

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(OS) No.717/2000

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Date of Decision: 13.04.2009

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Commodore G.C.Mitra AVSM(Retd.) Plaintiff
Through: Mr.Shantanu Rastogi, Advocate

Versus

Mr.Ashish Dogra Defendant
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. This is a suit for possession and recovery of damages and mesne profits and injunction. The plaintiff claims that he is the owner/landlord of premises No.C-7/3, Vasant Vihar, New Delhi. The plaintiff has contended that the front portion of the second floor of the said property, consisting of a drawing-dining and a bedroom with attached bathroom was let out to the defendant vide a lease deed dated 4th November, 1998 at a monthly rent of Rs.20,000/- per month besides payment of electricity and water charges. The rent was agreed to be

paid on quarterly basis and in advance by cheque.

2. The plaintiff has contended that the lease deed dated 4th November, 1998 was executed between the parties, but the lease deed was not got registered as contemplated under the law. Therefore, the defendant became a tenant on month to month basis. The defendant is alleged to have paid rent for sometime and thereafter the defendant stopped making payments and as on 31st January, 2000 defendant was allegedly liable to pay a sum of Rs.1,40,000/- as arrears of rent in respect the premises demised.

3. The plaintiff has also claimed that the defendant is liable to pay electricity charges as per sub-meter readings. It was contended that though the defendant had paid two bills of Rs.15,030/- and Rs.13,950/- directly to Delhi Vidyut Board by cheque, still some amount was due from the defendant.

4. On account of lapses committed by the defendant the plaintiff determined the tenancy with effect from midnight of 31st January, 2000 by giving a legal notice dated 24th December, 1999 and demanded possession of the suit premises. Since the defendant failed to restore the peaceful possession of the premises whose tenancy had been determined, the suit for recovery of possession along with arrears of rent of Rs.1,40,000/- was filed.

5. The plaintiff has also contended that since the defendant continued in possession of the suit premises even after the month to month tenancy was determined he is liable to pay damages with effect from 1st February, 2000. The plaintiff is claiming damages for the period 1.2.2000 to 1.4.2000 at Rs.75, 000/- per month amounting to a total of Rs. 1,50, 000/-.

6. The plaintiff has also contended that the defendant is liable to pay damages on account of misuse of premises by unauthorized installation of an industrial generator set fitted with six cylinder engines weighing about one tone with a size of 6 feet x 4 feet x10 feet on top of the building. It is alleged that the prolonged heavy strain on the terrace has put the entire structure of the building consisting of four floors most vulnerable to collapse. Though the plaintiff had claimed an amount of Rs.6,00,000/- under this head in the legal notice sent to the defendant, the plaintiff has averred that he is only claiming symbolical damages of Rs.1,00,000/- as he is not in a position to pay the Court fee due to financial constraint.

7. The defendant contested the suit and filed the written statement. The defendant contended inter-alia that the lease was for a period of three years with revival clause and, therefore, it could not be terminated before the expiry of the term.

8. An application was filed on behalf of plaintiff under Order XII Rule 6 of the Code of Civil Procedure. This Court by judgment dated 15th October, 2001 allowed the application and decreed the suit for recovery of possession and a decree of possession was passed in favour of plaintiff and against the defendant in respect of tenanted premises i.e front portion of the second floor of the property C-7/3, Vasant Vihar, New Delhi.

9. By order dated 15th October, 2001 the suit was directed to be proceeded qua other reliefs for mesne profits and recovery of arrears of rent etc. Pursuant to order dated 15th October, 2001 the keys of the premises were handed over to the plaintiff.

