

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS (OS) NO.170 OF 2003

%

Date of Decision : August 8, 2008.

SMT. VEERAN DEVI Plaintiff.

Through Mr. Varun Goswami, Advocate.

VERSUS

S. SUBHASH Defendant

Through Ms. Amita Sanghi with
Mr.Devendra Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be
allowed to see the judgment?

2. To be referred to the Reporter or not ? YES.

3. Whether the judgment should be reported
in the Digest ? YES.

SANJIV KHANNA, J:

1. The plaintiff-Smt. Veeran Devi, has filed the present suit
against Mr. S. Subhash, the defendant, for recovery of possession

of a portion of premises No.30, Village Hauz Khas, New Delhi and for recovery of Rs. 28,36, 025/- (Rupees twenty eight lacs thirty six thousands and twenty five only) alongwith future dues and mesne profits.

2. It is admitted by the parties that they had entered into a Memorandum of Understanding dated 5th August, 2000, Exhibit P-1. The said document was admitted by the defendant at the time of admission/denial of documents. The Memorandum of Understanding relates to the property and stipulates that approximately 12 thousand square feet area consisting of the basement, ground floor and the first floor shall be given on lease to the defendant for a period of nine years. It was agreed that the defendant would be liable to pay 20 % of the gross sales per month for use and occupation of the property after deducting the Sale Tax liability, as rent with the minimum guarantee charges/rent of Rs. 1,50,000/- (Rupees one lac and fifty thousand) per month for a period of first three years. Thereafter with effect from 1st January, 2004, the defendant was liable to pay enhanced amount of 25% of the gross sales with a minimum guarantee of Rs. 2,00,000/- (Rupees two lacs) per month. With effect from 1st January, 2007, the defendant was liable to pay 30 % of the gross sales with the minimum guarantee of Rs.2,50,000/- (Rupees two lacs fifty thousand) per month. The Memorandum of Understanding is however an unregistered document.

3. It is admitted case of the parties that the defendant had deposited Rs. 5,00,000/- (Rupees five lacs) as a security deposit with the plaintiff. It is also an admitted case that rent @ Rs.1,50,000/-

(Rupees one lac fifty thousand) per month with effect from 1st January, 2001, onwards was paid for a period of eight months i.e. up to 31st August, 2001. For the month of September, rent was not paid. However, an amount of Rs. 72,000/-(Rupees seventy two thousand) towards TDS was deducted from the rent due for September, 2001.

4. It is claimed by the plaintiff that the defendant stopped paying rent with effect from 1st September, 2001 and had also failed to vacate the property.

5. The defendant in the written statement has stated that the property has been in occupation and possession of the plaintiff since November, 2001 and therefore he is not liable to pay any rent and certain other pleas have also been raised.

6. On the basis of the pleadings, following issues were framed on 12th January, 2005:

“1. Whether the suit premises were let out to M/s.Sebbineni Hotels and Resorts Pvt. Ltd and not to the defendant as alleged? OPD.

2. Whether the suit for possession in respect of suit property is maintainable in view of admission on behalf of the plaintiff in notice dated 9th September, 2002 of being in legal and physical possession thereof? OPP.

3. Whether the possession of the suit property was handed over to the plaintiff on 1.11.2001? OPD.

4. Whether any agreement dated 1.1.2001 was executed between the husband of the plaintiff and M/s.Sibbineni Hotels and Resorts Pvt. Ltd. superseding the MOU dated 5.8.2000? If so, its effect ? OPD.

5. Whether the defendant had caused substantial damage to the suit property as alleged? If so, is the plaintiff entitled to recover any amount on account of damages and what amount? OPP.

6. Whether the plaintiff is entitled to recover arrears of rent as claimed? If so, what amount? OPP.

7. Is the plaintiff entitled to recover damages/mesne profits from the defendant? If so at what rate and for what period? OPP.

8. Is the plaintiff entitled to recover any interest on arrears of rent? If so, at what rate and what amount? OPP.

9. Whether the suit is bad for non joinder of parties for non impleadment of M/s. Sebbineni Hotels and Resorts Pvt. Ltd.? OPD.

