Shivani Properties Pvt. Ltd. Vs United Bank of India

Court: Calcutta High Court

Date of Decision: May 14, 2013

Citation: (2013) 4 CALLT 1 : (2014) 1 CHN 222 : (2014) 2 WBLR 637

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Ahin Chowdhury and Mr. Sabyasachi Chowdhury, for the Appellant;P.S. Bose and Mr. Subrato Dutta, for the Respondent

Judgement

Soumen Sen, J.
The principal issue for consideration in the suit filed by the plaintiff is whether the plaintiff is entitled to maintain a suit for

adjudication, determination and settlement of the monthly rent for the suit premises from 1st July, 1995 together with interest on the face of a

demurrer as to its maintainability founded on section 47 of the Code of Civil Procedure. The said objection as to the maintainability is on the basis

that the suit involves questions relating to execution, discharge or satisfaction of a compromise decree passed in Ejectment Suit No. 197 of 1990 in

which in Clause (iii) the defendant has agreed to review the rent after 5 years. All questions including the reluctance of the defendant to review the

rent or a decision in purported exercise of such Clause (iii) according to the defendant could only be decided in an application for execution of the

said compromise decree and not in a suit.

2. In or about 1947 Commilla Banking Corporation was inducted as a tenant at the Ground floor of Premises No. 5, Kiran Shankar Roy Road,

Kolkata - 700 001 (hereinafter referred to as the said office space) as a Lessee thereof. Commilla Banking Corporation was merged with the

United Bank of India and subsequently United Bank of India became a tenant in respect of the said Office Space.

3. The defendant is a tenant under the plaintiff in respect of about 4000 Sq. ft. in the ground floor of premises No. 5, Kiran Shankar Roy Road,

situated at the crossing of Kiran Shankar Roy Road and Old Post Office Street, presently paying rent of Rs. 4146.73 per month.

4. In the year 1990 Dipali Mallik, the erstwhile owner of the said premises filed an eviction suit being Ejectment Suit No. 197 of 1990 against the

Bank before the Learned City Civil Court at Calcutta claiming recovery of possession of the said Office Space.

5. The predecessor-in-interest of the plaintiff filed an ejectment suit No. 197 of 1990 against the defendant. The said suit was compromised and a

decree was passed in terms of settlement filed in the Court. The compromise decree was marked as Exhibit 1 collectively. Some of the relevant

terms and conditions of the said compromise decree as reproduced hereinbelow:-

Clause (i). The defendant has agreed to enhance the rent to Rs. 4,146.73 p. inclusive of all taxes per month from the month of July, 1990 in

respect of the suit premises.

Clause (ii). The Plaintiff has agreed to accept the proposed rate of rent and the total rent in respect of suit premises amounting to Rs. 4146.73 p.

inclusive of all taxes. In the event of increase in Municipal Taxes, the Defendant will bear the proportionate increase in taxes.

Clause (iii). The defendant has agreed to review the rates of rent in the year 1995 and thereafter at the instance of the Plaintiff he reviewed after

every 5 years which will be not exceeding 15% of the existing rent.

Clause (v). The Defendant will have right to fix up at its own cost counter, furnitures etc bring in heavy steel safes and safe-deposit locker, locker,

cabinet of any number and sizes to defendants'' requirements and erect partition walls wooden or brick-built in part or whole to construct strong

room, safe-deposit vault with steel doors at any place considered suitable by the Defendant, to fix up additional light and fan points, wherever

necessary and later, and remove at any time any and/or all of them belonging to the defendant. The defendant will have the right to remove articles

including the strong room door, vault door, collapsible gate/s, grill gate/s brought in the premises and belong to the defendant whether fixed up or

embedded.

Clause (viii). The fixation of rent at the rate of Rs. 4146.73 p. inclusive of all taxes shall be deemed to be effective from the month of 1st July, 1990

and the rent for the month of July, 1990, is being paid by the defendant here and now by a bank draft drawn on United Bank of India, High Court

Branch in favour of the plaintiff v. Depali Mall: ok.

Clause (ix). The defendant shall not ask the plaintiff for reimbursement of any expenses necessary for repair and renovation as mentioned in Clause

Nos. IV to VII above.

Clause (xii). The defendant shall have option to install a power generator of required capacity to be placed in the rented space inside the premises

considered fit and proper by the Bank without being liable to payment of further rent or otherwise.

Clause (xiii). The Plaintiff will keep the premises wind and water tight and to do all repairs of the suit premises, as and when required, while

washing every 2 (two) years and painting of doors and windows every 5 (five) years. If the Plaintiff fails to do such repairs or not perform any of

their obligations the defendant shall be at liberty to do the same at plaintiffs cost and such cost will be paid by the plaintiff to the defendant on

demand failing which the defendant shall recover the same from the monthly rent payable by the defendant to the plaintiff.

6. On 24th January, 1994 by a Registered Deed of Conveyance the said Smt. Dipali Mallick sold the entirety of the said office space to the

plaintiff herein.

7. Thereafter, Dipali Mallick by a letter dated 24th January, 1994 requested the Defendant Bank to attorn its tenancy in favour of the plaintiff and

to pay the rent for the month of February and March, 1994 to the plaintiff and the defendant duly complied with such request.

8. The plaintiff applied to the defendant for review of the rent and requested the defendant to review the rent taking into consideration the market

rent @ 50/- per sq. ft. prevailing at that time. The defendant by a letter dated May 13, 1997 requested the plaintiff for a discussion for review of

the rent with effect from July 1, 1995 in light of the existing tenancy agreement with the erstwhile landlord. The defendant, however, declined to

pay rent @ Rs. 50/- per sq. ft. as demanded by the plaintiff since the defendant was an existing tenant.

9. In January, 1998 the defendant refused to review the rent.

10. In the premises the suit was filed for adjudication, determination and settlement of the monthly rent from July 1, 1995 and decree for such sum

as may be found due and payable upon inquiry of determination by this Hon"ble Court.

11. The defendant contended that the suit is barred u/s 47 of the CPC and the suit does not disclose any cause of action. The basis of the

aforesaid contention is that the dispute is arising out of the compromise decree and the only recourse open to the plaintiff is to file an application for

execution of the decree and not a separate suit based on the said compromise decree. It was argued that what was contemplated under the

aforesaid clause of the compromise decree is that the rate of rent in the year 1995 is to be determined not at the market rate but it was the intention

of the parties that such rent would be 15 per cent of the rent that was existing when the compromise decree was entered into in July, 1990. It

involves an interpretation of the compromise decree and it is for the executing Court to decide if the said decree is executable or not and such issue

cannot be decided in a suit in view of section 47 of the Code of Civil Procedure. Mr. P.S. Bose, learned Senior Counsel argued that the plaint of

the said suit refers to Suit No. 197 of 1990 in the City Civil Court at Calcutta which was decreed on compromise by a Decree dated 06.08.1990.