10. On 12th July, 2002 on the basis of the pleadings and documents of the parties for the reliefs other than for recovery of possession the following issues were framed:-

1. Whether plaintiff is entitled to a decree of arrears of rent? If so, to what amount?
2. Whether plaintiff is entitled to decree for recovery towards damage/mesne profits for use and occupation of the premises? If so, to what amount and at what rate per month?
3. Whether plaintiff is entitled to pendente lite and future interest? If so, at what rate?
4. Whether plaintiff is entitled for the damages towards damage to the building as alleged in the plaint?
5. Whether plaintiff is liable to pay electricity charges as alleged in the plaint?

11. On 27th November, 2002 the plaintiff was examined as PW.1. Despite the opportunity given to the defendant, the plaintiff was not cross examined and therefore the cross examination of PW.1 by the defendant was closed. Two other witnesses were also examined by the plaintiff on 15th January, 2003, however, even they were not cross examined and the defendant's right to cross examine was closed. The plaintiff, thereafter, closed his evidence. Since the defendant did not appear on 27th November, 2002 or on 15th January, 2003 the evidence of the defendant was closed and the matter was listed for final disposal by an order dated 11th February, 2003.

12. The defendant had also filed an appeal being FAO(OS) No.40/2001 in which the appellant paid the amount of electricity charges and by order dated 19th December, 2002 it was held that no amount was due from defendant to Delhi Vidyut Board/BSES Rajdhani Power Ltd and, therefore, the appeal was disposed of. However, the counsel for the defendant had stated, at the time of disposal of appeal, that extra amount had been paid to BSES Rajdhani Power Ltd and, therefore, the defendant will take recourse regarding recovery of extra amount from BSES Rajdhani Power Ltd in accordance with law.

13. On 27th November, 2002 the affidavit of PW.1 was tendered in evidence which was exhibited as Exhibit P1. Deposition of PW.2 Shri.Kunal Mathur and PW.3 Mr.Raman Salwan were tendered on 15th

January, 2003 and were exhibited as exhibit P.2 and exhibit P.3 respectively. The plaintiff in his deposition dated 21st November, 2002 deposed that he is the owner/landlord of premises C-7/3, Vasant Vihar, New Delhi and that he had let out the front portion of the second floor to the defendant at a monthly rent of Rs.20, 000/-

14. The plaintiff deposed that the possession of the premises was handed over to him on 17th December, 2001 in pursuance to an order dated 15th October, 2001. It was deposed by the plaintiff that the tenancy was terminated and with effect from 1st February, 2000 the possession of the defendant became unlawful. The plaintiff has claimed that he is entitled to arrears of rent up to 31st January, 2000 amounting to a sum of Rs.2,60,000/-. The plaintiff has deposed that he has received an amount of Rs.5,92,755/- from the defendant and that the balance amount of Rs.3, 32, 755/- of the defendant lying with him is adjustable against the damages for unlawful occupation of the suit premises by the defendant from 1st February, 2000. The plaintiff also deposed that he is entitled for damages with effect from 1st February, 2000 to 17th December,2001 at Rs.44 per sq. feet which comes to Rs.44,000/- per month for the tenanted portion comprising of 1000 sq.feet.

15. For arriving at the rate of Rs.44 per sq.feet the plaintiff relied on market rent valuations in Times of India dated 21st September, 2002

wherein a rent of Rs.75,000/- to Rs.1 lakh was stipulated for an area of 2200 sq.feet at Vasant Vihar which works out to be Rs.34 to Rs.45 per sq.feet. A copy of the newspaper article was annexed with the deposition and was marked as exhibit PW1/1. The plaintiff also produced a copy of Properties Guide, a monthly journal which had published a rental valuation of Rs.39/- per sq.feet at Vasant Vihar and marked it as exhibit PW1/2. The plaintiff also deposed that he had rented out his first floor premises with a total area of 2200 sq.feet for Rs.73,000/- per month with effect from 15th August, 2001 and on that basis, the rent works out to be Rs.33 per square feet. A copy of the agreement was also annexed and was marked as exhibit PW1/3. A copy of an agreement dated 16th August, 2002 in respect of premises No.F-6/8B, Vasant Vihar, New Delhi was also filed disclosing that the rent which was charged for the said property comprising of 3000 sq.feet was Rs.90,000/- per month. The plaintiff has worked out the average of the above mentioned rental valuations to be Rs.36 per sq.feet and has contended that as in February, 2000 i.e. on the expiry of the notice period the rent was 20% higher than the prevailing market rate of Rs.36 per sq.feet, the market rent and on the expiry of the notice period can be assumed to be Rs.44 per sq.feet.

