the defendant, his agents, employees etc in respect in ground floor of property No.27, South Patel Nagar, New Delhi and as shown in the site plan.

(ii) pass a decree for future damages in favour of the plaintiff and against the defendant from the date of institution of the present suit till possession is delivered

to the plaintiff and @Rs.3 lacs per month or at such rate which this learned court decides and Under Order 20 Rule 12 C.P.C.

(iii) Interest @18% be also awarded on the future damages and under S.2(12) of C.P.C. ”

3. UCO Bank filed its written statement claiming that there is no lease deed executed between the Plaintiff and the bank and that as per the registered lease deed, the tenancy is not terminable before the expiry of the period specified in the lease. UCO Bank claims that it was entitled to pay the enhanced rent with an increase of 20% which it has done and therefore it is entitled to remain in the suit property till 30th April, 2018. According to UCO Bank, as per the renewal clause, the monthly rent payable between 2008-13 would be Rs.57,600/- and from 1st May, 2013 to 30th April, 2018 it would be Rs.69,120/-. It is the case of UCO Bank that immediately upon the demise of the landlord- Sh. Saran Singh Kocchar on 11th March, 2007, as per his Will, Smt. Manmohan Kaur Kocchar, his wife, became the owner. A letter dated 21st March, 2007 was addressed by Smt. Manmohan Kaur to UCO Bank that she had become the landlady of the suit. Simultaneously, the Plaintiff- her son also wrote a letter on 31st March, 2007 requesting the bank not to pay the rent to his mother. Thus, there were disputes between the family.

4. In the meantime, according to UCO Bank, vide letter dated 26th March, 2008, UCO Bank had expressed its clear intention to renew the lease for a further period of five years i.e. from 1st May, 2008 to 30th April, 2013. The said letter having been served upon the owner i.e. the Widow of the landlord, UCO Bank had acted as per clause 4(f) of the lease deed between the bank and the late father of the Plaintiff. Since, there were disputes

between the wife and son of the landlord, UCO Bank credited the monthly rental amount under a sundry credit account awaiting adjudication of the probate petition filed by the Plaintiff in respect of the Will executed by the landlord. After the wife of the landlord expired on 3rd September, 2008, memorandum of family settlement was entered into between the family members (consisting of the wife and two sons) of the landlord by which the suit property fell into the share of the Plaintiff. Thereafter, letter dated 2nd June, 2009 was addressed by the Plaintiff claiming all the arrears of rent to be paid in terms of the original lease deed and also demanded that the future rent be credited in his account. Along with its written statement, UCO Bank filed a counter claim seeking a declaration that the lease deed is contractual in nature and is valid up to 30th April, 2018. In the counter claim, the prayer of the bank is as under:

- “(a) dismiss the suit of the plaintiff being absolutely false, illegal and misconceived;*
- (b) pass a decree for specific performance of the lease agreement, dated 29.12.2003 and the plaintiffs letter dated 2.6.2009 and to direct the plaintiff to execute a fresh registered lease deed in favour of the defendant bank in respect of the suit premises for a period upto 30.4.2013 at the monthly rent of Rs.57,600/- with renewal clause for next five years upto 30.4.2018 at a monthly rent of Rs.69,120/- per month;*
- (c) pass decree of declaration in favour of the answering defendant and against the plaintiff and declaring the answering bank to be a lawful contractual tenant of the suit premises in terms of lease agreement dated 29.12.2003 and the plaintiffs letter dated 2.6.2009;*
- (d) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the present facts and circumstances of the case;*

(e) Cost of the counter claim be also awarded in favour of the defendant bank; ”

5. The following issues came to be framed in the suit:

“Issue no.1: Whether the tenancy of the defendant has been validly terminated by the plaintiff? OPP

Issue no.2: Whether the suit is bad for want of privity of contract between the plaintiff and the defendant? OPD

Issue no.3: Whether the tenancy rights of defendant bank are governed by Lease Deed dated? 29.12.2003? OPD

Issue no.4: Whether the plaintiff is estopped from seeking possession of the suit premises by virtue of letter dated 02.06.2009? OPD

Issue no.5: Whether the plaintiff is entitled to decree of possession as prayed for? OPD

Issue no.6: Whether the plaintiff is entitled to damages/future mesne profits? If so, for what period and at what rate? OPP

Issue no.7: Whether plaintiff is entitled to interest on damages? If so, at what rate? OPP

Issue no.8: Whether the defendant exercised the option of renewal as required as per the lease deed and within the stipulated period? OPD

Issue no.9: If issue no 5 is proved in favour of defendant, then what is the effect of non-execution and non-registration of a fresh lease deed, in terms of Section 107 of T.P. Act? OPD

Issue no.10: Whether defendant is entitled to a decree of specific performance as prayed in the counter claim? OPD

Issue no.11: Relief.”