10. Was the tenancy in favour of defendant legally and validly terminated? If not, its effect? OPP.

11. Relief.”

7. Parties thereafter were given opportunity to file evidence by way of affidavit. The plaintiff has produced two witnesses, namely, the plaintiff, Smt. Veeran Devi and her husband Mr. Rajesh Kumar Dhingra as PW-1 and PW-2. The defendant has only examined himself as DW-1. The witnesses were cross examined.

Issue No.5

8. Issue No.5 does not arise and requires no decision/adjudication. No relief or prayer for recovery of damages has been made. Court fee has not been paid to make a claim for damages. Learned Counsel for the plaintiff, however, submitted that as an issue has been framed, the plaintiff is entitled to claim damages and a decree should be passed.

9. Order XIV Rule 3 of the Code of the Civil Procedure, 1908, (hereinafter referred as the Code, for short), deals with the framing of issues. The said provision reads as under:-

“Order 14 Rule 3. Materials from which issues may be framed —The Court may frame the issues from all or any of the following materials:—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.”

10. Framing of issues was considered by the Supreme Court in the case of ***Union of India v. E.I.D. Parry (India) Ltd.***, reported in (2000) 2 SCC 223 and it was observed as under

“4. The suit was filed for the recovery of excess demurrage allegedly charged by the appellant from the respondent. The claim depended upon the Goods Tariff Rules, specially the rule quoted above, which authorises the respondent to claim damages in respect of the entire block of wagons supplied to a party which does not empty those wagons at the siding within the time permitted for that purpose. There was no pleading that the rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law that a question, which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the subject-matter of any issue, could not be decided by the court. The scope of the suit was limited. The pleadings comprising of the averments set out in the plaint and the defence put up by the present appellant in their written statement did not relate to the validity of the rule struck down by the High Court. The High Court, therefore, travelled beyond the pleadings in declaring the rule to be ultra vires. The judgment of the High Court, therefore, on this question cannot be sustained.”

11. Normally, therefore, in the absence of pleadings, an issue should not be framed on a question/claim that is not a part or arises from of the pleadings. A claim not made subject matter of the plaint cannot be decided by the Court and a decree passed thereon. Scope of the suit is limited by the prayers made and averments made out in the plaint and the defence put up by the defendants in the written statement. In the case of ***State Bank of India versus S.N Goyal*** reported in AIR(2008) SCW 4355 the Supreme Court considered the effect of a particular relief not being mentioned in the pleadings, the Court observed as under:

“Re : Question (ii) Effect of absence of pleading.

13. The plaint did not contain any plea that the order of removal by the Appointing Authority (Chief General Manager) was vitiated on account of his consulting and acting on the advice of the Chief Vigilance Officer of the Bank. Nor did it contain any allegation that the Appointing Authority acted on extraneous material in passing the order of removal. In the plaint, the challenge to the order of removal was on the ground that the enquiry by the Enquiry Officer was opposed principles of natural justice that is : (i) the charge was vague and not established; (ii) he was not given reasonable opportunity to defend himself; (iii) material witnesses were not examined;

(iv) documents relied on were not formally proved; (v) burden of proof was wrongly placed on him; (vi) findings in the enquiry report were based on surmises and conjectures; and (viii) the enquiry officer was prejudiced. The respondent had also averred that the Appointing Authority had approved the recommendation made by the Disciplinary Authority for imposition of penalty of removal, without application of mind and without giving him a hearing. He alternatively contended that the punishment imposed was severe and disproportionate to the gravity of the proved charge. But there was absolutely no plea with reference to the advice/recommendation of the Chief Vigilance Officer of the Bank. However, during the examination of the Bank's witness DW-1 (T.S. Negi, Deputy Manager) it was elicited that on 18.1.1995, the Disciplinary Authority had put up a recommendation to impose the penalty of reduction of pay by four stages by taking a lenient view; that the Appointing Authority had by his note dated 18.1.1995 accepted the said recommendation; that subsequently, on 2.2.1995, the Appointing Authority had informed the Chief Vigilance Officer of the Bank about the enquiry and proposed punishment; and that after receiving the comments of the Chief Vigilance Officer, the Appointing Authority on the recommendations of the disciplinary authority had reconsidered the question of punishment and imposed the penalty of removal. The respondent plaintiff did not amend the plaint to include the averments and grounds to challenge the order of removal on the said additional ground. No issue was framed in that behalf. No amount of evidence on a plea that was not put forward in the pleadings can be looked into. In the absence of necessary pleading and issue, neither the trial court nor

the appellate court could have considered the contention and recorded a finding thereon. “