16. The plaintiff deposed that he is entitled for damages from 1st February, 2000 to 17th December, 2001 at the rate of Rs.44 per sq.feet i.e. Rs.44, 000/- per month and he has claimed a total sum of

Rs.9,92,933/- as damages for 22 months 17 days. Since an amount of Rs.3,32,755/- of the defendant is lying with the plaintiff after adjusting the arrears of rent, the plaintiff has claimed a sum of Rs.6,60,176/-.

17. The plaintiff has also deposed that he is entitled for damages of Rs.4,52,640/- caused by the installation and running of a Heavy Industrial Generator Set on the terrace of the building by the defendant. A report of damages as assessed by one Mr.Kunal Mathur, Architect was also annexed with the deposition and was marked as Exhibit PW-2/1. Mr.Kunal Mathur was also examined as a witness by the plaintiff and his deposition dated 21st January, 2002 was tendered in evidence on 15th January, 2003 and exhibited as Exhibit P.2. He has deposed that he had visited the premises C-7/3, Vasant Vihar, New Delhi – 110 057, on the request of the plaintiff, to assess the damages caused to the building structure due to vibrations generated on account of installation, continuous running and operation of an industrial generator on the terrace of the building and that on the basis of the spot inspection he had quantified the damages to be Rs.4, 52, 640/-

18. Another witness of the plaintiff Mr.Raman Salwan who appeared as PW.3 deposed that he is a property dealer. He deposed that a licence agreement was executed between Mrs.Hima Balaram and Mr.Yuri Khomenko on 16th August, 2002 in respect of property bearing No.F-6/8B, Vasant Vihar, New Delhi for an area of 3000 sq.feet for a total

licence fee of Rs.90,000/- per month. The said witness also produced a copy of the licence agreement which was exhibited as exhibit PW-3/1 and he further deposed that the prevailing market rent in Vasant Vihar as in November, 2002 was Rs.30 per sq.feet.

19. The deposition of plaintiff and his witnesses have remained un-rebutted. They were not cross examined.

20. Issue No.1 is pertaining to whether the plaintiff is entitled for a decree of arrears of rent, if so, what amount?

According to the deposition of the plaintiff he was entitled for arrears of rent up to 31st January, 2000 at the rate of Rs.20,000/- per month. The plaintiff deposed that he is entitled for arrears of rent for 13 months amounting to Rs.2,60,000/- and since the defendant had already paid a sum of Rs.5,92,755/-, the plaintiff had received the entire arrears of rent up to 31st January, 2000. Consequently, the plaintiff is entitled for a sum of Rs.2,60,000/- which amount has already been paid by the defendant to the plaintiff and, therefore, the issue is decided accordingly.

21. Issue no.2 is regarding the entitlement of the plaintiff to recover damages and the amount of damages.

The plaintiff has deposed that he is entitled for damages at the rate of Rs.44 per sq.feet from 1st February, 2000 to 17th December,

