

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 264/2004 & IAs 1789-90/2004

Reserved on: 21st August 2009

Decision on: 23rd September 2009

SATISH KUMAR MEHTA Plaintiff
Through: Mr. Sanjiv Bahl with
Ms. Meghalee Barthakur, Mr. Rajiv Dubey
and Mr. Rajan Narain, Advocates.

versus

UNION OF INDIA & ANR. Defendants
Through: Mr. Rajesh Katyal, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

- | | |
|---|-----|
| 1. Whether reporters of the local newspapers
be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

JUDGMENT
23.09.2009

S. Muralidhar, J.

1. The Plaintiff is a lessee of property No.182 Jor Bagh, New Delhi (hereinafter referred to as 'suit property'). In this suit the Plaintiff inter alia seeks the mandatory injunction to quash the letter dated 17th December 2003 issued by the Defendant No.2, Land & Development Officer (L&DO) under the Ministry of Urban Development and Poverty Alleviation, Government of India calling upon the Plaintiff to pay a sum of Rs.48,57,924/- being the misuse charges and also file an undertaking, as a condition for regularization of the breaches and withdrawal of the order of re-entry. It also seeks the quashing of the letter dated 20th

February 2004, rejecting the request of the Plaintiff for reconsideration of the aforementioned terms of regularization of the breaches and rejecting the demand made in the letter dated 17th December 2003. The suit also seeks a decree to injunct the Defendants from dispossessing the Plaintiff from the suit property except in accordance with the due process of the law.

2. The suit property is a plot measuring 410.89 sq. yds. It was purchased as a leasehold property by the Plaintiff at an auction in 1963 for a consideration of Rs.83,500/-. It was thereafter built upon as a residential property. It is at present a double-storied building with a *barsati*. A deed of perpetual lease was executed on 18th October 1966 by the President of India in favour of the Plaintiff Satish Kumar Mehta whereby the suit property was given on perpetual lease to the Plaintiff for a period of ninety-nine years.

3. Clause III of the lease deed set out the obligations of the lessee. In terms of Clause III (7) the lessee would not, without the consent of the lessor permit the demised premises “to be used for any purpose other than that of a double storey residential building for a private dwelling house for one or two families in all...” Under Clause V of the said lease deed, upon any breach by the lessee of the covenants of the lease it would be lawful for the lessor to re-enter the suit property. The proviso to the said Clause entitled the lessor at its discretion to accept the payment of ground rent which shall be in arrears together with interest at the rate of six per cent per annum. Under Clause VI of the lease deed, no re-entry was to be

effected until the lessor served the lessee a notice in writing specifying the particular breach complained of and if the breach was capable of remedy, requiring the lessee to remedy such breach. The re-entry would be effected only if the lessee failed, within a reasonable time from the date of service of the notice to remedy the breach if it was capable of being remedied.

4. It is stated by the Plaintiff that the ground floor of the suit property was let out to M/s Organon India Ltd. for the purpose of residence of their Executives in the year 1971 for a monthly rent of Rs.1300/-. The tenant Organon India Ltd., misused the portion of the ground floor for some time but stopped this misuser upon protest of the Plaintiff. A substantial part of the misuse charges was paid to the Defendants. On the date of the filing of the present suit, a sum of Rs.191/- remained to be paid so far as the misuse of ground floor portion was concerned.

5. The first floor of the suit property was let out to M/s Consilium Pvt. Ltd. in August 1971 for the residential purpose of its Director. The first floor was vacated on 16th February 2002 at the conclusion of the eviction suit filed by the Plaintiff. It is maintained that the Plaintiff had never let out the suit premises for any purpose other than residential.

6. By a notice dated 30th September 1978, the L&DO, i.e., Defendant No.2 informed the Plaintiff that the occupant of the first floor was using the premises in contravention of Clause III (7) of the perpetual lease deed.

The plaintiff was also called upon to remedy the breaches failing which

action to re-enter the premises would be taken under Clause V of the lease deed. It is claimed by the Plaintiff that this notice was although replied to by him stating that the premises was not being used for any purpose other than residential, no other communication was received from the Defendants. Therefore, the Plaintiff presumed that the matter had been closed.

7. The Plaintiff claims that he was surprised to receive a notice dated 9th August 1983/28th September 1983 from the L&DO informing him that the suit property had been re-entered by the lessor on 9th June 1983. The Plaintiff was also called upon to hand over the peaceful possession of the premises on 24th August 1983. This notice was despatched by post only on 28th September 1983 and was received by the Plaintiff in the third week of October 1983.