12. Order VII Rule 2 of the Code explicitly lays down that where a plaintiff seeks recovery of money, the plaintiff shall specify the precise amount claimed. It is only in a case where a suit is based upon unsettled accounts, or for moveable property in possession of the defendant or for debts which cannot be valued after exercise of reasonable diligence, that a plaintiff is entitled to estimate and fix an appropriate amount or value to the relief sought. In the present case there is no prayer or claim made for damages. No Court fee has been paid and therefore, no relief can be granted to the plaintiff in this regard. I may note here that the plaintiff had filed I.A.No.5910/2003 claiming that the defendant had damaged the suit property and thereafter the Local Commissioner was appointed. These factors, however, do not persuade me to expand the scope of the suit and grant of relief beyond the prayers made in the plaint.

13. VII Rule 7 of the Code reads as under:-

“7. Relief to be specifically stated.—
Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for.

And the same rule shall apply to any relief claimed by the defendant in his written statement.”

14. The said provision was considered by the Supreme Court in the case of ***Om Prakash versus Ram Kumar*** reported in (1991)1 SCC 441, and it was held that a relief not claimed and prayed for, cannot be granted, if granting the said relief would result in affecting rights and cause prejudice to an interested party. The plaintiff had occasion but did not taken any step to add or amend the plaint and make a prayer for grant of damages in the plaint. It would not be appropriate to decide the question of damages, without any claim or prayer made in the plaint. The issue is accordingly decided and not answered. No relief can be granted to the plaintiff.

Issue No.1, 4 & 9

15. Memorandum of Understanding, Exhibit P-1 is between the plaintiff and the defendant. M/s. Sabbineni Hotels and Resorts Pvt. Ltd. is not a party to the said Memorandum of Understanding. The rent may have paid from the bank account of M/s. Sabbineni Hotels and Resorts Pvt. Ltd. but that by itself does not make M/s. Sabbineni Hotels and Resorts Pvt. Ltd. a tenant. It is well established that payment of rent by a third person does not make the

said third person a tenant (refer, ***Harshvardhan Chokkani versus Bhupendra N. Patel*** reported in (2002) 3 SCC 626). Tenancy is as a result of contractual relationship between two parties, who must be ad idem. PW-1 and PW-2 in their affidavits have stated that Mr. S. Subhash, the defendant was the tenant and they had not entered into in an agreement with M/s. Sabbineni Hotels and Resorts Pvt. Ltd. Written document i.e Memorandum of Understanding, Exhibit P-1 supports their stand.

16. DW-1, Mr. S. Subhash has stated that on 15th September, 2008 the company M/s. Sabbineni Hotels and Resorts Ltd. was incorporated and, it is alleged by the defendant that thereafter a fresh agreement was executed on 1st January, 2001. Issue No. 4 was also framed in this regard. The defendant has proven the certificate of incorporation but has not filed the purported Agreement dated 1st January, 2001. Adverse inference is therefore drawn against the defendant. Issue no.4, therefore, has to be answered against the defendant.

17. In the written statement, it is stated that at the time when the Memorandum of Understanding, Ex-P-1 dated 5th August, 2000 was executed, M/S. Sabbineni Hotels and Resorts Pvt. Ltd. was in process of incorporation and there was "atonement of tenancy".

18. In case a lessee assigns the rights adjuncted to a lease, to a third person, provisions of Section 108 (j) of the Transfer of Property Act, 1882, may apply, subject to a contract to the contrary. Section 108 (j) reads as under :-

“108. Rights and liabilities of lessor and lessee.-

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorize a tenant having any untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee”

19. Assignment of lease therefore does not lead to extinguishment of tenancy pursuant to a contract between the lessor and the lessee. The lessee remains liable for payment of rent and other covenants agreed upon unless the lease otherwise provides. The liability of the lessee to the lessor continues notwithstanding that the lease has been assigned by the lessee. However, in respect of covenants which run with the land the assignee also becomes liable

to the lessor by reason of privity of estate. In such cases remedy against the lessee is founded on privity of contract and as against the assignee on privity of estate. Mere assignment to a third party does not release a lessee of his obligations. Relinquishment of tenancy is different from assignment of tenancy. Relinquishment must be to the lessor and under Section 108 (q) of the Transfer of Property Act on determination of a lease, a lessee is under an obligation to put the lessor in possession. Similarly, under Section 108(l) of the Transfer of Property Act, the lessee is liable under the obligation to pay rent to the lessor. Section 108 (l) and 108 (q) read as under:-

“(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;”

“(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.”

