

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 25.11.2010

CS(OS) No. 1181/1998

KARAN PROMOTERS (P) LTD. & ANR.

..... PLAINTIFFS

Vs

ERICSSON COMMUNICATIONS PVT. LTD.

..... DEFENDANT

Advocates who appeared in this case:

For the Plaintiffs : Mr Harish Malhotra, Sr. Advocate with Mr Rajender Agarwal, Advocate
For the Defendant: Mr D.R. Bhatia, Advocate

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

RAJIV SHAKDHER, J

1. This is a suit filed for recovery of a sum of Rs 1,13,95,591/- alongwith pendente lite future interest at the rate of 24% per annum on the decretal amount from the date of institution of the suit till its realization. The recovery of monies sought by the plaintiff is towards brokerage/ commission. In the background of the above, the plaintiff set up the following case.

2. Plaintiff no. 1 is a company engaged in the business of liaison and property consultancy. Plaintiff no. 2 is a director in plaintiff no. 1 company. It is averred that plaintiff no. 1, who was earlier carrying on the business, had transferred its business to plaintiff no. 2 company. It is further averred that the defendant was interested in acquiring on lease a property in south Delhi admeasuring approximately 70,000 sq. ft. It is the case of the plaintiffs that since they were able to identify a place, which was suitable for the requirements of the defendant, they sent a proposal to the defendant vide

communication dated 02.01.1996. In the proposal it was indicated by plaintiff no. 2 that the approximate area of 70,000 sq. ft. spread over seven (7) floors in the building known as Great Indian Plaza Building situate at 2A, Bhikaji Cama Place, New Delhi was available at the rate of Rs. 200 per sq. ft. including maintenance charges. This building was owned by Great Eastern Shipping Company Ltd. (hereinafter referred to as 'GESCO'). The other terms for acquiring the lease being: payment of a security deposit equivalent to two years and payment of advance rent equivalent to one year. The lease was available for a period of nine years with an increase in rental by 25% after every three years. It is averred that at the time of making the proposal plaintiff no. 2 made it clear that the commission chargeable would be equivalent to one month's rent.

3. According to the plaintiffs, the defendant vide communication dated 16.02.1996 sent out a counter-offer whereby it was communicated to the plaintiff that they would agree to a rent of Rs 150 per sq. ft. in addition to its liability to pay maintenance, ground rent and taxes separately. It was, according to the plaintiff, also indicated to the plaintiff that rent would be paid only for 65,000 sq. ft. as the area available for utilization was only 65,000 sq. ft. Resultantly, a Memorandum of Understanding dated 15.05.1996 (hereinafter referred to as 'MOU') was executed between the defendant and the GESCO in respect of first, second and third floors in the Great Indian Plaza Building at a monthly rent of Rs 59,37,447.45/-. As per the MOU rent was to start w.e.f. 01.07.1996.

4. The plaintiffs aver that after the execution of the aforesaid MOU they made demands for payment of at least 25% of the brokerage/ commission. These demands were not met by the defendant. According to the plaintiff since the cheque was not prepared in the name of the plaintiff no. 1, plaintiff no. 2 was advised to collect the cheque after one week. Finally on 04.09.1996 a lease deed was executed between GESCO and the defendant, which was duly registered on 13.09.1996. The plaintiffs aver that on 12.09.1996 it had written to the defendant informing it that the cheque for the brokerage/ commission should be issued in favour of plaintiff no. 1 as the business now stood converted, to a corporate form. There is an averment to the effect that several

letters were written by the plaintiffs demanding the commission, which was postponed by the defendant on one pretext or the other. Finally, the defendant by way of a letter dated 21.04.1997, wherein, according to the plaintiff, the defendant took the false plea that the plaintiff was not entitled to a brokerage/ commission of more than 1% of the annual rent. This stand of the defendant was refuted by the plaintiff vide letter dated 30.04.1997. By this letter the plaintiff demanded commission not only in respect of first, second and third floor of the Great Indian Plaza Building but also for premises situate on the fourth and sixth floor of the said building. The total amount demanded was a sum of Rs 85,94,924/20/-. The plaintiffs claim that thereafter several letters were written by them. By a letter dated 05.12.1997 the defendant once again refuted the claim of the plaintiffs. Plaintiffs finally issued a legal notice dated 10.10.1997. It is important to note that the plaintiffs have averred that while issuing the said legal notice they had sought payment of commission only for the first, second and third floor of the Great Indian Plaza Building, and inadvertently they had failed to mention the fourth and sixth floor which had also fallen due.