2001. The plaintiff has claimed a total sum of Rs.9,92, 933/- at Rs.44 per sq.feet. Though the plaintiff has produced the agreement exhibited as PW.1/3 and the agreement dated 16th August, 2002 exhibited as PW.3/1, however, no cogent evidence has been led by the plaintiff to prove the same. Mere exhibition of the documents is not the proof of the same. Consequently on the basis of documents produced by the plaintiff, it cannot be held that the documents have been proved and on the basis of same, it will not be appropriate to take any inference in his favor. The deposition of the plaintiff that he is entitled for damages at the rate of Rs.44 per sq.feet, however, has remained unrebutted. The plaintiff has also produced another witness Sh.Raman Salwan, PW.3, a property dealer who has deposed that the rent prevailing in Vasant Vihar was Rs.30 per sq.feet. The testimony of the witness of the plaintiff also remains unrebutted. In the circumstances, the inevitable inference is that the plaintiff is entitled for damages from 1st February, 2000 to 17th December, 2001 at Rs.30 per sq.feet and not at Rs.44 per sq.feet as the witness of the plaintiff has deposed that the average rate was Rs.30 per sq.feet. Therefore, at the rate of Rs.30 per sq.feet the plaintiff shall be entitled for Rs.6,77,000/- as damages. The plaintiff has already admitted that after adjusting the arrears of rent he still has a sum of Rs.3,32,755/- of the defendant with him which is to be adjusted against the amount of damages. Therefore, after adjusting the said amount the plaintiff shall be entitled for Rs.3,44,245/- as damages.

22. The third issue is whether the plaintiff is entitled for pendente lite and future interest. Though the plaintiff has deposed that he is entitled for pendente lite and future interest at 24% per annum, however considering the facts and circumstances the plaintiff is awarded pendente lite and future interest at the rate of 8% per annum on the amounts decreed in his favor.

23. The issue No.4 is regarding whether the plaintiff is entitled for damages towards damage to the building. The plaintiff has examined Mr. Kunal Mathur, an architect who had inspected the premises of the plaintiff and who had assessed the damage caused to the building on account of installation and continuous running an operation of an industrial generator at the terrace of the building. He assessed the damage caused to the building at Rs.4,52,640/-. He gave a report which was proved by him and which was exhibited as Ex Pw 2/1. The testimony of the said witness remained un-rebutted. The plaintiff has also deposed that the damage was caused to his building on account of installation of an industrial generator by the defendant on the terrace of the building. The testimony of the plaintiff also remained un-rebutted. The plaintiff has thus been able to prove that installation and running of the industrial generator has caused damage to the building. The plaintiff, however, has claimed an amount of Rs.1,25,000/- and has

paid court fees on that. Though in the prayer the plaintiff has claimed damages of Rs. 6,00,000/-, however, in the facts and circumstances the plaintiff is only entitled for Rs.1,25,000/-. The issue is thus decided in favour of plaintiff awarding him damages of Rs.1,25,000/-

24. Issue No.5 is whether the plaintiff is liable to pay electricity charges. No evidence has been led either by the plaintiff or defendant on this issue. A copy of the order dated 19th December, 2002 passed in an appeal, being RFAOS 40/2001, reveals that no amount is due from the defendant to the electricity authority. Therefore, it is held that the plaintiff is not entitled for any other charges as electricity charges. The issue is decided accordingly.

25. In the circumstances, the suit of the plaintiff is decreed for a sum of Rs. 3,44,245/- as the arrears of damages up to 17th December, 2001 from 1st February, 2000 at the rate of Rs.30 per sq.foot after adjusting the amount of Rs. 3,32,755/- which amount the plaintiff already have and Rs.1,25,000/- as damage caused to the building of the plaintiff. Therefore, the suit is decreed for a sum of Rs. 4,69,245/- (Rupees four lakhs sixty nine thousand two hundred and forty five) along with interest at 8% per annum from the date of institution of the suit till the recovery of the decretal amount. The plaintiff shall, however be liable

to pay the balance ad valorem Court fees on the amount of Rs.344,245 the amount of damages for use and occupation of the premises up to 17th December, 2001 as the plaintiff has paid the court fees on Rs,1,50,000/- only. The suit is decreed accordingly. Decree sheet be drawn on plaintiff paying the balance Court fees within four weeks.

April 13, 2009.
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ANIL KUMAR J.