Clause (iii) of the said decree inter alia provides that the defendant has agreed to review the rates of rent in the year 1995 and thereafter at the

instance of the plaintiff after every 5 years which would not exceed 15% of the existing rent. The prayer of the said suit infer alia includes decree

for adjudication, determination and settlement of the monthly rent for the suit premises by the defendant from July 01, 1995 and decree for such

sum as may be found due and payable upon enquiry and determination by this Hon''ble Court. It is, thus, evident that the plaintiff has filed the

instant suit based upon the compromise decree, passed in Suit No. 197 of 1990 in the City Civil Court at Calcutta. The instant suit is for

determination of the monthly rent from July 1, 1995 based on Clause (iii) of the compromise decree which, inter alia, provides that the Defendant

has agreed to review the rates of rent in the year 1995. This issue cannot be adjudicated in a suit. In this regard he has relied upon the following

decisions:-

(1) Sadananda Saha and Others Vs. Union of India (UOI),

(2 State of Punjab and others Vs. Krishan Dayal Sharma,

(3 Rabindra Nath Roy Choudhury and Others Vs. Dhirendra Nath Roy Choudhury and Another,

(4 Nebubala Sardar Vs. Abdul Aziz Baidya,

(5) Jai Narain Ram Lundia Vs. Kedar Nath Khetan and Others,

(6) Parkash Chand Khurana, etc. Vs. Harnam Singh and Others,

12. Mr. Bose has categorically submitted that the defendant does not wish to make any submission with regard to the other issues, namely, the

power of the Court to adjudicate, determine and settle the monthly rent on the basis of the evidence adduced by the parties in view of the

preliminary objection with regard to the maintainability of the suit. He did not make any submission on the evidence adduced by the valuers of

either side. No argument was advanced on the evidence adduced by the parties.

13. Mr. Ahin Chowdhury, the learned Senior Counsel appearing on behalf of the plaintiffs submitted that the objections with regard to the

maintainability of the suit is misconceived.

14. A purely declaratory decree is different from other types of decrees such as injunction, money decrees etc. (decrees which are capable of

execution). A declaratory decree simpliciter is incapable of execution.

15. The consent decree in question merely declares the terms upon which the relationship of Landlord & Tenant is to be governed in future. It is a

declaratory decree. It does not provide for the remedy in the event of breach of such terms. There is no mandate of the Court or direction of the

Court. In the premises, section 47 CPC will have no manner of application. The modes of execution do not contemplate a determination of rent (S.

51 CPC).

16. Declaratory decree is not a mere opinion devoid of Legal effect. The effect thereof is that it operates as res judicata (Sec. 35 Specific Relief

Act).

17. In this case the defendant by its letter dated May 13, 1997 intended that the review of rent should be made mutually. It cannot resile from the

same.

18. It was argued that the power of the Court to fix the rent has been decided in various cases where it has been held that the Court has the power

to adjudicate and determine the rent. There is no statutory bar in the instant case. In this regard he has relied upon the following three decisions:-

(i) Damodhar Tukaram Mangalmurti and Others Vs. The State of Bombay,

(ii Martin Burn Limited Vs. Steel Authority of India Ltd.,

(iii) An unreported judgment in Appeal No. 686 of 1988 (Steel Authority of India Ltd. v. Martin Burn Ltd.)

19. In dealing with the submissions made on behalf of the defendant it was argued that in this case, the question of interpreting the compromise

decree did not and could not arise. The parties correctly understood the same and have already acted in terms thereof by sitting for negotiations for

review of the rent as will be evident from correspondence. There is no question of interpreting the decree. Rabindra Nath Roy Choudhury (supra)

has no nexus with section 47 or execution and has no manner of application in the present case.

20. Jai Narain (supra) inter alia deals with the question relating to execution, discharge or satisfaction of a decree. It presupposes that the decree is

executable. The said decision has no manner of application in case of non-executable decree or merely declaratory decrees.

21. Parkash Chand (supra) in fact supports the case of the plaintiff. The said judgment inter alia provides that;

Tenor of the award shows that the arbitrator did not intend merely to declare the rights of the parties. It is a clear intendment of the award that if

the appellant defaulted in discharging their obligation under the award, the respondent would be entitled to apply for and obtain possession of the

property.

22. In the present case, the parties intended that from July 1, 1995, parties would mutually review the rent. The defendant, in fact, invited the

plaintiff by its letter dated May 13, 1997 for a negotiation. There is no question of interpretation of the decree. The parties have intended to

mutually review the rent and had in fact, acted in terms thereof and there is not further question of interpretation. The compromise decree also

contains no default clause.

23. In Sadananda Saha (supra) it was held that a decree in contravention of section 47 is a nullity. Such principle has no manner of application in

the present case. Since it is a non-executable decree, it is not covered u/s 47.

24. State of Punjab (supra) in fact supports the case of the plaintiff. Since, execution Court is bound by the terms of decree and it cannot add or

alter the same, issues involved in the suit could not be urged in an application u/s 47 CPC.

25. It was argued that the Hon''ble Supreme Court in Mohammad Ahmad and Another Vs. Atma Ram Chauhan and Others, in considering the

plea of enhancement of rent laid down few guidelines and such guidelines should also be applied in the instant case for the purpose of interpreting

Clause (iii) of the decree passed on compromise. In justifying the rate of rent at Rs. 32.5/- per sq. ft. as in the year 1995, Mr. Chowdhury has

placed reliance upon the valuation report being Exhibit ""A"" in this proceeding. It was argued that it would be evident from the said report that the

rental value in respect of the suit premises for 4000 sq. ft. would be Rs. 1,30,000/- per month in the year 1995 at the rate of Rs. 32.5/- per sq. ft.

The said report is based on the building rentals in the surrounding areas, let out during the period. The valuer has taken into consideration two

premises in the vicinity let out to banks in the year 1995. The plaintiff caused Subpoena to be issued on ICICI Bank being lessee of the said

building to produce the two agreements of the year 1994 and 2004. ICICI Bank had produced both the agreements. The said agreements are

marked as Exhibit ""C and Exhibit ""B"" respectively. The location of the suit premises is more prominent than the buildings compared in the valuation

report.

26. Let me now consider the preliminary objection taken by Mr. Bose with regard to maintainability of the suit.

27. Mr. Bose in questioning the maintainability of the suit has strongly relied upon Jai Narain (supra) paragraph 23 and Parkash Chand (supra)

paragraphs 18 to 22.

28. In Jai Narain (supra) the Hon''ble Supreme Court was considering a decree imposing mutual and reciprocal obligations of both sides. In

Paragraph 18, the Hon''ble Supreme Court held as follows: -

18. Much of the argument about this revolved round the question whether the equitable rules that obtain before decree in a suit for specific

performance continue at the stage of execution. It is not necessary for us to go into that here because the position in the present case is much

simpler.