6. The Plaintiff appeared as PW-1. PW-2, Mr. Parminder Singh was

produced to prove a lease deed of Axis Bank in East Patel Nagar, New Delhi. PW-3, Mr. Sunil Kumar was produced to prove a lease deed executed by Andhra Bank in East Patel Nagar. Mr. Vinay Sethia, Senior Manager UCO Bank, South Patel Nagar branch appeared as DW-1. Mr. Ashok Kumar Kanojia, Manager, UCO Bank appeared as DW-2. Plaintiff also led rebuttal evidence.

7. The impugned judgment was thereafter passed decreeing the suit for possession as also damages @ Rs.10,000/- per month in addition to the rent payable after expiry of every five years in terms of the lease deed. The operative portion of the judgment of the Trial Court is set out herein below:

“31. The findings given herein above are clear enough to conclude that the plaintiff has been able to prove its case so as to be entitled to seek possession of the suit premises (i.e. the ground floor of property no. 27 South Patel Nagar, New Delhi) from the defendant bank and the counter claim of the defendant bank is liable to be dismissed. Ordered accordingly. Plaintiff is also awarded damages @Rs. 10,000/- p.m. w.e.f. the date of the filing of the suit i.e dtd. 10.11.2009 alongwith interest @6% p.a. till the realisation of the decreetal amount as well as possession of the suit premises; alongwith the costs of the suit. The damages so awarded are in addition to the 'rent' payable after expiry of every five years in terms of the lease deed Ex. P-2.”

8. During the pendency of the present appeal, various attempts were made for amicable resolution of the dispute, however, the same failed. Thus, UCO Bank is in continued possession of the property and paying the admitted rent along with Rs.10,000/- which was awarded as damages.

9. These two appeals have been filed against the impugned order. The

first appeal is filed by UCO Bank and the second appeal is by the Plaintiff, seeking enhanced mesne profits. On behalf of the bank, Mr. Rajesh Rattan, Ld. Counsel has made submission. Mr. Arvind Bhatt, Ld. Counsel has initially made submissions on behalf of the Plaintiff, however, rejoinder submissions by Dr. Arun Mohan, Senior Advocate have been heard.

10. On 11th May, 2018, the following order was passed:

“Counsels for the parties have sought instructions in the matter. UCO Bank is willing to vacate the premises on or before 30th May, 2019. The Bank is willing to also pay the admitted rent as per the notice. Both the parties are directed to discuss the rent payable for the year May, 2018 to 31st May, 2019.

List on 21st May, 2018.”

11. Thus, UCO Bank is willing to vacate the premises on or before 31st May, 2019. The only question therefore to be adjudicated is as to whether time till 31st May 2019 ought to be granted, what would be the amount payable for the period till 30th April, 2018 and thereafter for the period from 1st May, 2018 to 31st May, 2019.

12. During the pendency of the appeal, there has been a further development i.e. the Plaintiff has served another notice of termination dated 12th March, 2018. The said notice reads as under:

“Dated : 12, March, 2018
Urgent – Regd. AD Post/Courier /Speed Post

To,
C.M.D., UCO BANK
REGD. OFFICE : 10, BRABORNE ROAD,
KOLKATTA – 700001
ZONAL OFFICE AT:
ZONAL MANAGER, UCO BANK

**5, PARLIAMENT STREET
NEW DELHI – 110001
BRANCH OFFICE AT :
BRANCH MANAGER, UCO BANK
27, GROUND FLOOR,
SOUTH PATEL NAGAR,
NEW DELHI – 110008**

LEGAL NOTICE

Under instructions and on behalf of my client MR. JAY KOCHHAR S/O LATE SHRI SARAN SINGH KOCHHAR, D-14, 3RD FLOOR, MAHARANI BAGH, NEW DELHI, I hereby serve you with the following legal notice as under:

