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

Date of decision: 05.02.2010

+ CS(OS) 101/2009

M/S MEXIT (INDIA) PRIVATE LTD Plaintiff
Through : Mr. Dinesh Garg, Advocate.

versus

M/S LIFE BUSINESS PROJECTS PRIVATE LTD Defendant
Through : Nemo.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The plaintiff seeks possession of suit premises, being industrial built-up property, F-1, Block B-1 Extension, Mohan Cooperative Industrial Area, Mathura Road, New Delhi, which includes a basement of 8000 sq. feet; ground floor of identical area and first floor of 4000 sq. feet (hereafter collectively called “suit property”).

2. The plaintiff also seeks a decree for Rs.1,20,00,000/- , on account of arrears of rent for the period 01.02.2008 to 30.11.2008 @ Rs.8 lakhs per month as well as *mesne profits* from December till the date of filing the suit @ Rs. 20 lakhs per month, amounting to Rs.30,00,000/- and Rs.10,00,000/-, on account of alleged interest. A further decree of *pendente lite* and future *mesne profits* @ Rs.30,00,000/- per month and interest is sought. The plaintiff lastly seeks mandatory injunction against the defendant to direct it to issue TDS Certificate for the amounts deducted towards the tax paid till 31.01.2008 and also direct it to pay arrears of electricity

charges.

3. The suit allegations are that the plaintiff, owner of the suit premises which are set-out in a site plan, Ex.PW-1/3, let them out to the defendant on a monthly rent of Rs.8,00,000/- with effect from 10.08.2007. The terms of the lease were reduced into writing on that day; it was agreed that the lease period was to be 34 months. The plaintiff states that the lease agreement was not executed on Stamp paper and is also unregistered. Nevertheless, the plaintiff has produced a copy of the same, which is exhibited as PW-1/4. The plaintiff contends that on account of the arrangement being the result of an unregistered and unstamped agreement, it has to be treated as a monthly tenancy. The plaintiff further states that the defendant occupied the premises and paid rent for the period August 2007 to January 2008 after withholding the Tax Deduction at Source (TDS). Yet a certificate to such effect has not been furnished.

4. The plaintiff submits that the defendant had issued two cheques, drawn on State Bank, dated 07.02.2008 and 07.03.2008, towards rent after TDS for the months of February and March 2008. The cheques were, however, dishonored or returned unpaid with the remarks "Account Closed". The said two cheques with the original Bank Return Memos have been produced as Ex.PW-1/5 to PW-1/8. The plaintiff contends having issued a legal notice on 10.07.2008, for the cheques returned, calling upon the defendant to pay the amounts in terms of Sections 138 to 141 of the Negotiable Instruments Act, with interest. Copies of the notice and the original postal receipts have been marked as Ex. PW-1/9 and Ex.PW-1/10. The plaintiff submits that on account of default in payment of rent and also because of the dishonor of cheques, the tenancy was terminated by legal notice dated 14.05.2008, with effect from 10.03.2008, giving clear six months' notice, by treating the arrangement as oral or annual tenancy.

5. The original postal receipts as well as copy of the legal notice have been marked as Ex.PW-1/11 to Ex.PW-1/13. It is submitted that besides terminating the arrangement with effect from 30.11.2008, the defendant was called upon to pay the arrears of rent and further issue a TDS Certificate. The plaintiff submits that the defendant was in arrears of electricity charge, and relies upon three electricity bills which are marked as Ex.PW-1/14 collectively. The plaintiff claims that the continued occupation of the suit premises, despite receipt of the notice – which

can be presumed on account of the lapse of more than 30 days, entitles it to claim Rs.20,00,000/- per month as *mesne profits*. The plaintiff justifies this by stating that the market rent for the premises was Rs.100/- per square feet per month and that thereafter this became Rs.150/- per square feet per month. It is claimed that the defendant's possession is unauthorized, with effect from 01.12.2008. On these allegations, the plaintiff seeks reliefs in the suit.

6. The suit was registered and the summons issued on 19.01.2009. It was mentioned on 13.04.2009 that possession of the ground floor of the premises, measuring 8000 sq. feet had been handed back by the defendant, in the meanwhile. The Court by its order dated 03.07.2009 noticed that despite several attempts, the defendant could not be served through the normal process. In the circumstances, substituted service through publication in the newspaper *Statesman* was directed, returnable on 22.10.2009. Since on that date, the plaintiff proved publication, despite which the defendant did not appear in the proceedings, the Court set them down *ex-parte*. The plaintiff filed the affidavit evidence of Sh. Kailash Chandra Goyal, who identified it; the affidavit was marked as Ex.PW-1/A on 20.01.2010. The matter has been thereafter listed for orders.

7. The Court has considered the materials on record. It is evident that the lease agreement, Ex.PW-1/4, mentioned the arrangement as continuing for 34 months, commencing from 10.08.2007. Yet the same is executed on a Rs.50 Stamp Paper and is not a registered instrument. Therefore, the document is inadmissible and the tenancy consequently has to be treated as one existing on a month-to-month basis, by reason of Section 107 of the Transfer of Property Act, 1882. Ex.PW-1/5 and Ex.PW-1/7 are the two cheques issued by the defendant, returned by the bank through memos, Ex.PW-16 and Ex.PW-1/8 on the ground that the account had been closed. The legal notice dated 14.05.2008 (Ex.PW-1/11) clearly terminates the arrangement with effect from 30.11.2008, granting more than six months to the defendant, to vacate the premises. The plaintiff dispatched the same; the postal receipts for the Regd. Post A.D. are marked as Ex.PW-1/12. The plaintiff has also exhibited copies of three bills issued by the BSES Rajdhani Power Limited for Rs.60,820/-, Rs.2,17,100/- and Rs.53,160, which was payable by the defendant.

8. The record discloses that the defendant had handed-over the ground floor of the premises to the plaintiff. In the circumstances, the plaintiff has, in the opinion of the Court, proved entitlement to decree for possession of the premises. So far as *mesne profits* are concerned, apart from blandly averring that the plaintiff is entitled to such damages quantified at Rs.20 lakhs per month till date of filing of suit and for Rs.30 lakhs (calculated at Rs.150/- per sq. feet) thereafter, there is no material or evidence in that regard. In these circumstances, it is held that the plaintiff is entitled to a decree at the same time as the parties had agreed and is also entitled to damages on account of default in rent at the agreed rate, i.e. Rs.8,00,000/- per month. Since the defendant vacated part of the premises sometime in April 2009, the plaintiff would be entitled to only proportional amounts for the period April 2009 till date. The plaintiff has not shown how it is entitled to any interest on the amounts claimed for which entitlement has been determined by this Court.

9. In view of the above discussion, let a decree for possession of the suit premises - industrial built-up property, F-1, Block B-1 Extension, Mohan Cooperative Industrial Area, Mathura Road, New Delhi, which includes a basement of 8000 sq. feet; ground floor of identical area and first floor of 4000 sq. feet be drawn. The court directs that a decree for the sum of Rs.1,52,00,000/- (Rupees One Crore Fifty Two Lakhs only) be drawn; the claim for mandatory injunction to direct the defendant to clear the outstanding bills of BSES Rajdhani (i.e. Rs. Rs.60,820/-, Rs.2,17,100/- and Rs.53,160) too has to succeed, and a decree to such effect, shall also be drawn.

10. CS (OS) 101/2009 is decreed in the above terms with costs; the counsel's fee is quantified at Rs.50,000/-.

**S. RAVINDRA BHAT
(JUDGE)**

**FEBRUARY 05, 2010
'ajk'**