8. On receipt of the aforementioned notice, the Plaintiff filed a suit for permanent injunction in the Court of the learned Senior Sub-Judge, Delhi in November 1983 praying for a decree of permanent injunction restraining the Defendants from taking action pursuant to the aforementioned letter. Status quo was ordered by the trial court. On 18th September 1992 the civil court recorded the statement of the counsel for the Defendants that the Defendants would not dispossess the Plaintiff without the due process of the law. In view of the said statement, the Plaintiff withdrew the suit on that date.

9. According to the Plaintiff from 1985 onwards he kept writing to the

Defendants asking for information on the terms and conditions and the amount to be paid to regularize the alleged misuse of the first floor of the suit property by M/s Consilium Pvt. Ltd. According to the Plaintiff, the Defendants did not bother to reply to these letters. It is maintained that none of the inspections of the suit property by the Defendants was done after a prior intimation or in the presence of the Plaintiff.

10. In July 1990, an eviction petition was filed under Section 14(1) b & k of the Delhi Rent Control Act by the Plaintiff against M/s Consilium Pvt. Ltd. This suit ultimately came to be decreed in 2002. It is stated that on 16th February 2002, the Plaintiff got the physical and vacant possession of the first floor of the suit premises. By a letter dated 29th July 2002, the Plaintiff informed the Defendants of the stoppage of the misuse and again asked for the terms and conditions for regularization of the breaches. It is thereafter that the letter dated 17th December 2003 was sent by the L&DO stating that a sum of Rs.48,57,924/- was to be paid by the Plaintiff as misuse charges and related interest, penalty and damages for regularization of the breaches and withdrawal of the re-entry.

11. The Plaintiff's case is that the misuse was by the tenant without the consent of the Plaintiff. At the highest the Plaintiff could have, after becoming aware of the misuse, initiated an eviction petition which in fact he did. Despite his repeated enquiries, the Defendants failed to inform the Plaintiff about the misuse charges to be paid. In the letter dated 17th December 2003, the Defendants mentioned the area being misused on the first floor as measuring 1771 sq. ft. for the period from 15th July 1977 to

28th July 1981. The misuse area was reduced to 722 sq. ft. from 29th July 1981 to 23rd April 1986. This area was further reduced to 629 sq. ft. with effect from 24th April 1986 to 21st September 1987 and to 618 sq. ft. with effect from 22nd September 1987 to 1st November 1994. However, thereafter the area was shown as having increased to 1771 sq. ft. with effect from 2nd November 1994 to 30th July 2002. This according to the Plaintiff was arbitrary and based on fictitious inspection reports.

12. Without prejudice to the above pleas the Plaintiff submits that he not liable to pay misuse charges for an area of 500 sq. ft. in terms of Office Order No.7/83 dated 20th March 1983. In terms thereof, rooms being used for professional work by occupants such as doctors, lawyers, architects, engineers, chartered accountants, business consultants and journalists would be exempted so long as the portion being used for professional work did not exceed 30% of the covered area or 500 sq. ft., whichever was less. The actual area of misuse would be the area of the bed-room and the drawing-dining room which worked out to 952 sq. ft., and therefore the entire first floor could not be treated as having been misused. After reducing the area of 500 sq. ft. the misuser charges could be levied only on 452 sq. ft.

13. A reference is made to the Clause 8 of the Office Order No.23/76 dated 31st March 1976 which states that in the event of the lessee or ex-lessee filing a suit for eviction against the defaulting tenant on receipt of the notice of misuse, and where the lessee is successful in evicting such tenant, then one per cent of the charges would be recovered as token

penalty in consultation with the Ministry of Finance. Inasmuch as the Plaintiff has in fact filed a suit which resulted in eviction of the tenant, the above office circular would be applicable. Further as per Clause 7 of the Office Order No.23/76 dated 31st March 1976 in cases where the charges on account of change in use were found to be more than the income of the lessee from the leased premises, the charges had to be reduced suitably. The total rent received by the Plaintiff for the period 1st August 1971 to 16th February 2002, i.e., the period of misuse, was Rs.4,41,264/-. The amount by way of damages could not therefore exceed the said amount. Without prejudice to his rights and contentions, it is submitted in para 26 of the plaint that the amount of misuse charges cannot exceed Rs.10,31,630/-.