- 1. That the premises Ground Floor, at 27, South Patel Nagar, New Delhi – 110 008, was taken by you on lease vide Registered lease deed dtd. 29th December, 2003, for a total period of 15 years w.e.f. 01.05.2003 to 30.04.2018 from Late Shri S.Saran Singh Kotchhar (father of my client).*
- 2. That initially the rent was for Rs.48,000/- per month till 30.04.2008 and thereafter the said rent was enhanced at 20% as Rs.57,600/- from 01.05.2008 and further 20% increased to an amount of Rs.69,120/- from 01.05.2013 till the expiry of the lease, i.e 30.04.2018 as per the provisions of the aforesaid lease deed.*
- 3. That as the term of aforesaid lease deed would expire on 30.04.2018, my client do not wish to continue the same and hereby serve you with the termination notice in advance to vacate the premises in question under tenancy, i.e. Ground floor portion situated at 27, South Patel Nagar, New Delhi – 110 008 on or before 30.04.2018.*
- 4. That you are as such called upon to hand over and deliver back the vacant possession of the premises in question to my client on or before 30.04.2018, failing*

which your possession of the premises in question will be illegal and you shall be held liable to pay damages at the rate of Rs.5,00,000/- (Rupees Five Lakh only) per month which is the present prevailing rate of rent of identical premises in the vicinity. In case the notice is not complied with, then my client shall be left with no other option but to file a suit for possession and damages and should that become necessary then you will be liable for all the costs and consequences thereof.

5. You are, therefore, being served with the notice to vacate the premises in question under tenancy, i.e. Ground Floor portion situated at 27, South Patel Nagar, New Delhi – 110 008 on or before the expiry of the lease period, i.e. 30.04.2018, failing which a suit for ejectment and recovery of damages/means profit etc. will be filed against you, at you risk, cost and consequences.

You have been informed accordingly.

Copy kept for further action in the matter.

Sd/-
**(MOHAN BABU AGARWAL)
ADVOCATE”**

13. The reason why the said notice has been extracted is because the Plaintiff has now admitted that as per the registered lease deed dated 29th December, 2003, the term of the lease deed was 15 years from 1st May, 2003 to 30th April, 2018. The Plaintiff has also admitted that the rent was enhanced by 20% for every five years and thus, from 1st May, 2008, Rs.57,600/- was liable to be paid and from 1st May, 2013, Rs.69,120/- was liable to be paid. The Plaintiff categorically admits in the said notice that as per the terms of aforesaid lease deed, the lease would come to an end on 30th April, 2018. In view of this notice, which is now served on the bank by the

Plaintiff, the lease deed and the terms thereof stand admitted. UCO Bank, no longer is an unauthorized occupant or a month-to-month tenant, for the period from 2008 till 2018.

14. The Trial Court's judgment is based on the premise that the renewal letter dated 26th March, 2008 was not properly served by UCO Bank and was not proved. The said option to renew the lease having not exercised by UCO Bank, the tenancy is a terminable one under Section 106 of the Transfer of Property Act. Thus, the Trial Court held that the Plaintiff is entitled to mesne profits/damages. This position is completely altered with the service of notice dated 12th March, 2018 by the Plaintiff. The notice by itself is sufficient to hold that no damages are payable. However, even going by the terms of lease deed and the evidence on record, it is clear that the bank had exercised its option to renew the lease.

TERMS OF THE LEASE DEED

15. A perusal of the lease deed dated 29th December, 2003 shows that the same is a registered document. The relevant clauses of the lease are set out herein below:

“1. In consideration of the rent hereby reserved and the covenant terms and conditions herein contained and on the part of the lessee to be paid observed and performed the Lessor doth hereby grant and demise unto the Lessee premises on the ground floor of 27 South Patel Nagar, New Delhi as shown in the plan attached

And more particularly described in the Schedule hereunder Written and hereinafter for the sake of brevity referred to as “the demised premises” TOGETHER WITH all rights easements and appurtenances belonging thereto to HOLD the demised

premises unto the Lessee for term of Five years from the 1st Day of May, 2003 YIELDING AND PAYING therefor unto the, Lessor during the said term monthly and every month the monthly rent of Rs. 48000/- (Rupees Forty Eight Thousand only) Inclusive of all rates and taxes by equal monthly payments on or before the 7th day of each and every month for the month immediately preceding.