When a decree imposes obligations on both sides which are so conditioned that performance by one is conditional on performance by the other

execution will not be ordered unless the party seeking execution not only offers to perform his side but, when objection is raised, satisfies the

executing Court that he is in a position to do so. Any other rule would have the effect of varying the conditions of the decree; a thing that an

executing Court cannot do.

There may of course be decrees where the obligations imposed on each side are distinct and severable and in such a case each party might well be

left to its own execution. But when the obligations are reciprocal and are interlinked so that they cannot be separated, any attempt to enforce

performance unilaterally would be to defeat the directions in the decree and to go behind them which, of course, an executing Court cannot do.

The only question therefore is whether the decree in the present case is of this nature. We are clear that it is.

29. In Paragraph 23 on which much reliance has been placed, the Hon"ble Supreme Court observed that the executing Court has to see that the

defendant gives the plaintiff a very thing that the decree directs and not something else, so if there is no dispute about its identity or substance

nobody but the Court executing the decree can determine it. The said paragraph is reproduced hereinbelow:-

23. The only question that remains is whether the executing Court can consider whether the defendant is in a position to perform his part of the

decree. But of course it can. If the executing Court cannot consider this question who can? The executing Court has to see that the defendant gives

the plaintiff the very thing that the decree directs and not something else, so if there is any dispute about its identity or substance nobody but the

Court executing the decree can determine it.

It is a matter distinctly relating to the execution, discharge and satisfaction of the decree and so, u/s 47, Civil P.C., it can only be determined by the

Court executing the decree. And as for the first Court"s conclusion that it could not decide these matters because it was not the Court that passed

the decree, it is enough to say, as the High Court did, that section 42 of the code expressly gives the Court executing a decree sent to it the same

powers in executing such decree as if it had been passed by itself.

30. The Hon"ble Supreme Court was considering the power of the executing Court in relation to a decree which imposes reciprocal and

interlinked obligations. In the instant case, the questions raised are not relating to the execution, discharge or satisfaction of the decree but for

determination and adjudication of a right declared in Clause (iii) of the said decree with no mechanism provided to resolve the issue.

31. In Parkash Chand (supra) the Hon''ble Supreme Court was construing a clause in a decree passed in terms of an arbitration award which

provided that on the happening of certain events, the vendor would be entitled to take back possession of the property. This Clause was construed

as one which does not make the decree incapable of execution. The relevant observations of the Hon''ble Supreme Court in Paragraph 18 is

reproduced hereinbelow:-

18. The next contention of the appellants is that the award is merely declaratory of the rights of the parties and is therefore in-executable. This

contention is based on the wording of clause 7 of the award which provides that on the happening of certain events the respondents ""shall be

entitled to take back the possession"". We are unable to appreciate how this clause makes the award merely declaratory. It is never a precondition

of the excitability of a decree that it must provide expressly that the party entitled to a relief under it must file an execution application for obtaining

that relief. The tenor of the award shows that the arbitrator did not intend merely to declare the rights of the parties. It is a clear intendment of the

award that if the appellants defaulted in discharging their obligations under the award, the respondents would be entitled to apply for and obtain

possession of the property.

32. In order to attract the provision of section 47 of the CPC, the expressions ''execution'', ''discharge'' or ''satisfaction'' of the decree is and/or of

seminal importance. ""All questions"" are qualified by the said three words which if read together gives a clear impression that such questions must

relate to execution, discharge or satisfaction of the decree. The decisions that were cited on behalf of the defendant are all concerning execution of

a decree. The aforesaid decisions are not an authority for the proposition that if under the consent decree, a party is required to take a decision in

future and either had failed to take a decision or had taken a decision which the other party did not accept a suit cannot be instituted for

determination and adjudication of such rights.

33. The decree postulates that the defendant would review the rates of rent in the year 1995. What would happen if the defendant fails to review

the rates of rent or determine the rent on review which the plaintiff found to be unsatisfactory? Does the decision of the defendant to review the

rate of rent as contemplated in Clause (iii) could form the subject-matter of the execution application? Would the Court in considering an

application for execution of the compromise decree be competent to either direct the defendant to review the rate of rent or to hold an enquiry and

arrive at a decision to find out if the said decision of the defendant in reviewing the rent was just and proper?

34. The party entrusted to take a decision if had failed to take a decision or had taken a decision which according to the other party is

unreasonable and the parties are not ad idem if could be decided in an application for execution of the compromise decree or in a suit is the issue

which needs to be decided in this proceeding.

35. The plaintiff contends that it is a declaratory decree.

36. The decree which merely declares the rights of the parties and does not direct any act to be done, in other words, a decree in which no definite

order is made which the Court contemplates enforcing by execution, is merely a declaratory decree which is incapable of being executed and only

a separate suit and not an application u/s 47 would lie to enforce the rights so declared by the decree. Similarly, a decree which does not provide

for a certain relief though it declares a right to such relief is one not capable of being executed Chuni Lal Dutta Vs. Hira Lal Dutta

37. A decree based on compromise decree is executable. Where the machinery provided for working out a consent decree fails it is a duty of the

Court to fill up the gap caused by such failure by making necessary orders in order that the consent decree may be worked out as agreed between

the parties. Adelia Dos Remedios Vs. Anand Giri Keni (Deceased by Lrs)., , Smt. Kamla Devi v. Addl. District Judge Dehradun & Ors.; 1996

AIHC 2292 (All) Nebubala Sardar Vs. Abdul Aziz Baidya, . It is only to that extent an executing Court can step in and pass appropriate orders

for working out of the consent decree.

38. To the extent to which any controversy calls for an adjudication, the same can be taken care of by the executing Court which can still compel

fulfilment of obligations respectively to the extent to which either party is obliged to do but has failed in discharging the same, like, issuing necessary

process, appoint Commissioner or direct detention in civil imprisonment of the party found in breach and thus execute the decree. The consent

decree retains its character as a contract because it is founded on agreement between the parties and is, therefore, subject to the incidence of a

contract (Ashok Kumar Sukla v. Gahaneshwar Awasty; 2005 (3) ICC 8 (Cal) . The executability depends upon the intention of the parties as

expressed in agreement than on anything else. Where a decree is passed on compromise whereby the defendant agreed to vacate the property

after a certain date but there was no remedy provided in case of non-compliance, the decree-holder cannot recover the property in execution. (

Khalli Rath Vs. Eppili Ramachandra,

39. From the discussions made above, it is clear that if the decree is merely declaratory and no remedy is provided in case of non-compliance, the

proper remedy is to file a suit. In the instant case, the defendant considered the prayer for revision but refused to enhance the rent to the extent as

requested by the plaintiff on the basis of its own understanding of Clause III of the compromise decree. The decree does not provide a formula for

determination or a solution in case of disagreement. This aspect of the matter cannot be decided in an application for execution.