14. The demand for a sum of Rs.55,866/- for the unauthorised area of 57 sq. ft. on the ground floor for the period from 24th April 1986 to 15th June 2003 and for an area of 194 sq. ft. for the period from 16th June 2003 to 31st March 2004 is contested by the Plaintiff. According to him, the structure was a temporary shed made of plastic sheets in the *verandah* on ground floor and that in terms of the Office Order No.7/83 dated 22nd March 1983, the covering of a *verandah* was permitted. The area was intended for protection against sun and rain and was removable as and when required. It was also not visible from the road.

15. In the plaint it was stated that since the Plaintiff required urgent orders, it was seeking exemption under Section 80(2) CPC from serving a prior notice on the Defendants under Section 80(1) CPC.

16. By an order dated 20th March 2004, this Court issued a temporary injunction restraining the Defendants from dispossessing the Plaintiff from the suit property subject to deposit of Rs.10 lakhs by the Plaintiff within three weeks. The said sum has since been deposited by the Plaintiff.

17. After completion of pleadings, issues were framed on 5th July 2006. The Plaintiff examined himself as PW1. On behalf of the Defendant No.1, one A.K. Aggarwal filed an affidavit by way of evidence. The recording of evidence was completed on 19th May 2009. The submissions on behalf of the Plaintiff were advanced by Mr.Sanjiv Bahl, learned Advocate and on behalf of the Defendants by Mr.Rajesh Katyal, learned Advocate.

Issue No.1 : Whether the Suit is not maintainable because of non-issuance of a Section 80 CPC Notice?

18. It is a fact that the Plaintiff filed an IA No.1790 of 2004 in these proceedings seeking exemption from issuing notice to the Defendants under Section 80(1) CPC. Despite notice in the said application being issued way back on 23rd March 2004, no reply thereto was filed by the Defendants. On a perusal of the contents of the said application, this Court is satisfied that relief in this suit was sought urgently and sufficient ground has been made out for waiving with the requirement of serving an advance notice under Section 80(2) CPC. The suit is therefore not bad for want of prior notice under Section 80 CPC. This issue is accordingly answered in favour of the Plaintiff and against the Defendants.

Issue No.2: *Whether the demand made by the Defendants towards the misuse charges, interest and penalty is bad in law and facts?*

19. The first question that requires to be answered is whether there was any misuse of the suit property. The case of the Plaintiff is that he instituted a suit for eviction of the tenant from the first floor of the premises on the ground of misuse. It is a different matter that the Plaintiff claims that the actual area of misuse was only 452 sq. ft. and that 500 sq. ft. was to be exempted as being permissible for the use of professional purposes. The Plaintiff submits that the Defendants have not proved their inspection reports as regards misuse and therefore he is entitled to succeed on this issue.

20. Ex.P2 is a letter dated 21st July 1987 written by the tenant of the premises Mr. M.L. Bhardwaj to the L&DO stating that the area of misuse is 615 sq. ft., which according to him was 115 sq. ft. in excess of the maximum permissible limit. The counsel for the Plaintiff submits that this is consistent with the observations in the inspection report dated 22nd September 1987 (Ex. DW1/6) which mentions only part of the first floor being used for office (non-residential) purposes by Mr. Bhardwaj. It also confirms the existence of an unauthorised construction in the courtyard on the ground floor. The next inspection report of 2nd November 1994 however indicates that the entire first floor is being misused as office of 'India Abroad' and 'National Press Agency'. It also speaks of the shed on the ground floor. The counsel for the Plaintiff points out that the Overseer on this document indicates that date as '2/11/84'. However, the signature of the Engineer on the right hand column indicates the date as 19th

December 1994. The noting on this file explains that this signature was appended after the date of the inspection on 2nd November 1994. It appears that the date given by the Overseer was really a mistake and that the inspection took place on 2nd November 1994.

21. Issue No.2 is answered by holding that the Defendants have been able to show that during the years in question there was misuse of the premises. Whether the demand raised was justified will be determined hereafter while considering the issues that follow.