.....

4(f) If the Lessee shall be desirous of taking a new lease of the demised premised after the expiration of the term hereby granted and of such its desire shall give to the Lessor or leave at his usual or last known place or residence in 27 South Patel Nagar. A notice in writing not less than one month before the expiration of the term hereby granted to the Lessee a new Lease of the demised premises for a further period of five +five years (subject to an increase of 20% on the last rent paid for each block of five years) to commence from and after the expiration of the term hereby granted subject to the same terms covenants and conditions as are herein contained except this present clause for renewal. The total duration of the lease shall not exceed fifteen years.”

16. Upon the death of landlord-Sh. Saran Singh Kocchar, UCO Bank received letter dated 31st January, 2008 from the landlord's widow and the second son-Mr. Harinder Singh Kocchar that the tenure of the existing lease agreement would remain unchanged. However, consent was to be obtained from Sh. Jay Kocchar i.e. the Plaintiff as well. Vide letter dated 1st February, 2008, the Plaintiff called upon the bank to keep the enhanced rent, effective from 1st February, 2008, in a sundry account as there were disputes between him and his family. This letter is important and is set out herein below:

“The Senior Manager,

February 1, 2008

*UCO Bank Patel Nagar,
New Delhi 110008*

*Ref: Your request for installation of ATM at 27
South Patel Nagar branch.*

Dear Mr. Airi,

In lieu of permission to install ATM, the rental is being raised to Rupees 65000/- per month effective February 1, 2008. Please review this agreement with Mr. R.K. Mehrotra, DGM, whom I had the pleasure of meeting recently in your presence. His signature will bind this agreement immediately.

Enclosed is the draft agreement for an Addendum to the Lease Deed dated 29th day of December, 2003 which was signed by my late father S. Saran Singh Kochar and UCO Bank for the ground floor premises located at 27, South Patel Nagar, New Delhi. This gives you my permission for installation of ATM.

Since my father's Will has not been probated and all the surviving family members have been unable to have a meeting of the minds, the enhanced rent effective Feb.1, 2008 be continued to be kept in Sundry account.

*Thanking you,
Yours truly,*

*Sd/-
Jay Kochar”*

17. The original lease deed though dated 29th December, 2003 was effective from 1st May, 2003, for a period of five years and would have expired on 30th April, 2008. Prior to the expiry of the lease on 26th March, 2008, a letter was served by UCO Bank to all three LRs of the landlord. The widow-Mrs. Manmohan Kaur Kochhar was residing in the same premises in the First Floor where the bank was running from and the said letter is

claimed to have been delivered by hand to her. The noting of the officials who went to deliver the said letter to her is important and is set out herein below:

“Senior Manager,

I alongwith, Mr. A.K. Kanojia, Manager, visited the residence of Mr. H.S. Kocchar for delivery of notice dated 26-3-2008 for renewal of lease to Mrs. Manmohan Kocchar. But she refused to accept the notice citing family dispute. However on persuasion, she accepted a copy without acknowledgment by her. A copy was given to Mr. H.S. Kocchar also. This is for your information please. Signed 31.03.08”

18. This letter and the service thereof on the mother, is seriously disputed by the Plaintiff on the ground that UCO Bank never exercised its option for renewal of the lease. The letter was never served upon the Plaintiff and that the dispatch register which shows the delivery of the letter as being 31st March, 2008, is fudged. On the other hand, counsel for UCO Bank submits that one of the officials i.e. Mr. A.K. Kanojia who went to serve the notice has appeared as DW-2. In his cross-examination he categorically stated that he had personally visited and served the letter to the landlady.

19. Insofar as letter dated 26th March, 2008, which is the option for renewal of the lease, is concerned the cross-examination of the DW-2 is quite clear and some extracts of the same are set out herein below:

“...I remained in this branch between October, 2007 to October, 2008.

Ques. Who exercise the option of extension of lease on behalf of the bank and when?

Ans. Sh. B.K. Airi, Senior Manager exercised the option of extension of lease on 26.03.2008.

It is wrong to suggest that no such option of

extension were ever exercised.

Ques. Did you know the addresses of all the owners when the said alleged option was exercised?

Ans. The landlady was living on the first floor of the bank and the bank was aware of the address.

.....

