

**State Bank of India Vs. William**

**State Bank of India Vs. William**

**SooperKanoon Citation :** [sooperkanoon.com/730721](http://sooperkanoon.com/730721)

**Court :** Kerala

**Decided On :** Aug-28-2003

**Reported in :** AIR2004Ker153; [2004]50SCL152(Ker)

**Judge :** A. Lekshmikutty, J.

**Acts :** [Companies Act, 1956](#) - Sections 394

**Appeal No. :** SA No. 580 of 1996

**Appellant :** State Bank of India

**Respondent :** William

**Advocate for Def. :** V.O. John,; Jimmy John Vellanikaran,; K.J. Antony an

**Advocate for Pet/Ap. :** George Thomas, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**A. Kumari Lekshmikutty, J.**

1. The defendant in O.S. No. 1723/1986 on the file of the Munsiff Court, Irinjalakuda is the appellant. The plaintiff filed the suit for recovery of arrears of rent. The plaintiff's father was the Estate Officer of former Bank of Cochin Ltd. He leased out his building situated in a remote rural area to M/s. Bank of Cochin Ltd.

as per Ext. B1 lease deed dated 1-7-1976. The monthly rent fixed was Rs. 300 and the period was 20 years. As per the terms of the lease, the parties are not entitled to terminate the tenancy. It was also agreed to pay interest at the rate of 12% per annum for the defaulted payment. Later the Bank of Cochin Ltd. was amalgamated with the State Bank of India as per Section 45(4) of the Banking Regulation Act, 1949. Accordingly the rights and liabilities of the Bank of Cochin Ltd. were taken over the defendant Bank. The defendant Bank kept the rent in arrears from the month of April 1986. The branch manager sent a notice to the plaintiff on 31-10-1985 terminating the tenancy as on 31-12-1985. The plaintiff sent a reply stating that the defendant had no right to terminate the tenancy unilaterally. Afterwards the rent till and including the month of March 1986 was paid to the plaintiff. Another notice was sent on 17-3-1986 by the defendant stating that the plaintiff schedule building will be vacated on 31-3-1986. The defendant has no right to terminate the tenancy before the expiry of the lease period. The suit is filed for arrears of rent at the rate of 300 per month together with interest from April 1986.

2. The defendant resisted the suit, contending inter alia, that the suit is not maintainable. The father of the plaintiff, who was a senior officer of the erstwhile Bank of Cochin Ltd. approached the bank to take over the building on rent. Any stipulation under the lease agreement curtailing the lease against termination of lease is unconscionable and hence not enforceable. The defendant is not bound by agreement between the plaintiff and the erstwhile Bank of Cochin Ltd. The agreement has become impossible of performance. The defendant is not in possession of the building and the defendant is not liable to pay rent also. The defendant does not require the building for the use and occupation of their Branch Manager. There is no lease agreement between the defendant and the plaintiff. The agreement between the plaintiff and the erstwhile Bank of Cochin Ltd. has been terminated when the defendant has taken over the erstwhile Bank of Cochin Ltd. There is no transfer of possession of the premises to the defendant by the erstwhile bank of Cochin Ltd. The defendant has produced the key of the building along with the written statement. Therefore, the suit is liable to be dismissed.

3. The trial Court raised three issues. The evidence in this case consists of the oral testimony of PW1 and DW1 and Exts. A1 to A20 and Ext. B1. The trial court after appreciation of the evidence decreed the suit. Against the said judgment and decree, the defendant filed A.S. No. 21 of 1989 before the Sub Court, Irinjalakuda. The first appellate court dismissed the appeal confirming the decree and judgment of the trial court, against which this Second Appeal is preferred by the defendant. Substantial questions of law involved in this appeal are :

(i) Whether on the facts and circumstances of the case the courts below were right in holding that the lease evidenced by Ext. B1 is still in force, in spite of the surrender of the lease hold by the lessee ?

(ii) Have not the courts below went wrong in decreeing arrears of rent in respect of the subject-matter of lease which has been surrendered ?

(iii) Is not plaintiff liable to treat the lease evidenced by Ext. B1 as broken and take steps for mitigating the loss for breach of contract rather than filing the suit for arrears of rent ?