Issue No. 6 *Whether the Defendants are estopped from raising the demand after the lapse of so many years?*

22. The plea of the Plaintiff that after the re-entry notice dated 9th August 1983/28th September 1983 (Ex.DW1/5), the Defendants did not take any action for many years and therefore were estopped from seeking to recover misuse charges, is without merit. The Plaintiff himself filed a suit for permanent injunction against the Defendants which was withdrawn by him upon the statement given by the Defendants that it would not dispossess the Plaintiff except in accordance with the due process of law. The said suit was dismissed as withdrawn on 18th September 1992. That in fact should be seen as a starting point for the Defendants to invoke the due process of law against the Plaintiff, and thereafter the misuser charges were calculated. Admittedly, the misuse continued till 16th February 2002 when the tenant was evicted. It cannot therefore be said that the Defendants are estopped from raising any demand for misuser charges.

23. The decisions in *Rattan Kaur v. DDA 145 (2007) DLT 283* and *Prof. Ram Prakash v. DDA 2007 RLR 565* cannot be said to be applicable to the facts of the instant case. The Plaintiff here has filed a suit for eviction of the tenant and has informed the Defendants that the misuse came to an end with the eviction of the tenant. Also if the Plaintiff seeks to take advantage of the Office Order No. 23/76 dated 31st March 1976 which restricts the penalty to one per cent then it cannot be heard to say that there was no misuse of the premises at all. Issue No.6 is accordingly answered against the Plaintiff and in favour of the Defendants.

Issue No. 3. *Whether the Plaintiff is entitled to the benefit of circular No.23/76 dated 31st March, 1976? If so to what extent?*

24. Clause 8 of Office Circular No.23/76 dated 31st March 1976 reads as under:

“In case the lessee/ex-lessee files a suit for eviction against defaulting tenant on receipt of our notice for misuse and are successful in evicting such tenants, one per cent of the charges will be recovered as token penalty in consultation with the Ministry of Works & Housing and Finance.”

25. By an Office Order No.8/1999 dated 6th April 1999 (Ex.DW1/1), the position in law was further clarified by the L&DO as under:-

“Office Order No.8/99

With reference to Clause 8 of the Office Order No.23/76 dated 31.3.1976 certain clarifications were sought from the Ministry of Urban Affairs & Employment.

2. Ministry of Urban Affairs & Employment in consultation with Finance Division & M/o Law decided

that “if any lessee, after receipt of our misuse notice files a suit for eviction against the defaulting tenants and succeeds in evicting such tenants, the lessee shall be liable to pay the misuse charges, irrespective of the fact that he/she got the tenant evicted through the Court. However, in such cases the penal charges shall be reduced to 1% instead of usual 10%.”

This issues with the approval of L&DO.”

26. The cumulative effect is that under the Office Circular No. 23/76 dated 31st March 1976 upon the lessee/ex-lessee filing a suit for eviction against the default tenant, one per cent of the misuser charges would be recovered as token penalty. In effect what is recoverable, would be the misuser charges and in addition one per cent as token penalty. Under the Office Order No.8/99 it was clarified that the penal charges would be reduced to one per cent instead of the usual ten per cent. It was, of course, clarified that the lessee shall be liable to pay the misuse charges. It is not as if for the first time on 6th April 1999, the L&DO was demanding the misuse charges in addition to the penalty. In terms of the Clause 10 of the Office Order No.23/76 dated 31st March 1976, penalty was payable as under:-

“10% Penalty

(i) Non-re-entered cases :-

10% penalty in addition to the additional charges for change of use will be charged up to the date of request for compromise plus 30 days thereafter, 10% penalty will not however, be charged on the damages for unauthorised construction.

(ii) Re-entered sites:-

10% penalty both in addition to the additional charges for

change to use and damages for unauthorised construction will be charged up to the date of withdrawal of re-entry plus 30 days thereafter.”

27. It is plain from the above clause that there are two kinds of cases. One is the non-re-entered cases and the other the re-entered ones. As far as the Plaintiff is concerned, in view of the order dated 18th September 1992 treating his suit as withdrawn, the case of the Plaintiff must be treated as non-re-entered case. Therefore, in terms of Clause 10, the Plaintiff would have to pay 10% penalty in addition to the additional charges for the sum misuse. This 10% penalty would stand reduced to one per cent if in terms of Clause 8, the ex-lessee or lessee files a suit for eviction. Under the subsequent circular of 8/1999, it was stated that the 10% penalty would be reduced to one per cent. The Circular 8/1999, therefore, is only clarificatory and does not reduce or increase an existing liability. Therefore, the reliance placed by the Plaintiff on the decision in ***Govind Das v. ITO (1976) 1 SCC 906*** is misconceived.

