

DECIDED ON: 17.12.2009

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CS (OS) 207/2009

SH. KHAIRATI LAL BATRA & ORS.

..... Plaintiffs

Through: Mr. Dinesh Garg &
Ms. Rachna Aggarwal, Advocates.

versus

ADAM & EVE STUDIO PVT. LTD.

..... Defendant

Through: Mr. Tarun Sharma, Advocate.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

% Heard counsel for the parties. In the suit, plaintiff seeks decree for possession of the premises being ground floor bearing No. F-18, South Extension, Part-I, New Delhi-110049. It is contended that the premises were let out to the defendant for monthly rent of Rs.57,500/-. Learned counsel for the plaintiff relies upon a Lease Deed executed on 23.08.2007; the tenure of the lease was up to 31.05.2008. The terms of the lease have been set out in para 3 of the suit.

2. The plaintiff contends that the defendant, despite expiry of the lease, by efflux of time on 31.05.2008, failed to hand over possession of the premises to the plaintiff, and relies upon a legal

notice dated 25.06.2008 calling upon the defendant to vacate the premises.

3. In these circumstances, a decree for possession as well as Rs. 15,00,000/- being the arrears of the mesne profits/damages alleged for the period after expiry of the lease have been sought.

4. The defendant filed the belated written statement, which was permitted to be taken on the record on 13.04.2009. It was stated in para 8 that the rent had been paid up to June, 2008 and after which, the cheques presented to the plaintiff were not encashed.

5. The defendant does not deny the essential averments regarding the lease conditions and the expiration by efflux of time on 31.05.2008. It was contended by counsel that the defendant had in fact paid the rent up to the period January, 2009 in cash. It was submitted by the learned counsel for the defendant that the defendant (who is present in the Court) is willing to suffer a decree in so far as possession is concerned; he may be given sufficient time to vacate the premises. Counsel agreed upon, on instructions, that time to vacate the possession should be granted on or before 30th June, 2010. Learned counsel for the plaintiff stated that the claim for damages as alleged in the suit would not be pressed and that instead defendant be directed to pay the agreed rent, i.e. Rs.57,500/- per month, for the period from 01.07.2008 to November, 2009.

6. From the above discussion, it is evident that as the defendant is not disputing the essential averments in the plaint regarding the expiration of lease by efflux of time on 31.05.2008, the relief of decree of possession, can be granted.

7. In view of the submissions made in para (a) of the prayer, the suit is decreed so far as possession is concerned subject to the condition that in case the defendant does not vacate the premises on or before 30.06.2010, the decree would be executable, thereafter. The defendant is granted time to vacate the premises upto 30.06.2010, subject to the conditions set out hereafter.

8. As far as the claim for damages is concerned, in view of the submissions made, the only question that survives consideration is whether the defendant is correct in contending that he had paid rent up to January, 2009. The relevant part of the written statement, in para 8, pertaining to payment of rent reads as follows:-

“That the contents of para 8 of the suit are accepted to the extent that the defendant received a notice dated 25.06.2008. However, it is pertinent to mention here that the plaintiff is twisting facts to suit its position and is deliberately concealing the true facts and circumstances. In fact it was pursuant to the receipt of the said notice that the defendant approached the plaintiff, who assured the defendant that the lease would be further renewed at the continuing rent of Rs.57,500/-. The defendant on the basis of assurance given by the plaintiff paid the rent for the month of May and June in cash. It is pertinent to mention that the plaintiff also assured that the said rent paid in cash would be acknowledged in the new lease deed. As the plaintiff has categorically agreed to renew the lease again, pursuant to which the defendant paid the rent for the month of May & June. Hence, the question of mesne profits and vacation of the premises did not arise and the Defendant Company continued to carry on their institute pursuant to the assurance of the plaintiff. However, the intention of the plaintiff turned malafide after receiving the rent in cash and the plaintiff started making allegations to extract more money. Therefore, the contention of the plaintiff that the defendants did not pay the rent for the month of May and did not hand over the possession and is liable to pay the mesne profits is false and frivolous and is liable to be rejected. The plaintiff received the rent in cash and further refused to renew the said lease deed in violation of the understanding reached between the defendant and the plaintiff to give the premises on rent for at least five years. Also it is pertinent to mention here that after paying the rent for the month of May & June in cash, the Defendant Company also gave rent vide cheques to the plaintiff which was accepted by the plaintiff but has not been presented till date for encashment.”

9. In view of the above averments which are not being contradicted at any later pleadings, or documentary evidence on the record this Court is unable to accept the defendant's contention that the payment of rent had been made up to January, 2009. The plaintiff has agreed to waive the claim for damages beyond a sum of Rs.57,500/- per month. The plaintiff is thus entitled to a decree for Rs.9,77,500/- i.e. the arrears of rent, user charges/damages for the period July, 2008 to November, 2009. The defendant has paid the sum of Rs.57,500/- by way of pay order dated on

16.12.2009 (bearing No. 082747 drawn on Axis Bank, Rajouri Garden) towards December, 2009 user charges in the court today.

10. The defendant shall as a condition for continuing in the premises, ensure that at least 1/3rd of the said decretal amount is paid to the plaintiff within three months from today. This shall be over and above the monthly amount of Rs.57,500/- to be paid to the plaintiff as a condition for continuing in the premises till 30.06.2010. The said monthly amount shall be paid on or before 7th of every month. The defendant shall ensure that the balance be paid on or before 30.06.2010.

11. In the event of any default by the defendant, in the payment of amounts in terms of the above directions, the plaintiff shall be entitled to execute the decree and also entitled to interest @ 15% p.a on the balance unpaid amount. Accordingly, the suit is accordingly decreed in the above terms. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DECEMBER 17, 2009
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