

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

Date of Order: 30th October, 2009

CS(OS) No. 2262/2007

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30.10.2009

Shri Sidharth Kochhar

... Plaintiff

Through: Mr. D.K.Bhardwaj, Advocate

Versus

M/s Lakshmi Vatika Limited

... Defendant

Through: Nemo

JUSTICE SHIV NARAYAN DHINGRA

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

ORDER

Plaintiff being owner/landlord of premises no. 1010-1011, 10th Floor Narain Manzil, 23, Barakhamba Road, New Delhi measuring 1100 sq. feet had let out the same to defendant company at a monthly rent of Rs.1,21,000/- by way of a registered lease deed for a period of three years starting from 15th May, 2006 to 14th May, 2009. The monthly rent was payable in advance by 7th day of each English calendar month. The case of the plaintiff is that defendant company became habitual defaulter in payment of monthly rent and failed to pay monthly rent since February, 2007 till filing of the suit and thus became in arrears of rent since then. In terms of clause 5 of the lease deed the defendant was liable to pay a penalty of Rs.500/- per day for late payment of rent. The plaintiff has stated that defendant was liable to pay a total amount of Rs.13,50,000/- on account of arrears of rent and penalty. It is also submitted that two cheques of the defendant company towards arrears of rent drawn on UTI Bank Ltd. also got dishonoured on account of insufficient funds. The plaintiff on finding that the terms and conditions of the lease deed had been grossly violated by defendant, served a legal notice terminating the tenancy of the defendant and asked the

defendant to handover the possession of the premises. However, despite notice dated 27/31.8.2007 defendant failed to handover the possession of the premises and failed to pay the arrears of rent hence the suit claiming possession, arrears of rent and penalty for delayed payment. A prayer is also made for passing of decree for future damages/mesne profits at the admitted rate of rent @ Rs.1,21,000/- p.m. from the date of decree till the possession is handed over and pendent lite and future interest @ 24% from the date of filing of this suit till realization.

2. Notice of the suit was served upon the defendant with great efforts. As initial effort to serve the defendant through ordinary process and pasting etc. did not turn fruitful. The defendant had kept the premises locked and the report of AD, shows that it had left the premises without leaving the address. Ultimately, the defendant was served through publication and thereafter the defendant put appearance. It only shows that defendant was keeping a watch on the proceedings and ultimately appeared after the defendant was served through publication. Time was granted to defendant to file WS and reply to the interim applications, still WS was not filed nor was the reply to the applications filed. Adjournments were sought and ultimately the defendant stopped putting appearance after few appearances and was proceeded ex parte and ex parte evidence of plaintiff was recorded.

3. Plaintiff examined PW-1 Rajan Kochhar, attorney of the plaintiff who proved his authority to appear on behalf of plaintiff as PW-1/1. He proved the lease deed executed between plaintiff and defendant as Exh. PW-1/3 and the copy of notice terminating tenancy of the defendant as Exh. PW-1/6, the registered postal receipt as Exh. PW-1/7, UPC receipt as Exh. PW-1/8 and courier receipt as PW-1/9, copy showing that the notice was duly received by defendant company as Exh. PW-1/10. He also proved two of the cheques of defendant company which got dishonoured for insufficient funds as Exh. PW1/4 & PW-1/5. The witness of the plaintiff also testified that the defendant had not paid rent from February, 2007 till date and was in arrears of rent since February, 2007.

4. The lease deed between plaintiff and defendant was for a period of three years which came to an end on 14th May, 2009 thus the lease has expired by efflux of time and even otherwise the lease was terminated by serving a valid notice thus, the plaintiff is entitled to a decree of possession of the premises.

5. It has been proved by the plaintiff that defendant has not paid rent as reserved under the lease deed since February, 2007. The rent was reserved @ Rs.1,21,000/- p.m. the plaintiff is thus entitled to a decree for arrears of rent from February, 2007 till the filing of the suit and thereafter till passing of this decree. The plaintiff has claimed mesne profits at the rate of same rate at which the premises was let out. The premises is situated in Connaught Place area and after May, 2009 when the lease came to an end, the rent in the area has not fallen down and Court can take safety presume that the market rent of the premises would not be less than the rate at which the premises was let out to the defendant. I, therefore consider that plaintiff was entitled to mesne profits from the date of the decree till recovery of possession @ Rs.1,21,000/- p.m. The plaintiff has been deprived of the monthly rent from February, 2007. Though a penalty of Rs.500/- per day is prescribed in the lease deed but, I consider that it would be appropriate that a reasonable rate of interest is allowed to the plaintiff on delayed payment of rent. I consider that 10% p.a. simple interest would meet the ends of justice. I, therefore allow 10% p.a. simple interest on arrears of rent on each month from February, 2007 till the passing of decree. Plaintiff is entitled to costs of the suit.

6. The suit of the plaintiff is thus decreed in following terms:

- 1) A decree of possession in respect of premises no. 1010-1011, 10th Floor Narain Manzil, 23, Barakhamba Road, New Delhi is passed in favour of the plaintiff and against the defendant.
- 2) A decree for rent/arrears of rent, mesne profits @ Rs.1,21,000/- p.m. from February, 2007 till the recovery of possession of the premises is passed.

- 3) The plaintiff shall be entitled to 10 % p.a. simple interest on arrears of rent/mesne profits.
- 4) Costs of the suit and litigation expenses.

A certificate of costs be filed within two weeks.

Decree sheet be prepared accordingly.

October 30, 2009
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SHIV NARAYAN DHINGRA, J.