28. In the present case, it is held that the Plaintiff is entitled to the benefit of Clause 8 of the Circular No.23/1976 as further clarified by the Office Order No.8 of 1999. Reliance is placed on the decision in ***Birla Institute of Scientific Research v. Union of India 53 (1994) DLT 342*** and ***Justice Sisir Kumar Sen v Union of India 1996 (39) DRJ 358*** to contend that what would be recovered was only one per cent of the misuser charges. On a perusal of the judgment in ***Birla Institute of Scientific Research***, this Court does not find the said judgment to be holding that the 1%

penalty alone should be recovered and not the misuser charges itself. Likewise in *Sisir Kumar Sen*, again the question really was about the extent of penalty. This decision also does not hold that the need to pay the misuser charges is to be dispensed with.

29. As regards Clause 7 of the Office Order dated 31st March 1976, it reads as under:-

“7. In cases where the charges on account of change in use are found, beyond any doubt, to be more than the income of the lessee from the leased premises the charges will be reduced suitably according to the circumstances of each case in consultation with Ministry of Works and Housing and Finance. While doing so, the reasons for the inability on the part of the lessee to increase the income from the leased premises will, no doubt, have to be fully considered.”

30. The Plaintiff has no doubt pleaded that the total rent received from the premises during this period was Rs.4,41,264/- only. However, it cannot be said that the Plaintiff has shown sufficient reason or its inability to increase the income from the leased premises. Therefore, Defendants cannot be faulted in not extending the benefit of Clause 7 of Office Order dated 31st March 1976. The issue is answered accordingly.

Issue No. 4. *Whether the Plaintiff is entitled to the benefit of circular No.7/83 dated 22nd March, 1983? If so to what extent?*

Issue No. 5. *What was the actual area of alleged misuse on the first*

floor of the property no.182, Jorbagh, New Delhi?

31. The next question is whether the Plaintiff is entitled to the benefit of Circular No.7 of 1983 and if so to what extent? The plaintiff has urged that the misused area could be only 115 sq. ft after accounting for an area of 500 sq. ft. being the area of bed-room which was partly being misused for residential purposes. It is seen from the inspection report dated 2nd November 1994 that indeed the area misused is shown as part of the first floor and not the entire first floor. The area of misuse according to the letter dated 7th December 2003 stood reduced to 629 sq. ft., for the period 24th April 1986 to 21st September 1987 and further reduced to 618 sq. ft. with effect from 22nd September 1987 to 1st November 1994. It however increased to 1771 sq. ft. with effect from 2nd November 1994 to 30th July 2002. This appears to be based on the inspection report of 2nd November 1994 which indicates the area of misuse as the entire first floor. However, in the subsequent inspection report, it is stated that the misuse mentioned in the inspection report dated 2nd November 1994 has been removed with the eviction of the tenant. There is, therefore, merit in the contention of the Plaintiff that there is inconsistency in the area of misuse shown in the inspection reports.

32. After accounting for the benefit of Circular No.7/83, the Plaintiff has in para 26 of the plaint, stated that “the misuser charges which the Defendants have claimed in their letter dated 17th December 2003 in clause C (1) to (16) amounts to Rs.42,11,604/- according to the plaintiff this amount cannot exceed cannot exceed Rs. 10,31,630/-.” This has been

reiterated in para 22 of the affidavit dated 15th September 2006 filed by the Plaintiff by way of evidence. This amount appears to have been arrived at after applying the rates of misuse charges as demanded by the Defendant although on the reduced area. This Court is satisfied that the Plaintiff has been able to prove that the actual area of misuse is what has been claimed in the plaint on the basis of which the above figure of misuser charges for the first floor has been computed by the Plaintiff. The Defendants have not been able to prove to the contrary. Therefore, Rs. 10,31,630/- can be taken to be the amount payable by the Plaintiff for the misuser of the first floor , after accounting for the benefit of the Circular No.7/83. The further contention of the Plaintiff that he is only liable to pay a token penalty which is one per cent of the said amount is however not correct. He has to pay the misuser charges as well. One per cent of the admitted sum of misuser charges of Rs.10,31,630/- works out to Rs.10,316/-. Therefore, the total amount payable towards misuser charges for the first floor is Rs.10,31,630 + Rs.10,316/-. Issues 4 and 5 are answered accordingly.