40. The scope of an executing Court u/s 47 has been elaborately discussed in Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, in

which it was held that powers of the executing Court are very narrow. The executing Court can allow objections u/s 47 C.P.C. as to the

executability of the decree on the ground that decree is not capable of execution under the law either because the same was passed in ignorance of

such provision of law or the law was promulgated making the decree inexecutable after its passing.

41. The executing Court is competent to determine all questions arising between the parties to the suit or their representatives relating to the

execution, discharge or satisfaction of a decree. Such questions must be a question relating to the decree and not otherwise. The Court in deciding

an application u/s 47 of the CPC is required to keep in mind that the executing Court cannot adjudicate upon the legality or correctness of the

decree unless the decree is a nullity. In other words, if the decree is challenged on the ground that the said decree is a nullity, the executing Court

can go into such questions but, if the execution of the decree is challenged on the ground that the decree is contrary to law, such objection cannot

be entertained under the section. The Court executing the decree is competent to embark upon an enquiry of the facts tending to show that the

Court which passed the decree had no jurisdiction, unless the Court has, by wrongly deciding a jurisdictional fact, assumed jurisdiction. Similarly,

the question whether a decree is capable of execution or not falls under the said section and the executing Court is competent to decide whether a

decree is executable or incapable of execution. For example, where a decree is vague in its term or becomes incapable of execution because of

events subsequent to the decree or because of any subsequent legislation Haji Sk. Subhan Vs. Madhorao, or where it merely declares the rights of

the parties then in such cases the decree can be said to be incapable of execution.

42. In the instant case, under the compromise decree the plaintiff was allowed to continue possession exclusively on certain terms and conditions.

43. A decree must determine the rights and liabilities of the parties finally and it cannot obviously be the province of an executing Court to

determine the rights and liabilities that would be accruing in future. The percentage of enhancement on review by the defendant, is not indicated in

Clause (iii) of the said decree although while dealing with the right of the plaintiff to demand enhancement consequent upon a rent being fixed by the

defendant on review, is limited to 15% only. The said clause in the compromise decree merely provides the procedure to be adopted by the

parties after 5 years. It is independent and separable from the other part of the compromise decree. What should be the procedure for enforcing

the rights created under a consent decree that is by a suit or execution of the decree is dependant on the construction of the consent decree. The

failure to review the rent after 5 years or refuse to enhance the rent thereby giving a right to the plaintiff to question such action of the defendant and

seek adjudication and determination of rent cannot form the subject-matter of an execution application. Such questions can only be decided in a

suit.

44. The words ""execution"", ""discharge"" or ""satisfaction"" in section 47 of the CPC defines the limits of the scope of enquiry required to be made

under the said section. It is limited to the questions of implementation and fulfilment of obligations under the decree. The executing Court in

deciding such application cannot, under the guise of considering the issue regarding execution of the decree, set aside the decree by going beyond

the decree and in such case the executing Court would be acting illegally in allowing an application u/s 47 of the Code of Civil Procedure.

45. The instant suit is not for execution, discharge and/or satisfaction of the decree. The compromise decree is an agreement between the parties.

Clause (iii) of the said decree clearly provides that the defendant had agreed to review the rates of rent in the year 1995 and, thereafter, at the

instance the plaintiff agreed to review after every 5 years which would be not exceeding 15 per cent of the existing rent. The said clause in the

compromise decree, thus, contemplates that in the year 1995, the defendant would review the rate of rent and thereafter, the rent fixed would be

considered to be the existing rent in future for the purpose of enhancement after every 5 years at the instance of the plaintiff. The right to review the

said rent at the first instance has been given to the defendant. The said review required to be done in 1995. The second scope of review would be

at the instance of the plaintiff and the enhancement of the rent would not be more than 15 per cent of the rent to be fixed in 1995. The

determination of this rent from July 1, 1995 is the subject-matter in the suit. It cannot be said by any stretch of imagination that the subject-matter

of the suit is execution, discharge and/or satisfaction of the decree and, accordingly, a bar u/s 47 of the Code of Civil Procedure. The said

argument is unacceptable and, accordingly, rejected.

46. In considering the rent to be fixed in the year 1995 in absence of any agreement between the parties, the Court if invited to determine such rent

is within its jurisdiction to determine the said rent. The three authorities submitted by Mr. Chowdhury supports the said contention.

47. In Damodhar (supra), the Hon''ble Supreme Court was considering a renewal clause in a lease deed which reads as follows:-

Subject to such fair and equitable enhancement as lessor shall determine.

48. This aspect of the matter was considered in Paragraphs 8, 10 and 17 of the said judgment which are reproduced hereinbelow:-

8. We think that the clause should be read as a whole and every effort should be made to give effect to all the words used therein. The relevant

portion of the clause states - ""such fair and equitable enhancement as the lessor shall determine"". If the construction is that whatever the lessor

determines as fair and equitable enhancement must be treated as binding on the lessee, then the words fair and equitable" are not given the meaning

and sense which they have according to the ordinary acceptation of those words. ''Fair'' and ''equitable'' mean fair and equitable in fact, and not

what the lessor subjectively considered to be fair and equitable. The words ''fair'' and ''equitable'' both mean ''just or unbiased'' (see the Concise

Oxford Dictionary, 4th Edn. p. 426 and p. 402). If the intention was to leave the enhancement to the subjective determination of the lessor, the

clause would have more aptly said - ''such enhancement as the lessor shall determine''. We consider that the words ''fair and equitable'' must be

given their due meaning and proper effect. The question then asked is what meaning is to be given to the words ''such as the lessor shall

determine''. It is indeed true that these words constitute an adjectival clause to the expression ''fair and equitable enhancement'', but we consider

that the meaning of the adjectival clause is merely this: the lessor must first determine what it considers to be fair and equitable enhancement; but if

in fact it is not so, it is open to the lessee to ask the Court to determine what is fair and equitable enhancement. We do not think that on a proper

construction of the clause, the intention was to oust the jurisdiction of the Court and make the determination of the enhancement by the lessor final

and binding on the lessee. We think that the conclusion at which Mudholkar J. arrived on this point was correct, though not exactly for the reasons

given by him.

10. Our attention has been drawn to some English decisions in which the point arose if a contract which appoints a way of determining the price

can be specifically enforced. There are two lines of decisions. In Milnes v. Gery, (1807) 14 Ves 400 : 33 ER 574 the contract provided that the

price shall be valued by two different persons to be nominated and if they happened to disagree then those two persons shall choose a third person

whose determination shall be final. The question was whether such a contract could be specifically performed and the answer given by the Master

of the Rolls can be best put in his own words:

The more I have considered this case, the more I am satisfied, that, independently of all other objections, there is no such agreement between the

parties, as can be carried into execution. The only agreement, into which the Defendant entered, was to purchase at a price, to be ascertained in a

specified mode. No price having ever been fixed in that mode, the parties have not agreed upon any prize. Where then is the complete and

concluded contract, which this Court is called upon to execute?