The letter was taken to the landlady by me and the Senior Manager, son of the landlady was also present there who told that landlady was not well today and she will collect the letter. The said letter was given to the landlady. The said letter regarding option of renewal of lease was not sent by post. The lease deed was entered into on behalf of the bank in the year 2003 by the Senior Manager. I made entry regarding dispatch of the letter later on i.e. 31.03.2008 in the dispatch register. There was no entry made after 31.03.2008 as there was no space left in the dispatch register. [Vol. As it was last day of the financial year].”

20. A lot has been said by the Plaintiff about the dispatch register and the alleged fudging of the letter dated 26th March, 2008. The first submission is that it has been shown to have been dispatched on 31st March, 2008 and secondly, the entry in the register is in a different handwriting. None of these objections are valid inasmuch as the letter itself (Ex.RW1/5) is on record and it shows the noting of the officials of the bank of a contemporaneous period that they had visited the landlady. The cross-examination, letter and dispatch register clearly shows that UCO Bank had exercised the option for renewal of the lease. Moreover, even the letter of the Plaintiff dated 1st February, 2008 uses the words “enhanced rent effective 1st February, 2008 to be kept in a sundry account”. If the lease was not to be extended, there was no question of any enhanced rent being payable. It is clear that the

Plaintiff is raising completely frivolous objections in respect of this letter.

21. A perusal of the Will of the father dated 3rd August, 2006 clearly states that upon the death of the landlord, his wife would be entitled to live in the house till her death and the rental income from the suit property would go to his wife. The relevant clause of the Will is set out below:

“A. House no.27, South Patel Nagar, New Delhi-110008

a) That after my death, my wife shall have the right to live in the house till her death and the rental income which comes from the ground floor of property bearing no.27 South Patel Nagar, New Delhi which is in possession of UCO Bank shall go to my wife.....”

22. Thus, as per the Will which was subsequently probated, the owner of the suit property at the relevant time, even upon the death of the landlord, was the widow-Smt. Manmohan Kaur Kocchar. The Plaintiff also does not have any personal knowledge as to whether the meeting between the officials of UCO Bank and Smt. Manmohan Kaur Kocchar actually took place. There is no reason to disbelieve the officials of the bank, the documents on record, as also the contemporaneous evidence. The facts of this case are completely distinguishable from the facts in *State Bank of India v. H.C. Takyar [RFA 6/2004 decision dated 13th February, 2012]* where the Supreme Court held that the letter for extending the lease sent by the Bank was contrived. Here, the officials actually met with the landlord's wife. Thus, it is held that UCO Bank had exercised the option of renewal of the lease vide letter dated 26th March, 2008.

23. Ld. Sr. Counsel for the Plaintiff has sought to make a distinction between a 'renewal of lease' and 'extension of the lease'. According to Dr. Arun Mohan, the former signifies an execution of a fresh lease deed and

the latter signifies extension of the existing lease deed. In the present case, the clause according to him contemplated signing of a 'new lease deed' which was not done and hence the renewal did not take place. This submission would have been of significance, had the Plaintiff understood it in the manner that it is being argued. The understanding of the Plaintiff was that the enhanced rent ought to be paid and the said enhancement as per the agreement is only in Clause 4(f) and nowhere else. The Plaintiff seeking the enhanced rent itself showed that it was his understanding that the lease would be automatically renewed/extended. As per *Provash Chandra Dalui v. Bishwanath Banerjee AIR 1989 SC 1834*, 'extension' means prolongation of the lease. That is exactly what happened in this case, viz., the term of the lease was prolonged and it did not come to an end, but with enhanced rent as per clause 4(f) of the lease deed. Moreover, UCO Bank had exercised the option during the currency of the lease and not after expiry thereof. Thus, the authorities cited by the Plaintiff in the written submissions, support the position that UCO Bank exercised the option within the term of the lease and also paid the enhanced rent as demanded by the Plaintiff and thus the lease stood extended.

24. Insofar as the next period of five years i.e. from 2013 to 2018 is concerned, UCO Bank had clearly filed a counter claim pleading therein that it is willing to renew the lease. A perusal of the lease also reveals that if UCO Bank exercises the option of renewal, the owner/landlord had no power to terminate. Further with the service of the notice dated 12th March, 2018, it is clear that UCO Bank is an authorised occupant of the suit property as per the lease deed till 31st March, 2018. Thus, UCO Bank is liable to pay the rent for this entire period from 2003 to 2018 as per the lease

deed.