20. Mere acceptance of rent from the assignee by itself is not enough to release the lessee or establishes relinquishment of tenancy. The lessee continues to be liable to pay rent because the lessee cannot by an unilateral act put an end to his contractual

obligations. Privity of contract exists between the lessor and the lessee. Assignment of the lease does not prejudice the personal contract between the lessee and the lessor and accordingly the lessee remains liable on the covenant for payment of rent and the other covenants on his part contained in the lease unless the lease otherwise provides; but as regards the covenants which run with the land, the assignee also becomes liable to the lessor by reason of privity of estate. The liability of the lessee to the lessor continues notwithstanding that the lease has been assigned and that the lessor has a remedy against the assignee for the rent and on the covenants running with land. The remedy as against the lessee is founded on privity of contract; and as against the assignee on privity of estate. (Refer, ***Kishan Lal versus Ganpat Ram Khosla*** reported in AIR (1961) SC 1554 and ***Treasurer of Charitable Endowments versus S.F.B. Tyabji*** reported in (1948) BOMLR 240 DB).

21. Even otherwise, I find that the defendant has not been able to prove and establish assignment or relinquishment. Fresh or new tenancy in favour of M/s Sabbineni Hotels Pvt. Ltd.; has not been proven. In view of the written document, Ex-P-1 and failure of the defendant to produce the alleged fresh agreement dated 1st January, 2001, it is held that the tenancy was between the plaintiff and the

defendant. Premise was not let out to the M/s. Sabbineni Hotels and Resorts Pvt. Ltd. and the said Company did not become a tenant of the plaintiff. Defendant is liable to pay rent.

Issue Nos.2, 3, 6 & 7

22. The present suit was filed on 16th January, 2003 with the prayer that a decree for possession, permanent injunction and recovery should be passed. If the plaintiff was already in possession he would not have made the said prayer and paid court fees thereon. There is no letter by the defendant to establish and prove surrender of the possession of the property. No surrender receipt has also been produced. It is, however, admitted by the defendant that rent was paid for the period of 1st January, 2001 till 31st August, 2001.

23. The plaintiff has placed on record three notices dated 11th January, 2000, 13th July, 2002 and 9th September, 2002, marked Exhibit PW-2, 4 and 7 respectively. The plaintiff has placed on record the registered postal receipt marked Exhibit P-3 dated 12th January, 2002 in respect of Ex-P-2 and registered postal receipts Ex Nos.P-5 and P-9 in respect of Ex-P- 4 and 7 respectively. The acknowledgement cards in respect of notices dated 30th July, 2002 and 9th September, 2002 (Ex. P-4 and P-7) are available on record. The two acknowledgement cards have been marked as Ex.-P-6 and

P-9. The acknowledgment cards bear stamps of the Postal Department and the address given on the same; is that of the defendant. In view of Section 27 of the General Clauses Act and Section 114 (e) and (f) of the Evidence Act, 1872, the plaintiff has been able to prove service of notices dated 11th January, 2002, 30th July, 2002 and 9th September, 2002 and the fact that these letters were duly received. I may note that the defendant at the time of admission/denial has admitted contents of letter/notice dated 9th September, 2002 (Ex.P-7) but denied receipt thereof. The defendant did not reply to any of these notices. In case the defendant had surrendered possession he would have replied and stated so.

24. In the notice dated 11th January, 2002 (Ex.P-2) it is stated that the defendant had committed breaches and defaults in payment of the rental amount, as well as electricity charges and the same should be cleared with interest within 15 days, otherwise the plaintiff would be entitled to take recourse to legal remedy. In the notice dated 30th July, 2002 (Ex.P-4) similar statements have been made and it is also stated that in case of failure of the defendant to make payment of arrears of rent and electricity, telephone bills, the plaintiff would enter upon the property and would be free to let out the same to anyone. Notice dated 30th July, 2002 (Ex.P-4) clearly indicates that the plaintiff

had not taken possession of the property till the said date and possession had continued to remain with the defendant.