(iv) Is not the suit liable to be dismissed, the same being in essence one in the nature of a suit for specific performance of contract, which cannot be decreed on the facts of the case

#### The Points

4, It is admitted case of the parties that the building of the plaintiff's father was taken on rent by the Bank of Cochin Ltd. at a monthly rent of Rs. 300 for a period of 20 years. Ext. B1 is the rent deed executed by the parties. The building was taken on rent for the accommodation of the Branch manager of the then manager of the Bank of Cochin Ltd. After the execution of Ext. B1, the Bank of Cochin Ltd. was amalgamated with the defendant bank by virtue of Section 45(4) of the Banking Regulation Act. Admittedly the amalgamation was effected as per the scheme formulated by the Reserve Bank of India by virtue of the said amalgamation. The rights and liabilities of the transferor bank were taken over by the transferee bank. The case of the defendant is that after amalgamation, the

defendant bank sent Ext. A8 notice to the plaintiff terminating the tenancy with effect from 31-12-1985. Thereafter the defendant again sent Ext. A12 notice informing that the building will be vacated on 31-3-1986. As per the agreement, the plaintiff is not liable to take possession of the building before the expiry of the lease period. There is no dispute with regard to the fact that the building was taken on rent by the Bank of Cochin Ltd. for a period of 20 years. Only after the expiry of the agreed period, the lessor shall be entitled to have the premises vacated after issuing three months notice. According to the plaintiff, the parties are bound by the agreement and as per the terms, the plaintiff need to take vacant possession of the building only after the expiry of the lease period of 20 years from the date of Ext. B1. As per Section 106 of the Transfer of Property Act, in the absence of a contract or local law or usage to the contrary a lease of immovable property otherwise for agricultural or manufacturing purposes shall be deemed to be from month to month terminable on the part of either lesser or lessee by 15 days notice expiring with the end of a month of the tenancy. Here there is a written contract between the parties that the tenancy shall be terminated only after the expiry of 20 years. The specific case of the plaintiff is that the building was constructed in a remote area for the purpose of letting out to the bank for the residence of the Manager of the Bank. It is not disputed by the plaintiff that the Bank of Cochin Ltd. was amalgamated with the State Bank of India as per Section 45(4) of the Banking Regulations Act, 1949. It is true that as per the said Regulation, the rights and liability of the Cochin Bank Ltd., devolved on the State Bank of India. The averment in the plaint shows that the building was taken on rent for the residence of the Manager of the Cochin Bank Ltd. Since, the said Bank has been amalgamated with the State Bank of India, the contract has become incapable of performance. If the contract is broken the plaintiff can sue for damages. The defendant has no case that after 31-5-1985 any rent was paid to the plaintiff. Ext. B1 agreement is signed by the Chairman of the Bank of Cochin Ltd.

5. Ext. A6 is the copy of the Gazette notification dated 23-8-1985 notifying the amalgamation scheme. As per the amalgamation, all rights, powers, claims, demands, interests, authorities, benefits, assets and properties of the transferred Bank movable and immovable including premises subject to all incidents of tenure and to the rents and other sums of money and covenants reserved by or

constrained in the lease or agreements under which they are held shall stand transferred to and become the properties and assets of the transferee. In the light of Ext. A6, the defendant cannot contend that the agreement between the plaintiff and the erstwhile Cochin Bank Ltd. will not bind the defendant. But in the instant case, the contract has become incapable of performance. The building was taken on rent for the residence of the then Manager of the Bank. Due to the amalgamation, the agreement has become incapable of performance.

6. Before this court, the plaintiff has produced the copy of the appeal memorandum filed by the defendant before the Appellate Authority (R.C.) as R.C.A. No. 41 /1991. The contention of the defendant is that the lease has been terminated as per Ext. All. It is submitted by learned counsel for the plaintiff that for fixation of fair rent, the appellant has filed R.C.P. No. 3/1990 before the Rent Control Court, Thrissur which was dismissed against which the defendant filed R.C.A. No. 41/1991 before the Appellate Authority (R.C.A.), Thrissur. So according to the respondent the tenancy was subsisting even after the alleged surrender. This argument of the learned counsel cannot be accepted since the defendant has surrendered the key along with the written statement. Hence it is clear that now the building is not used by the defendant. So at the most it can be stated that the defendant has committed breach of contract. If it be so the remedy open to the plaintiff is to sue for damages.

Since the defendant has surrendered the key before the court, this Court cannot compel the defendant to occupy the buildings. Both the courts below did not consider this aspect. In such circumstances, it is to be found that the judgment and decree passed by the courts below are perverse and hence the judgment and decree are liable to be set aside. But I make it clear that the dismissal of the suit is not a bar to claim damages for breach of contract. The period by which the plaintiff was prosecuting the suit and continuous proceedings shall be exempted for the purpose of limitation. The plaintiff seek appropriate remedy within three months from the date of this judgment.

The second appeal is allowed with the abovesaid observation.