In Taylor v. Brewer, (1813) 1 M & S 290 : 105 ER 108 a claim to compensation was founded on the resolution of a committee which provided

that ""such remuneration be made as should be deemed right"". It was held that the engagement was merely an engagement of honour and no claim

could be made on it. An example of the other line of decisions is furnished by Gourlay v. Duke of Somerset, (1815) 19 Ves 429 : 34 ER 576. In

that case the agreement provided for ""all such usual and proper conditions, reservations, and agreements, as shall be judged reasonable and proper

by John Gale, land surveyor, and in case of his death, by some other proper and competent person to be mutually agreed upon by the said

parties"". The plaintiff came to Court and the question arose whether the reference to settle the lease to be made by the defendant to the plaintiff

should be to the Master or to Mr. Gale, the defendant contending that the Court decreeing specific performance will take the whole subject to

itself and determine by its own officer, not by a particular individual, what are usual and proper covenants. Sir William Grant, Master of the Rolls,

said:-

When the agreement is, that the price of the estate shall be fixed by arbitrators, and they do not fix it, there is no contract as the price is of the

essence of a contract of sale, and the Court cannot make a contract, where there is none: but, where the Court has determined, that the agreement

is binding & concluded and such as ought to be executed, it does not require foreign aid to carry the details into execution. Gale''s agency is not of

the essence of this contract.....If the parties had gone to Gale, and got him to settle a lease, and one of them had objected to the covenants as

improper, and the Bill had been filed by the other, the Court would have inspected the lease; and if it were found unreasonable, would not have

decreed an execution of the agreement.

We consider that the present case comes within the rule laid down in (1815) 19 Ves 429 :34 BR 576, learned Counsel for the respondent placed

strong reliance on Collier v. Mason, (1858) 25 Beav 200 : 53 ER 613. That was a case in which the defendant had agreed to purchase a property

at a valuation to be made by AB; the Court, though it considered AB''s valuation very high and perhaps exorbitant, decreed specific performance,

there appearing neither fraud, mistake or miscarriage. The case was decided on the footing that the contract provided that the property shall be

purchased at such a price or sum as should be fixed by reference to AB, and it was pointed out that there being no evidence of fraud, mistake or

miscarriage the parties were bound by the contract they had made. There was no question in that case of the Court stepping in, under the terms of

the contract, to determine what was fair and reasonable. Learned Counsel for the respondent also relied o AIR 1942 119 (Nagpur) . The principle

laid down therein was that a contract binds the parties to it and their representatives and the Court''s power to interfere with contracts is limited to

such cases as fraud, undue influence or mistake and relief against penalty or forfeiture. Indeed, we agree that if the contract in the present case was

that whatever the lessor determined as the enhanced rent would be binding on the parties, then the Court has no power to interfere with that

contract unless it is vitiated by fraud, undue influence, mistake etc. If, however, the proper construction of cl. III of the contract is what we have

held it to be, then the contract itself provides that the enhanced rent though determined by the lessor in the first instance, must be fair and equitable.

On such a construction the determination of the enhancement by the lessor would not be final and it would be open to the court to determine what

is fair and equitable enhancement.

17. In my view the correct interpretation to be put on this clause of the lease deed is what is contended for by the respondent. The lessor was

given the authority to determine the enhancement but such enhancement was to be fair and equitable and what would be fair and equitable in any

particular case was also to be determined by the lessor. The lease deed entered into by the lessor. The lease deed entered into between the parties

is dated May 24, 1909. In the first clause are given the usual obligations of the lessee as to payment of rent, the purpose of the building to be

constructed, the period in which it was to be completed, the design of the building and keeping it in proper condition. In the second clause of the

agreement the lessor covenanted peaceful possession subject to the right of the lessor to recover rent as arrears of land revenue and other

remedies for nonobservance of the obligations contained in the first clause with a provision for re-entry upon failure of certain conditions. In the

third clause the lessor covenanted for grant of lease for further periods of 30 years at the request of the lessee with the following proviso:

Provided that the rent of the land hereby demised shall be subject to such fair and equitable enhancement as the lessor shall determine on the grant

of every renewal.

This is the disputed clause. Now it appears that this further covenant was for the benefit of the lessee and the reservations made are couched in

such language which left the discretion in regard to enhancement of rent to the lessor. What the enhancement was to be and what would be fair and

equitable was left to the determination of the lessor. It is not an unusual provision in a lease for a long term of years with provision for renewal to

leave the question of rent to be determined by the lessor or an outside valuer and it would not, in my respectful opinion, be a correct interpretation

to say that the enhancement by a valuer would be unchallengeable if the adjectival words ""fair and equitable" are not used but would be subject to

Court"s review if these words are employed. That is going contrary to the very nation of valuations and their legal incidence. The extent of the

power of Courts over valuations by valuers has been stated in text books and in certain decided cases. In Williston on Contracts Vol. 3, S. 802 at

page 2252 the law is sated thus:

In the absence of fraud or mistake, the price fixed by agreed valuers is conclusive upon the parties. Though an excessively large or an unreasonably

small price involves some element of penalty or forfeiture, the possibility of this is not enough to overcome the express terms of the contract in the

absence at least of fraud, gross mistake, or such arbitrary conduct as is outside what the parties could have reasonably contemplated.

And it is not a far step to say that in all cases of valuation the parties do contemplate a fair and equitable amount to be fixed or determined and not

any price fanciful or otherwise.

49. In Martin Bum Ltd. (supra) a learned single Judge of this Court held that when the renewal clause provides that for renewal of the lease, terms

shall be mutually agreed upon and if the parties cannot agree upon a reasonable rent, the Court in these circumstances may fix a fair and

reasonable rent.

50. The view expressed by the learned single Judge was affirmed by the Division Bench in an appeal from the said order. It was held by the

Hon"ble Division Bench ""we come to the conclusion that there is no bar to Civil Court in considering the determination of the actual rent of the

premises if there was an agreement between the parties that they would agree to the enhancement of rent at certain interval. We, therefore, reject

this contention of the appellant that the Trial Court has no jurisdiction to determine the actual rent of the premises in question.

51. Although, no argument was advanced by the defendant on the issue relating to determination of rent in 1995, however, since both the parties

have adduced evidence with regard to the rent which the suit property could fetch in 1995, this Court is required to decide the said issue on the

basis of the pleadings and the evidence on record.

52. It appears from the evidence that at the time of compromise in the year 1991, the bank was paying rent of Rs. 1 per sq. ft. to the plaintiff. The

consideration for such a meager rent paid by the bank to the erstwhile landlord is not known inasmuch as the same has also not borne out from the

evidence. The plaintiff also could not offer any explanation since the plaintiff purchased the property subsequently and became the landlord.