25. Learned counsel for the defendant had relied upon the notice dated 9th September, 2002 (Ex.P-7) and submitted that in the said notice it was stated by the plaintiff that in view of the earlier notice dated 30th July, 2002, the plaintiff had legal as well as physical possession of the property and that the defendant had no interest, right, title in the property. On this basis, it was argued that the plaintiff had taken possession of the property between the period 30th July, 2002 and 9th September, 2002. I have examined the said contention but do not find any merit. A careful examination of the words used in the legal notice dated 9th September, 2002 (Ex.P-7) shows that the plaintiff had made reference to the earlier letter dated 30th July, 2002 in which it was stated that the plaintiff had the right to enter upon the premises and let out the same to anybody. With reference to the said notice it was stated “*thus my client had the legal as well as physical possession of the premises...*” It is also apparent that the plaintiff wanted right to enter upon and claim legal as well as physical possession of the property in question without fighting litigation and getting any decree. The plaintiff was also aware of the consequences if he forces his entry into the property and takes physical possession

of the same. Moreover, it is not understandable why the defendant did not reply to any of the letters/notices. Failure of the defendant to reply to any of these notices or state that he had surrendered possession or abandoned possession goes against him. It is not difficult to understand the predicament that the plaintiff was under, with the defendant not paying any rent and not coming to the property and also not replying to the notices. If the plaintiff had taken law into his own hands and re-entered the property, the defendant who was keeping quiet in all probability would have taken steps against the plaintiff including filing a case for criminal trespass.

26. I may also note that in the written statement, the defendant has not given a specific date on which he had surrendered possession of the property. It is not stated in the written statement that the plaintiff had re-entered the property and taken possession of the property between issue of the notices dated 30th July, 2002 (Ex.P-4) and 9th September, 2002 (Ex.P-7). The defendant claims that the plaintiff is in occupation and possession of the property since November, 2001. The said statement has been made in paragraph 2 of the preliminary objections of the written statement. The defendant has not placed on record any letter or communication relating to surrender of possession. On the other hand, the defendant in his

evidence has stated that the restaurant project ran into difficulty as the banks refused to grant credit facilities. Due to paucity of funds, the renovation work in the property was stopped and it was left incomplete. It is difficult to accept that the defendant would have vacated and handed over the possession of the property without writing a letter and without obtaining possession receipt or even writing a letter that he had surrendered possession.

27. After the defendant was served, a proxy counsel had appeared before the Court on 20th March 2003 and stated that the plaintiff being in possession there was no urgency in the case. It was also stated that being a proxy counsel he did not have clear instructions to make the statement. Thereafter, the defendant filed his written statement on 6th May, 2003 stating that he was not in possession and the suit property was in possession and occupation of the plaintiff. In these circumstances, 6th May, 2003 will be treated as the date of surrender of possession of the property by the defendant. I may observe here that abandonment of tenancy does not end landlord tenant relationship. The tenancy agreement is bilateral and tenancy rights can be surrendered by a bilateral agreement which may be express or implied (See, Section 111, Clauses (e) and (f) of Transfer of Property Act). Abandonment of tenancy being a unilateral act does

not result in surrender of tenancy and a tenant is liable to pay rent till there is surrender of tenancy which brings the landlord tenant relationship to an end. (See, in this regard, observations of the Supreme Court in the case of ***Shah Mathuradas Maganlal & Co. versus Nagappa Shankarappa Malage*** reported in AIR 1976 SC 1565).

28. It is an admitted fact that the defendant had stopped paying rent from September, 2001 and did not make any payment on account of rent due on him, till 6th May, 2003, the date when he made the first formal statement to the effect that he has relinquished the tenancy. Thus, the defendant would be liable to pay arrears of rent from September, 2001 (minus TDS for Rs.72,000/-) till 30th November, 2002 @ Rs.1,50,000/- per month which amounts to Rs.21,78,000/-. The present Suit was filed on 16th January, 2003 but arrears of rent have been claimed only till 30th November, 2002. Therefore, arrears of rent from 1st December, 2002 till 15th January, 2003 will not be payable. The plaintiff has not led any evidence to show that market rent had increased and was much higher till 6th May, 2003 and therefore the plaintiff is held entitled to rent or damages for use and occupation of the property from the period between 16th January, 2003 till 6th May, 2003

@ Rs.1,50,000/- per month. For this period, the plaintiff will deposit Court fees. The defendant will be also entitled to deduction of Rs.5,00,000/- which was paid by him as security deposit from Rs.21,78,000/-. Thus the total amount due and payable by the defendant to the plaintiff towards arrears of rent till filing of the Suit is Rs.16,78,000/-.