5. In these circumstances, the plaintiff has sought recovery of brokerage/ commission equivalent to one month rent for the first, second, third, fourth and sixth floor of the space let out to the defendant in Great Indian Plaza Building along with interest at the rate of 24% per annum. The plaintiff has based his claim both on agreement as well as the practice prevailing in the market, which the plaintiffs claim is to charge one month rent by way of commission.

6. The defendant has refuted the claim set up by the plaintiff. The defendant has taken a stand that, as a matter of fact, the services, which the plaintiff is required to render in its capacity as the broker, were not rendered. The defendant has pleaded that inter alia plaintiff no. 2 did not supply copies of the title documents and completion certificates in respect of the buildings, which, at the relevant point of time, was under construction. Resultantly, the defendant's stand is that the plaintiffs are not entitled to any commission. The defendant has, as a matter of fact, also pleaded that it has no

privity of contract with plaintiff no. 1 and it recognizes only plaintiff no. 2. Defendant has, however, stated what was agreed to with the plaintiffs was brokerage/ commission equivalent to 1% of the annual rent and that too only in respect of the first, second and third floor of the Great Indian Plaza Building. The defendant has denied that it had approached plaintiff no. 2. The stand taken by the defendant is that, defendant was introduced to plaintiff no. 1 by GESCO. It is the stand of the defendant that since the rents involved in leasing the space in issue were substantial, the general market practice is to charge a commission equivalent to 1% of the annual rent, which is also, according to them, in line with the general market practice. Importantly, in the written statement the defendant stated that even though no service had been rendered by the plaintiffs, they offered to pay the brokerage/ commission equivalent to 1% of the annual rent as it was agreed to by them. It has been further averred that the plaintiff resorted to intimidation and held out threats to its officers, which is why, at one stage they had offered to pay brokerage/ commission equivalent to 15 days rent; since the plaintiff refused to accept the cheque, the offer stood withdrawn. In nutshell the defendant has denied that any sums, as alleged or at all, are payable to the plaintiffs either towards the principal sum or interest, as demanded. There is a specific denial in respect of the alleged claim for commission in relation to fourth and sixth floors of the Great Indian Plaza Building leased out to the defendant.

7. In the replication the plaintiff has reiterated the stand taken in the plaint. The plaintiff, as a matter of fact, submitted that since there is an acceptance by the defendant that brokerage/ commission equivalent to 1% of the annual rent was payable to it, the defendant should be called upon by the court to pay at least this amount in exercise of its powers under Order 12 Rule 6 of the Code of Civil Procedure, 1909 (hereinafter referred to as 'CPC'). A similar averment is also made in the replication with respect to the averments made in the written statement qua payment of rent equivalent to 15 days.

8. In the background of the pleadings and documents filed by the parties, the court framed the following issues vide its order dated 11.09.2002:

- (i) *Whether there was any privity of contract between the plaintiff no. 1 and defendant? OPP*
- (ii) *Whether there was any contract between plaintiff no. 2 and defendant, if so, to what effect? OPP*
- (iii) *Whether plaintiff provided any services to the defendant, if so, to what effect? OPP*
- (iv) *Whether plaintiff is entitled to the commission/ brokerage from the defendant, as being claimed in para 19 of the plaint? OPP*
- (v) *Whether the plaintiff is entitled to the interest on the same and at what rate of interest? OPP*
- (vi) *Relief.*

9. Based on the pleadings, parties proceeded to lead evidence. Both the plaintiffs and the defendant examined one witness each. The plaintiff no. 2 Mr Vinod Gupta (PW1), who was the sole witness, in his examination-in-chief, replicated the stand taken in the plaint. Similarly, the defendant's witness one Mr Swapan Ganguly, made assertions in consonance with the stand in the pleadings.