53. The plaintiff upon attornment of tenancy in its favour requested the defendant to fix the rent in 1997 after taking into consideration the market

value. The plaintiff by a letter dated March 13, 1997 requested the defendant to increase the rent at the rate of Rs. 50/- per sq. ft. per month. The

plaintiff contended that on a true, proper and meaningful reading of Clause (iii) and the said compromise decree, it would be clear that the parties

heard and understood the said clause as provided for an agreement between the parties to mutual review and/or revise and/or survey the rate of

amount equivalent to rent on and from July, 1995 according to market rate and, thereafter, the same would be reviewed after every 5 years at the

instance of the plaintiff, however, subject to ceiling of 15% increase each time. The plaintiff requested the defendant to sit together and mutually

settle and revise the monthly rental with effect from July 1, 1995. The plaintiff, in fact, by a letter dated 13th March, 1997 requested the defendant

to have a discussion at an early date with regard to increase of rent at the rate of Rs. 50/- per sq. ft. per month which according to the plaintiff

would be fair and reasonable considering the fact that the bank is an old tenant and the property situated at a very prominent place of the city. The

defendant bank responded to the said letter on May 13, 1997 by contending that the rent of the said premises was mutually agreed upon as

detailed in the compromise decree in which the rent for the premises was enhanced to Rs. 4146.73 paise inclusive of all taxes per month from the

month of July, 1990 (wrongly mentioned as 1st July, 1993). However, in the event of increase in Municipal Taxes, the bank would bear the

proportionate increase in taxes and the bank would review the said rent after expiry of every 5 years with enhancement of rent not exceeding 15%

of the existing rent. In view thereof, the bank contended that the question of payment of market rent at the rate of Rs. 50/- per sq. ft. per month as

demanded could not and does not arise inasmuch as the bank is an existing tenant. However, the plaintiff was invited to have a discussion for

review of the rent w.e.f. 1st July, 1995 in the light of the tenancy agreement with the erstwhile landlady. This meeting, however, did not take place

and hence the suit was filed. It is, thus, clear that there is a disagreement between the parties with regard to the rent payable on and from 1st of

August, 1995. In this context, the word ''review'' appearing in Clause (iii) of the compromise decree assumes importance. The term ''review''

would ordinarily mean revisiting, re-examination and reconsideration of the matter. Let me now consider the meaning ascribed to the word

review"".

Concise Oxford English Dictionary, 10th Edition

Black"s Law Dictionary, Ninth Edition

Advanced Law Lexicon, 3rd Edition 2005, P. Ramanatha Aiyar Review:

A review is a proceeding which exists by virtue of statute. It is in its nature a new trial of the issue previously tried between the parties, the cause of

action being brought into Court again for trial by a new petition. The proceeding in some respects resembles a writ of error, and also a new trial.

The power of a Court or a superior Government officer or agency to examine and either to confirm, modify or annul, a regulation or determination

of an inferior Court or official, or of an administrative agency; Court''s power to examine a proposed act of an administrative agency.

The process under which a Court in certain circumstances can reconsider its own judgment; a general survey or re-examination; a retrospective

survey of past actions etc. (O. XLVII, R. 1(2), C.P.C. (5 of 1908).

Wharton"s Law Lexicon, 15th Edition

Review: The expression review used in two different senses namely (1) a procedural review which is either inherent or implied in a

Court or Tribunal to set aside a palpably erroneous order passed under by misapprehension under it and (2) a review on merits when the error

sought to be corrected is one of law and is apparent on the face of the record, State of Maharashtra Vs. Shobha Vitthal Kolte and Others,

The word ''review'' necessarily implies the power of the Board to have a second look and to so adjust from time to time its charges as to carry on

its operations under the Act without sustaining a loss, Delhi Cloth and General Mills Co. Ltd. and Another Vs. Rajasthan State Electricity Board

and Another,

Literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility,

S. Nagaraj and Others Vs. State of Karnataka and Another, (Constitution of India, Art. 137)

Consideration, inspection, or re-examination of a subject or thing, Black''s Law Dictionary, 7th Edn., p. 1320.

54. It appears from the compromise decree that the bank had agreed to enhance the rent to Rs. 4148.73 paise inclusive of all taxes per month

from July, 1990 in respect of Rs. 4000/- per sq. ft. The bank had agreed to review the said rent in 1995. The first obligation to review the rate of

rent is with the bank. It is only thereafter at the instance of the plaintiff the said rent would be reviewed every 5 years with a ceiling limit of 15% of

the existing rent. A bare reading of the said Clause gives an impression that the rent to be determined upon review in the year 1995 would be

considered to be the base and/or existing rent and after every 5 years such rent would be reviewed by the plaintiff. The enhancement of such rent

would be permissible only up to 15%. Accordingly, the contention of the defendant bank that Rs. 4146.73 paise would be considered to be base

rent and/or existing rent in 1995 and an enhancement of such rent would be limited to 15% only is not acceptable. If that were intention of the

parties then there was no necessity of agreeing to ""review"" the rates of rent in the year 1995 by the defendant. The compromise decree would have

then only mentioned enhancement of rent at the rate of 15% after every 5 years and no review would then be at all necessary and/or required.

Reexamination with a view to enhance and fixation of the rent in 1995 for future guidance and enhancement of rent in future on the basis of such

determination was what intended by the parties. Stated briefly, the proper approach, I think, is that the Court should interpret the said clause to

mean and hold that the defendant is obliged to re-examine the rent with a view to enhance it as the said word ""review"" was intended to have legal

effect and efficacy. In fact, it is an admitted position that even on the basis of its own interpretation, the bank did not pay the rent at such enhanced

rate in the year 1995 or subsequent thereto. Since the defendant had failed to review the rates of rent on the basis of an interpretation which is

unacceptable and contrary to the intention of the parties gathered from the terms of the agreement, the Court is required to determine the said rent

on and from 1st July, 1995 by taking into consideration the other clauses in the said compromise decree.

55. The defendant had agreed to bear the proportionate increase in taxes and repair and renovate the suit premises at their own costs. The

defendant could make additions and alterations as may be necessary for suitable occupation and lay out of the office and the defendant would not

ask for reimbursement of the expenses for carrying out repair and renovation. The defendant could install a generator of required capacity within

the office premises without any additional rent. The defendant did not complain that the plaintiff has failed to perform its obligations under the

compromise decree and hence not entitled to revision of rent. Although in Paragraph 14 of the written statement a plea was raised with regard to

failure on the part of the plaintiff to discharge obligations under Clause 1(X) and (XII) of the compromise decree as a ground for refusal to enhance

the rent within the ceiling of 15% but no evidence was adduced in support of such pleading. The defendant bank had declined to accede to the

request of the plaintiff for an enhancement of rent to Rs. 50/- solely on the ground that such revision is only permissible to the extent of 15% and

the defendant is an old existing tenant. The letter of May 13, 1997 is silent about any lack of facilities or any failure on the part of the plaintiff to

discharge its obligations under the compromise decree.