29. Oral argument of the defendant that there was no lease but merely a license has to be noted to be rejected. There is no specific pleading or evidence to establish and support the said plea.

Issue No. 10.

30. In view of the above findings, it is not relevant to examine the question whether the tenancy of the defendant was validly terminated by notices issued by the plaintiff as the defendant himself had surrendered possession of the property in terms of the written statement filed on 6th May, 2003. I may also note that Ex. P-2 did not cancel or terminate the tenancy. This was only mentioned in the notice dated 30th July, 2002 (Ex.P-4).

ISSUE NO. 8

31. The plaintiff has placed on record notices viz. Exs.; P-4, P-7 and P-9 in which interest has been claimed. The transaction

between the plaintiff and the defendant was a commercial transaction whereby the defendant had taken on rent a portion of the property in question for setting up a restaurant. In these circumstances, I feel that the plaintiff is entitled to interest on the arrears of rent. Keeping in view the market rate of interest prevailing in the said period, the plaintiff is held entitled to interest @10% per annum from the date rent became due i.e. 10th day of each calendar month. Interest will be payable till payment.

NEW ISSUE

32. No issue has been framed in respect of the arrears of electricity and telephone bills, but, the said issue arises for consideration in view of the pleadings and prayer made in the plaint and the written statement. Evidence is also lead by the parties. Accordingly, the following additional issue is framed for decision of this Court :

“Whether the plaintiff is entitled to any amount on account of arrears of electricity charges and telephone charges?”

33. The plaintiff in his affidavit filed on 14th March, 2007 has stated that the defendant is liable to pay outstanding bills of electricity and telephone that had not been cleared by the defendant and have

been marked as Ex.P11 and P17. I have examined the said documents (Ex.P-11 and P-17). The electricity bills enclosed were issued in the year 2004. These bills do refer to some arrears but it is not clear whether the arrears mentioned in the bills pertain to the period when the defendant was a tenant of the property, till he vacated the same on 6th May, 2003. The plaintiff has not led any evidence to establish that the arrears mentioned in the bills pertain to the said period. The plaintiff did not summon any officer of the BSES Rajdhani Power Ltd. to produce their records and substantiate the claim of the plaintiff. Claim of the plaintiff towards electricity bills is rejected. The plaintiff has however placed on record two telephone bills relating to telephone no. 6534996 pertaining to period 1st April, 2001 and 31st May, 2001 and 1st June, 2001 and 31st July, 2001. The bills are for Rs. 5732/- and Rs.1594/-. The plaintiff's husband (PW-1) was not cross-examined with regard to these two telephone bills. These two bills pertain to the period of tenancy. It is not the case of the defendant that no telephone connection was provided in the property by the plaintiff. It is held that the plaintiff is entitled to Rs.7326/- (Rs. 5732+1494) due and payable towards telephone expenses.

RELIEF

34. Accordingly, the Suit of the plaintiff is decreed against the defendant for sum of Rs.16,78,000/- towards arrears of rent till filing of the Suit and Rs.7,326/- towards arrears of telephone bills. The plaintiff will be entitled to interest @ 10% per annum on the arrears of rent and bills from the date when it fell due till payment. The plaintiff will be also entitled to rent/damages from 16th January, 2003 to 6th May, 2003 @ Rs.1,50,000/- per month (i.e Rs.5,55,000/-). Decree in respect of this period will be prepared after the plaintiff deposits Court fees. The defendant will be also liable to pay interest on this amount @ 10% per annum w.e.f. 6th May, 2003 till payment is made. Additional Court fee will be paid within three weeks. Plaintiff will be entitled to costs.

(SANJIV KHANNA)

JUDGE

AUGUST 8, 2008.

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