Issue No.7. *Whether the Plaintiff is not liable to pay any charges for unauthorized area 57 sq.ft. on ground floor and 194 sq. ft. on the ground floor in view of office Order No.7/83 dated 22nd March, 1983?*

33. As regards the ground floor, the reliance is placed on the Office Order No.7/83 dated 22nd March 1983 under which covering of the verandah/enclosing of the verandah is permitted. According to the Defendants, however, the said covering of the verandah is really an unauthorised area and its extent has been increased according to the inspection report dated 16th June 2003. The Plaintiff has not been able to

CS (OS) No.264/2004 **Page 16 of 19**

prove by independent evidence the nature of the construction on the ground floor. Consequently, the plea of the Plaintiff in this behalf is negatived. The issue is answered against the Plaintiff and in favour of the Defendants. It is held that the Plaintiff has to pay the amount of Rs. 55,866/- as demanded in the impugned letter dated 17th December 2003 towards damage charges

Issue No. 9. *Whether the suit is not maintainable under Order 2 Rule 2 CPC?*

Issue No.10 *Whether the suit is barred by time?*

34. The Plaintiff no doubt earlier filed a civil suit seeking injunction with stood withdrawn on the assurance of the Defendants. However the cause of action for the present suit arose with the demand letter dated 17th December 2003. Therefore the suit is neither barred under Order 2 rule 2 CPC nor is it barred by limitation, as it has been filed on 18th March 2004. Both issues 9 and 10 are answered in the negative and in favour of the Plaintiff.

Issue No.8. *Whether the Plaintiff is entitled to have the breaches regularized and entitled to have the re-entry withdrawn on the payment of Rs.1,17,565/-?*

Issue No.11.*Whether the Plaintiff is entitled to the Decree of Permanent and Mandatory Injunction and Declarations as claimed in the suit?*

35. The amount payable by the Plaintiff as misuser charges for the first floor has been indicated in the discussion hereinbefore. Accordingly, the demand raised in the letter dated 17th December 2003 of the Defendants towards misuser charges payable by the Plaintiff in respect of the suit

property would stand modified as under:

- (i) Rs.10,31,630/- + Rs.10,316/- towards misuser charges for the first floor
- (ii) Rs.55,866/- for the misuse of the ground floor the Plaintiff.
- (iii) Other sums demanded in the letter dated 17th December 2003 i.e. the sums under Sl. Nos. 1 to 3, Ground Rent under Head 'A', and Misuse Charges at Ground Floor under Head 'B' to the extent admitted by the Plaintiff in para 25 of the plaint (and in para 21 of his affidavit dated 15th September 2006).

The above sums will be paid by the Plaintiff together with simple interest at 10% p.a. from 1st January 2004 till the date of payment. The interest rate is what is indicated in the calculations given by the Plaintiff himself. Since the demand raised is as of 17th December 2003, the interest payable will be calculated for the period 1st January 2004 till date of actual payment. Against the sum so payable, the Plaintiff is entitled to adjust the amount of Rs.10 lakhs deposited in this Court together with the interest accrued thereon, and after payment of the balance amount within a period of four weeks, the Plaintiff is entitled to have the breaches regularised.

36. The Plaintiff has already paid a sum of Rs.10,00,000/- which has been placed in a fixed deposit under the directions of this Court. The said sum together with the interest accrued thereon will be paid over to the Defendants by the Registry within four weeks to the Defendants upon proper verification and obtaining a receipt from a duly authorised person acting on their behalf. After adjusting the sum of Rs.10 lakhs already

deposited together with the interest accrued thereon, the balance of the amount as calculated in terms of para 35 of this judgment will be paid by the Plaintiff to the Defendants within a period of four weeks from today. Upon such payment being made, the breaches in relation to the suit property will be deemed to be regularised and the impugned notice of re-entry dated 17th December 2003 and the letter dated 20th February 2004 will stand withdrawn. A mandatory injunction conditional upon the compliance by the Plaintiff of the above directions will issue in the above terms. Issues 8 and 11 are answered accordingly.

37. The suit will be decreed in the above terms and the decree sheet will be drawn up accordingly. As regards the costs, the parties will bear their respective costs. The applications stand disposed of.

S. MURALIDHAR, J.

SEPTEMBER 23, 2009

ak