10. In the cross-examination PW1 stated that till January, 1996 he was working as an officer in Punjab National Bank. He further submitted that he started his business of property dealership only from January, 1996. He further deposed that he did not have any document to establish the transfer of his individual business to plaintiff no 1. PW1 also alluded to the effect that even though in his chief he had stated that a letter dated 02.01.1996 was sent to the defendant the same had not been placed on record, though he had a copy of the same. PW1, however, accepted the fact that there was no agreement in writing with the defendant in respect of payment of commission/ brokerage equivalent to one month's rent. He, however, volunteered that the agreement with the defendant in that respect was verbal. The suggestion that PW1 had not given any proposal to the defendant that he would charge commission equivalent to one month's rent was refuted by him. He also refuted the suggestion that GESCO introduced him to the defendant. PW1 further refuted the suggestion that the terms of the lease pertaining to the first, second and third floor in the Great Indian Plaza Building was settled between GESCO and the defendant

and that he had no role to play in the finalization of the lease. To a specific question that the words “in the first instance only” did not find a mention in the MOU (Ex. PW1/4), the PW1 deposed that he had no knowledge whether these words did or did not find mention there. He accepted the fact that defendant did not ever promise to pay one month’s rent as commission. To another pointed question as to whether there was any agreement with the defendant to pay the amount as claimed in paragraph 12 of the affidavit, the answer of P1 was that there was no agreement whereby the defendant had agreed to pay any amount, as claimed in paragraph 12 of his affidavit of evidence, that is, the examination-in-chief nor, was there any document on record which would show that defendant has been postponing the issue on the ground that the amount (complete amount) would be paid after the execution of the lease deed. As regards as to whether letter dated 24.05.1996 (Ex. PW1/5) (a carbon copy of the original was filed by the plaintiff) was delivered to the defendant; PW1 deposed that the letter was hand delivered and hence, he was unable to show any proof of dispatch. He also accepted the fact that the letter did not bear an acknowledgment or stamp as it was delivered at the reception, and that appropriate noting have been made in the defendant’s register. Similarly, in relation to two other letters dated 30.05.1997 (Ex. PW1/15) and 16.07.1997 (Ex. PW1/16) PW1 stated that these letters were sent by fax as well as hand delivered, and that he did not have any document on record to prove that these letters were sent by fax. PW1 accepted the fact that his letter dated 16.09.1997 (Ex. PW1/16) was replied to by the defendant vide letter dated 03.10.1997 (mark A-1); a fact which was acknowledged by the plaintiff, in the letter dated 26.10.1997. With respect to a specific question as to whether there was any agreement in writing or otherwise in relation to lease of fourth and sixth floors, PW1 alluded to two documents dated 16.02.1996 (Ex. PW1/3) and 20.03.1996 (Ex. PW1/F). PW1 went on to say that there was no other document pertaining to the fourth and sixth floors apart from the aforementioned two letters. PW1 accepted the fact that the owners of the fourth and sixth floor are companies by the name of Living Media and Punj Lloyd respectively. He went on to accept that even though he had sought payment

of commission from the said owners, he had not as yet received the commission. To a specific question as to whether he had raised bills for services rendered for leasing out the fourth and sixth floors to the defendant, on Living Media and Punj Lloyd, PW1 stated that he had not raised the bill. The PW1 volunteered that he had filed a document which was a bill raised on GESCO, and that he had instituted a case against GESCO in that regard. To an another question as to why the legal notice issued by him did not refer to services rendered by him qua fourth and sixth floor or made a demand in respect of the same, PW1 simply stated that this fact was a matter of record. The Witness further went on to say that he did not remember whether his legal notice dated 10.10.1997 (Ex. PW1/G) was replied to by the defendant's counsel through its letters dated 04.11.1997 (Mark B1) and 18.12.1997 (Mark C1). PW1 when confronted with the question that GESCO had also conveyed that there was no agreement for payment of one month's rent qua first, second and third floor of the Great Indian Plaza Building; responded by stating that he did not recollect as to any such aspect being conveyed by GESCO to him. He went on to say that nevertheless he was paid one month's brokerage by GESCO. To a specific question as to whether he was aware as to when lease deed(s) was executed in respect of fourth and sixth floors of the Great Indian Plaza Building, PW1 Stated that though he did not recollect the dates when the lease deed was executed, he knew about its execution. To a specific question as to whether he had filed a similar suit against another company by the name of Motorola; he accepted that fact and further volunteered that it was not relevant. PW1 accepted the fact that even though he had filed his balance sheets with the Registrar of Companies as well as the Income Tax Department, he had not shown the claim, which he had made in the instant suit against the defendant, in his balance sheets. He denied that he had threatened or intimidated the officers of the defendant. The witness, however, accepted the fact that he had received commission equivalent to one (1%) of the annual rent amounting to Rs 7,12,494/- pursuant to orders of the court. He denied the fact that letters sent to him by the defendant were received

