JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.95 of 2013

Pakistan State Oil Company Limited
Versus
Syed Nusrat Ali Shah

Date of Hearing:	03.03.2021
Appellant by:	Mr. Usman Ahmed Ranjha, Advocate
Respondents by:	Syed Asghar Hussain Sabzwari, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal, the appellant, Pakistan State Oil Company Limited, impugns the judgment and decree dated 08.03.2013 passed by the Court of the learned Civil Judge, Islamabad whereby its suit for recovery of Rs.72,80,000/- against the respondent was dismissed.

2. The facts essential for the disposal of this appeal are that on 20.05.1996, a lease deed was executed between the appellant (lessee) and the respondent (lessor) whereby the rentable area on the 3rd floor 6,000 square feet of the building on Plot No.1-E, Jinnah Avenue, Blue Area, Islamabad **("the rented premises")** was leased for a monthly rent of Rs.1,20,000/- per month. As advance rent, the appellant had paid Rs.43,20,000/- to the respondent vide cheque No.PSO-H 260835 dated 15.05.1996 drawn on Habib Bank Ltd., State Life Branch, Karachi, after deducting an amount of Rs.2,16,000/- as income tax. The lease was for an initial period of five years.

3. Clause 17 of the lease deed provided *inter alia* that the respondent will provide two lifts within the well of the common stairs within reasonable time but not more than ten weeks of the signing of the contract and receipt of the advance rent. Clause 2 of the lease deed provided *inter alia* that the lease period would commence from 01.08.1996 or from the date when the two lifts start working.

4. On 18.09.1997, the appellant's lawyer issued a notice terminating the lease deed on the ground that the respondent had not fulfilled his obligation by not installing two lifts. Furthermore, the respondent was called upon to take possession of the rented premises and to refund the advance rent with effect from the date of

the receipt of the notice. The respondent neither refunded any part of the advance rent nor took possession of the rented premises.

5. On 14.11.1997, the appellant filed a suit for recovery of Rs.72,80,000/- against the respondent before the Court of the learned Civil Judge, Islamabad. The respondent contested the said suit by filing a written statement. Vide order dated 29.04.1998, the learned Civil Court framed the issues from the divergent pleadings of the contesting parties. Asif Aslam Khan appeared as PW.1 whereas the respondent appeared as DW.1 and gave evidence. As mentioned above, vide judgment and decree dated 08.03.2013, the said suit was dismissed. The said judgment and decree has been assailed by the appellant in the instant regular first appeal.

6. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that clause 17 of the lease deed obligated the respondent to install two lifts in the well of the common stairs; that the single lift installed by the respondent was too close for comfort; that the respondent's failure to install the two lifts had rendered the rented premises *"wholly untenantable"* and therefore the appellant was well within its rights to terminate the lease deed and demand a refund of the unutilized advance rent; that the appellant was entitled to the refund of Rs.22,80,000/- in addition to damages amounting to Rs.50,00,000/-; and that the learned Civil Court erred by not appreciating that the appellant had terminated the lease deed due to the respondent's failure to install two lifts. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned judgment and decree to be set-aside.

7. On the other hand, learned counsel for the respondent submitted that it was physically impossible to install two lifts in the well of the common stairs; that the respondent had installed one lift in the well of the common stairs; that the lease deed could only have been terminated in accordance with clause 26 thereof, the said clause provided *inter alia* that the lease deed could be terminated by giving thirty days written notice if the rented premises *"are totally damaged or are rendered wholly untenantable by fire or other cause;"* that during the subsistence of the lease, the appellant had not made any grouse regarding the non-installation of two lifts; that

the rented premises had not been totally damaged or rendered wholly untenantable by fire or other cause; that the termination of the lease deed was not in accordance with clause 26 thereof; that it is an admitted position that the appellant was in possession of the rented premises till 12.07.1999 as evident from the report of the local commission; and that the impugned judgment and decree does not suffer from any legal infirmity. Learned counsel for the respondent prayed for the appeal to be dismissed.

8. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 5 above, and need not be recapitulated.

9. It is an admitted position that the respondent had not fulfilled his obligation (set out in clause 17 of the lease deed) of installing two lifts within the well of the common stairs. It is, however, not disputed that a single lift had been installed by the respondent. But for clause 26 of the lease deed, the appellant could have terminated the lease deed and asked for the refund of the unutilized rent provided the appellant was in a position to hand over vacant possession of the rented premises to the respondent.

10. Clause 26 of the lease deed entitles the appellant to terminate the tenancy by giving thirty days' notice if the rented premises are totally damaged or are rendered wholly untenantable by fire or other cause or if the building is damaged so as to be beyond repair and the respondent decides not to restore or rebuild the same. For the purposes of clarity, clause 26 of the lease deed is reproduced herein below:-

> ***"26. If the demised premises, are totally damages or are rendered wholly untenantable by fire or other cause (attributable to any cause or reason) and if the LESSOR's shall decide not to restore or not to rebuild the same or if the building shall be so damaged as to be beyond repair then the LESSEE may choose to terminate this Lease Deed by giving thirty (30) days written notice to the LESSOR. Upon such termination, the LESSEE's liability for rent shall cease as of the day following the aforesaid damage. If the Lease Deed is terminated under this clause, then the LESSOR shall immediately refund to the LESSEE all payments of rent proportionate to the unutilized period under the Lease Deed and all other monies."***

11. It is not the appellant's case that the rented premises had been totally damaged. The appellant asserts that the rented premises were rendered wholly untenantable due to the non-installation of two lifts in the well of the common stairs. There is no document on the record requiring the respondent to install two lifts. Since the termination of the lease deed was not in accordance with the requirements of clause 26 of the lease deed, I am of the view that the learned Civil Court did not commit any illegality by not decreeing the appellant's suit.

12. The report of the local commission appointed by the learned Civil Court to inspect the rented premises was not challenged by the appellant. The report indicates that the appellant's employees were in possession of the rented premises until 12.07.1999. Therefore, the appellant's demand for the refund of the rent for the period after the issuance of the notice dated 18.09.1997 has no legal basis. In the appellant's application dated 08.07.1999 seeking the removal and replacement of the local commission, the permission has been sought for the removal of furniture and other articles from the rented premises. This goes to show that the appellant's furniture and articles were present at the rented premises until 08.07.1999.

13. In view of the above, I do not find any merit in this appeal, which is accordingly dismissed with no order as to costs.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 15/03/2021

*Qamar Khan**

(JUDGE) **(JUDGE)**