56. It is not in dispute that the bank was facing an eviction in the suit and, in fact, was benefited by the said compromise decree on the basis of

which the bank is still in occupation of the suit premises without reviewing the said rent. Once the bank had agreed to review the rent in 1995 it

implies that the bank had never intended that the rent fixed in 1990 is final or conclusive. The said clause requires a determination of rent in 1995 at

the instance of the defendant which would be considered to be the existing rent for the purpose of future enhancement. In the instant case no

particular means of ascertaining the rent are pointed out; there is nothing, therefore, precluding the Court from adopting any means, to determine

the rent which should be just, fair and equitable. I do not read anything in the decisions cited by Mr. Bose which would preclude the Court from

adjudicating and determining the rent if the parties disagree as to the quantum in a suit. If the parties disagree as to rate of rent payable, then in my

judgment, in absence of any mechanism provided in the consent decree, the Court has jurisdiction to determine it. However, in determining the said

rent regard must be had to the fact that the bank is an existing old tenant and the plaintiff has agreed to the continuation of the tenancy at an

enhanced rent of Rs. 4146.73 p. inclusive of all taxes with effect from July, 1990.

57. The plaintiff has relied upon an indenture of lease dated 21st December, 1994 in support of its contention that the rent existing at the relevant

point of time would vary between Rs. 30/- and Rs. 40/- per sq. ft. It appears from the said lease agreement that ICICI Bank had taken a lease for

a period of 10 years commencing from 21st December, 1994 in respect of office space measuring 3706 sq. ft. on the ground floor and 2453 sq.

ft. on the mezzanine floor and generator room space measuring 82 sq. ft. at R.N. Mukherjee Road.

58. Under the said agreement ICICI Bank was required to pay monthly rent for the office space on the ground floor at the rate of Rs. 20/- per sq.

ft. and enhancement by 20 per cent of the existing rent on the expiry of 5 years. The bank was also liable to bear the Municipal rates and taxes.

The said property is situated at Mission Row Extension, Premises No. 20, R.N. Mukherjee Road, Calcutta.

59. Mr. Sundar Lal Mitra who deposed on behalf of the plaintiff have considered the aforesaid lease agreement along with a property situated at

the Hemanta Basu Sarani, namely, ""Mangalam building"" in which Vijaya Bank was inducted as a lessee in respect of a 5000 sq. ft. at the rate of

Rs. 40/- per sq. ft. per month. The said building, however, was a new building. The property at Premises No. 20, R.N. Mukherjee Road, Calcutta

was built and constructed sometimes in 1953. The said property is situated on the southern side of R.N. Mukherjee Road near its junction with

Bentinck Street. The ICICI Bank deposited an interest free deposit of Rs. 65 lakhs. This interest free deposit the owner could easily utilize and

according to the valuer taking 10 per cent interest on such security deposit, the owner could get Rs. 6,50,000/- per annum, that is, Rs. 54,166.66

per month which would represent about Rs. 8.66 per sq. ft. per month. Accordingly, the rental equivalent according to the valuer comes to Rs.

33.32 per sq. ft. per month. After taking into consideration comparative advantages and disadvantages of the property and the rent which the said

two banks were paying to the respective lessors the rent was determined at Rs. 32.50 per sq. ft.

60. The location of the present property could not be equated with either of the properties. The defendant is an existing tenant. It is an admitted

fact that the building is an old building. The accessibility to the suit premises could not be equated with the accessibility of the ICICI Bank which is

situated on a main road and on a busy thoroughfare. If the property situated at the crossing of R.N. Mukherjee Road and Bentink Street could

fetch a sum of Rs. 20/- per sq. ft. for the ground floor even with all the disadvantages of the suit property would vary between Rs. 14/- and Rs.

18/- per sq. ft. The location and other special and distinctive features of this property are reflected in the report of the valuer appointed by the

bank.

61. The lease of ICICI Bank was a new lease. The bargaining power which the parties have at the time of entering into a fresh lease differs from

the bargaining power in relation to enhancement of rent and other terms of an existing lease. The landlord in the R.N. Mukherjee Road property

could exert and obtain Rs. 65 lakhs as interest free deposit which, however, would be difficult for a landlord to demand from an existing tenant

when the terms of the lease is silent on the same. In fact, the actual rent per sq. ft. in respect of the R.N. Mukherjee Road property comes to Rs.

24.64 per sq. ft. per month including fixture, furniture and service charges. In the instant case, in determining the said rent it has to be kept in mind

that the bank is located near to the High Court at Calcutta and although its accessibility could not be compared with the R.N. Mukherjee Road

property but the fact remains that the bank is enjoying a prime location having a space 4000 sq. ft. at a meagre monthly rent of Rs. 1 per sq. ft. per

month. Even 15% increase of the said rent, i.e., Rs. 4146.73 p. in 1995 would not be a fair rent in respect of the said property. It was precisely

for that reason the bank had agreed to review the rent in the year 1995. The valuer appointed by the bank has given a report fixing rent at Rs. 8.40

per sq. ft. per month in 1995.

62, The valuer appointed by the bank for the purpose of determination of the fair rent of ground floor of the suit premises considered the said

premises to be of immense importance. The relevant observations of the valuer in his report dated 17th July, 2012 are reproduced hereinbelow:-

The area is beside near High Court of Calcutta, in B.B.D. Bag. The locality is of immense importance, having different State as well as Central

Government offices, head offices/registered offices of banks and commercial establishments. It is a very convenient place in view of transport

facilities and other civic facilities. Commercial importance of the locality is immense.

The site is well integrated with the main commercial centre. From long back this locality of Calcutta and surroundings, experience a tremendous

growth-in demand for plot. The plot located at such situation is always under strong market demand. An examination of the surroundings area

reveals that a large number of development has been done in last 10 years.

We have considered following:

Location: the land is situated at one of the prime locations of Calcutta.

Approach: the property is situated at one of the important road of Calcutta, well connected with rest of city by bus, minibus and train route.

Frontage: It has a frontage on the 30ft wide Old Post Office Street.