back with endorsement “undelivered” or that he had failed to inform the defendant of change of his address.

11. In so far as DW1 was concerned, in his cross-examination, he accepted the fact that he had met plaintiff no. 2 in 1996 in his office at Hauz Khas and that Mr Gupta, plaintiff no. 2 accompanied the officials of GESCO. He stated that he did not remember the exact date of the meeting which included one official from GESCO perhaps one Col. Sodhi and two other officials of the defendant, including himself, Mr Tommy Eriksson and Mr Ulf Helgesson in the month of September-October, 1996. DW1 accepted the fact that he had joined the company on 02.09.1996. He asserted that in September, 1996 the parties were in the process of finalizing the terms of the lease. He stated that he did not remember any Memorandum of Understanding and Lease having been executed between GESCO and the defendant in August, 1996. The witness seems to recollect that the lease was executed in 1997. To a question as to whether the company had replied to letters dated 23.09.1996 (Ex. PW1/6) and 25.09.1996 (Ex. PW1/7); DW1 stated that the company might have replied to the said letters. His answer to the other letters put before him was the same. DW1, in respect of the correspondences, took the stand that whatever letters were received by the defendant company were replied to by the defendant company and to the best of his knowledge, they were on record. He specifically denied that the plaintiff had agreed to payment of commission. He went onto say that the commission he had agreed to pay was 1% in 1997-1998 to the plaintiff and the reason for the same was that the officials were being threatened and letters were being written to their headquarters situate at Sweden and their Embassy in Delhi; and therefore, in these circumstances, the witness stated that they decided to pay commission at the rate of 1% to Plaintiff no. 2. As regard the offer by the defendant to pay 15 days' rent as commission, DW1 deposed that in order to close the issue, which was becoming a nuisance and, to stop the threats which were being received by them, they had agreed to pay 15 days' rent to Plaintiff no. 2. To a question whether this was a collective decision of the defendant the witness said that it was a collective decision. He went on to elaborate that the

CS(OS) 1181/1998

decision was taken by his Manager at the relevant point of time, namely, Mr Ulf Hellgesson and another officer by the name of Tommy Eriksson. To another specific question as to whether any documents in that regard have been put on record, the witness said that whatever documents were available have already been placed on record. His answer with respect to the decision about the commission equivalent to 1% annual rent was somewhat similar. DW1 insisted that Plaintiff No. 2 was introduced to them by the landlord for the purposes of enabling them to secure the Building Completion Certificate for the defendant to decide as regards the suitability of the premises in issue. To a specific question as to whether there was any oral understanding of any remuneration to be paid; DW1 denied any such oral understanding. To a question as to whether he was present at the time of execution of the lease; the witness answered in the negative. The witness went on to say that to the best of his knowledge the lease was executed by Mr Tommy Eriksson on behalf of the defendant and Col. Sodhi on behalf of the GESCO. When shown the signatures of Mr Vivek Gupta, Plaintiff no. 2, DW1 said that he recognized the name but did not recognize the signatures. To a specific question as to whether the defendant had agreed to pay one month's rent as commission, the witness replied in the negative. Similarly, to a question as to whether one month's rent, as commission for the fourth and sixth floor in the said building, i.e., Great Indian Plaza Building was agreed to be paid, the witness's answer was also in the negative. DW1 also adverted to the effect that they had offered to pay 15 days' commission to buy peace with Plaintiff no. 2 as he was threatening the defendant's officials and becoming a nuisance.