25. Insofar as the period subsequent to 31st March, 2018 is concerned, on 2nd April, 2018, the following order was passed:

"File is taken up today as 26th March, 2018 was declared holiday.

Learned counsel for the Appellant has brought to the notice of the Court a notice dated 12 March, 2018 by which the Respondent landlord has stated that the lease which is in operation comes to an end on 30th April, 2018. Copy of this notice has been handed over to the counsel for the Respondent.

In view of the fact that a fresh notice has been issued on 12th March, 2018 as the lease is to expire on 30th April, 2018, both parties wish to seek instructions.

List on 11th May, 2018, on which date, parties shall obtain instructions in respect of whether they wish to renew the lease or not."

26. Thereafter, on 11th May, 2018, UCO Bank had expressed its willingness to vacate the premises on or before 31st May, 2019. The Plaintiff has not given express consent to extend the lease till 31st May 2019, but no serious opposition was expressed either. In any event, UCO Bank has been a tenant in the suit premises since 1958. Considering the long duration of the tenancy, spanning for almost six decades the period sought to vacate is not unreasonable. Accordingly, this court, grants to UCO Bank time till 31st May 2019, to vacate the premises, subject to filing of an undertaking to handover vacant and peaceful possession on or before 31st May 2019.

27. In respect of this period, the use and occupation charges would have to, therefore, be decided by this Court. For a period after 1st April, 2018, there is no amount of rent payable prescribed in the lease deed and the lease

has come to an end, UCO Bank would therefore be liable to pay the market rent. The Plaintiff led the evidence of two witnesses to prove the market rent currently prevailing in Patel Nagar area. The first lease deed (EX.PW-2/1) is a lease entered into by Axis Bank for a property in South Patel Nagar, New Delhi. The rate of rent prescribed in the said lease deed is Rs.3,40,000/- per month for a total carpet area of 3940 sq. ft. The second lease (EX.PW-3/A) of Andhra Bank dated 6th October, 2009 is at a monthly rent of Rs.1,01,250/- for an area of 1125 sq. ft. Thus, the average sq. ft. rate as per these two lease deeds is around Rs.88/-. UCO Bank is in occupation of the Ground Floor of the property. In the lease deed in question, the exact carpet area is not mentioned, however, going by the average in the area, it consists of six rooms, two bathrooms and the garage. The suit property measures 1000 sq. yards, which is almost 3000 sq. feet. But the exact carpet area is not available. The last paid rent as per the lease deed would be Rs.69,120/-. Taking the carpet area to be 50% of the entire area of the property, it is directed that for the period from 1st May, 2018 to 31st May, 2019, UCO Bank shall pay a sum of Rs.1,50,000/- per month to the Plaintiff for use and occupation of the suit property. The UCO Bank shall continue to bear all expenses as was being borne by them as a Lessee for the past years.

28. The impugned judgment/decree is accordingly modified as under:

- A decree for possession is granted in favour of the Plaintiff against UCO Bank but the same would not be executed till 31st May 2019;
- The Plaintiff is also awarded damages @ Rs.1,50,000/- per month for the period 1st May, 2018 to 31st May, 2019.
- UCO Bank would pay as per the Lease Deed dated 29th

December 2003, for the period upto 30th April 2018. Insofar as UCO Bank has made additional payment of Rs.10,000/- per month as per the impugned judgment of the Trial Court for the past, suitable adjustment would be given by the Plaintiff, only of the principal amount.

29. An affidavit shall be filed by a Senior official of UCO Bank along with the Board Resolution and authorisation, undertaking to abide by the above terms within six weeks, failing which the decree would be immediately executable. Decree sheet be drawn accordingly. The said affidavit shall also contain an undertaking before this Court to the effect that it shall handover peaceful and vacant possession of the property to the Plaintiff on or before 31st May, 2019 and that it would abide by the other terms of the lease in respect of electricity, water charges and maintenance of the property until the said period.

30. Both appeals are disposed of. The impugned judgment/decree is modified. Decree sheet be drawn accordingly. All pending applications also stand disposed of.

PRAATHIBA M. SINGH, J.
Judge

JUNE 01, 2018

Rahul