63. The said valuer considered the ground floor of premises No. 9, Old Post Office Street as comparable unit where the rent is being revised

every 5 years. The valuer came across an agreement in 1992 which records that the same bank was paying rent for Rs. 7.50 per sq. ft. per month

with a provision of revision after every 5 years by 20% increase of rent. The tenant is United Bank of India. The said building is a comparatively

new building with better condition and well maintained. The said valuer, however, has carefully observed that due to high demand for space, the

parameters indicated in the said report are often outweighed. The valuer took Rs. 7.50 per sq. ft. per month in 1992 as basis for determination of

the fair rent of the suit premises in 1995. The said valuer also observed that the building is more than 75 years old with poor maintenance inside

although the building from outside is wind and watertight. There is no car parking facility. The said valuer during cross-examination admitted that

the said valuer did not make any attempt to ascertain the fair rental value of the adjourning premises and only restrict his visit to premises No. 9,

Old Post Office Street, Kolkata. The valuer has also said that he had visited two other premises, namely, No. 7, Red Cross Place and Hare Street

just opposite to Bankshall Court but he could not obtain relevant informations and documents. The valuer also seems to have agreed with the

suggestion that the prevailing market rate of rent in 1982 as demanded by the India Auto-Mobiles Ltd. (1960) would be around Rs. 7-8 per sq. ft.

which would appear from the letter of India Auto-Mobiles Ltd. dated 23rd August, 1982 addressed to the United Bank of India. The landlord,

however, agreed to accept the rent at a reduced rate in view of cordial relationship between the parties. The valuer during cross-examination has

stated that he had determined the fair rent on the basis of land and building method and according to him comparable plot is also a part of the land

and building method.

64. A comparative assessment of the nature, location, accessibility to the main road, amenities available in the suit premises on the one hand and

similar characteristics of the premises surrounding on the other hand could be a relevant consideration for determination of rent. Even in the same

locality, the rent may differ. A lower rent in a comparable unit may not always be a guiding factor in determining rent if it appears to be meagre and

abnormally low. Considering the valuation report and other evidence on record it appears that the ""existing rent"" in 1995 could vary between Rs.

14/- and Rs. 18/-. Three properties were taken into consideration by the valuer on either side in giving their opinion. My conclusion is based on the

assessment of the evidence on record and after taking into consideration the comparative advantage and disadvantage of the suit premises. I have

taken into consideration the basic rent in respect of the R.N. Mukherjee Road property, namely, Rs. 20 per sq. ft. per month and Rs. 8.40 per sq.

ft. per month in 1995 as determined by the valuer on behalf of the defendant on consideration of a property situated at Premises No. 9, Old Post

Office Street, Kolkata. The defendant was facing an eviction in 1990 which, however, was compromised on the basis of terms of settlement filed

in Court and a compromise decree was passed on 24th August, 1990. The Bank never disputes that the bank was not obliged to enhance the rent.

65. The bank contended that the review is confined to increase of rent upto 15% on the rent mentioned in Clause (i) of the compromise decree

and such review does not encompass a re-examination of rent in 1995. The rent has already been determined in 1990. The Clause (iii) of the

compromise decree only entitles the plaintiff to claim enhancement of rent upto 15% and not redetermination of rent on review. The review is only

confined to the degree of increase in percentage. The plaintiff, on the other hand, contended that the parties have agreed to determine rent in 1995

which is to be determined as the basic rent for all future purposes. The crux of the problem lies there. As I have already indicated my reading of the

compromise decree gives an impression that the rent determined in Clause (i) was only tentative and is dependent upon a review of such rent by

the defendant after every 5 years. On such review, a basic rent is to be fixed on which future enhancement would depend. The defendant is

carrying on its bank business from a prime location and cannot avoid and/or refuse its obligation to pay a fair and just rent which would be close to

market rent. There is always a distinction between a fresh tenancy and continuation of an old tenancy by extending the time period. It cannot be

said that in 1995, the situation would be like a willing buyer and a willing seller negotiating intelligently and prudently at a arm''s length distance

making transaction after proper assessment of the market situation. The predecessor of the plaintiff has agreed to the continuation of tenancy by the

defendant on certain terms and conditions mentioned in the compromise decree with a faith and hope that a nationalized bank would act fairly in

determining the rent on a fair assessment of the situation in 1995 in reviewing the said rent. The plaintiff approached this Court since the

compromise decree does not provide any formula or guideline which the defendant is required to take into consideration in refusing the rent in

1995. However, it is implicit that the defendant was under an obligation to exercise the said power of review in a fair, just and equitable manner. In

my view, the defendant was under an obligation to review the rent in 1995 after taking into consideration the inflation, price index, increase in the

cost of maintenance, municipal rates and taxes and situation, location and condition of the premises and the amenities provided therein. There is no

evidence on record to show that the defendant was unhappy with the facilities or that the property was not properly maintained. The valuer

appointed by the bank although observed that the condition of the building is poor but also observed that exterior of the building is well-painted.

The property is wind and watertight. In determining the said rent, some guesswork is to be made. The result of such guesswork would largely

depend upon the factors as mentioned hereinabove more particularly in view of the complexities involved in such matter.

66. On a fair assessment of the pleading and evidence on record, I am of the view, that a fair and reasonable rent in 1995 would be Rs. 14.50/-

per sq. ft. in 1995. The said rent is, accordingly, determined at Rs. 14.50 per sq. ft. in 1995 after taking into consideration the aforesaid factors as

well as the basic rent in respect of the R.N. Mukherjee Road property, the letter dated August 23, 1982 of India Automobiles Ltd. (1960) and the

determination of the rent by the valuer in respect of the suit premises in 1995.

67. The plaintiff has claimed interest including interim interest and interest upon judgment on the differential amount being the amount paid by the

defendant and the amount to be determined in the suit at the rate of 18% per annum or at such rate as the Court may deem fit and proper. The

plaintiff has approached the defendant for reviewing the rent in 1997 and the bank responded to the same on 3rd May, 1997 rejecting the request

for fixing the rent at the rate of Rs. 50/- per sq. ft. on or after 1995. The defendant has given an interpretation to the said clause which is not

accepted for the reasons recorded earlier in this judgment. The rent is determined at Rs. 14.50/- on and from January, 1996. The suit was pending

for a considerable period of time. The defendant bank was paying rent according to its own understanding of the terms of the agreement. In my

view, the defendant shall pay simple interest at the rate of 7% per annum on and from 1st January, 1998 till December, 2000 on sums that is due

and payable on account of rent which has been determined at Rs. 14.50/- Per sq. ft. per month on and from 1st January, 1996 excluding municipal

rates and taxes. In the event of increase in Municipal Taxes, the defendant has agreed to bear the proportionate increase in taxes. The plaintiff shall

not be entitled to any interest between January, 1996 and January, 1998. In the event, the entire amount along with interest is paid by the

defendant bank within three months from date, the plaintiff shall not be entitled to any interest upon judgment. In default of payment of the entire

decreetal sum along with interest within the aforesaid stipulated time, the plaintiff shall be entitled interest at the rate of 6% per annum from 1st

January, 1998 till realization.

68. The plaintiff is also entitled to the cost of this litigation assessed at Rs. 10,000/-. The suit is decreed accordingly. The Department is directed to

draw up the decree expeditiously.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.