12. In support of their respective cases, arguments were addressed by Mr Malhotra, learned senior counsel, on behalf of the plaintiff, while submissions were made on behalf of the defendant by Mr Bhatia. Mr Malhotra, apart from stand taken in the pleadings, submitted that the plaintiffs were instrumental in securing for the defendant a lease in respect of the first, second, third, fourth and sixth floors in Great Indian Plaza Building based on an agreement that the plaintiffs will be paid brokerage/commission equivalent to one month's rent. He asserted that the fact that the plaintiffs had rendered relevant

services as was evident from the documents as well as the defendant's own stand. In this regard he referred to the lease deed dated 04.09.1996 (Ex. DW1/P), wherein at point 'F' under the caption witnesses the signatures of plaintiff no. 2 were appended. It was the contention of Mr Malhotra that very fact that plaintiff no. 2 was the witness to the lease deed would show that services had been rendered by plaintiff no. 2. Mr Malhotra conceded that there was no written agreement with the defendant in so far as payment of commission/brokerage was concerned. He submitted that an oral understanding to that effect was arrived at with the defendant. He sought to take support for this stand advanced by him on behalf of the plaintiffs, based on the several letters which the plaintiffs had written to the defendant; these being: letters dated 24.05.1996 (Ex. PW1/5), 23.09.1996 (Ex. PW1/6), 25.09.1996 (Ex. PW1/7), 19.11.1996 (Ex. PW1/8), 24.12.1996 (Ex. PW1/9), 11.02.1997 (Ex. PW1/10), 14.03.1997 (Ex. PW1/11), 26.03.1997 (Ex. PW1/12), 30.04.1997 (Ex. PW1/14), 30.05.1997 (Ex. PW1/15), 16.07.1997 (Ex. PW1/16), 26.08.1997 (Ex. PW1/18), 16.09.1997 (Ex. PW1/19), 17.09.1997 (Ex. PW1/20), 26.10.1997 (Ex. PW1/21) and 27.10.1997 (Ex. PW1/22).

12.1 Mr Malhotra urged that apart from two communications dated 21.04.1997 (Ex. P-10) and letter dated 05.12.1997 (Ex. P-14) there had been no response of the defendant. In these circumstances, Mr Malhotra contended that it was quite clear that there was an oral agreement between the plaintiffs and defendant for payment of commission/brokerage equivalent to one month's rent. Mr Malhotra further contended that the same position obtained as regards the lease of the fourth and sixth floors in the Great Indian Plaza Building by the defendant. The defendant's failure to pay, according to Mr Malhotra, was not only contrary to the oral agreement but was also contrary to the general practice prevailing in the market.

13. Mr Bhatia, appearing for the defendant, on the other hand, refuted the submissions made by Mr Malhotra, on behalf of the plaintiffs. Mr Bhatia alluded to the effect that the cross-examination of PW1 clearly revealed that there was no written agreement with plaintiff no. 2 as regards payment of commission. He submitted that the

entire case of the plaintiffs that the defendant agreed to pay as commission one month's rent has no factual basis. For this purpose he drew my attention not only to the evidence on record but also the evidence of PW1. It was Mr Bhatia's contention that the defendant was forced to pay even the commission, that it did, i.e., 1% of the annual rent only because its officers were intimidated and threatened since, according to the defendant, plaintiff no. 2 had not rendered services which were required of him. As far as the plaintiffs' claim based on one month's rent was concerned, Mr Bhatia submitted that the plaintiff has not been able to show that there was any such written or oral agreement between the parties which obliged the defendant to pay commission equivalent to one month's rent. He submitted that the plaintiffs have failed to discharge its onus in that regard. Furthermore, it was Mr Bhatia's contention that this was contrary to the general practice prevailing in the market. As regards the claim for commission in regard to lease of the fourth and the sixth floors in the Great Indian Plaza Building, Mr Bhatia said that not only did the plaintiffs fail to plead material particulars, as regards the lease, but also had not placed on record the lease documents. There was, according to Mr Bhatia, no evidence on record to establish the plaintiffs' claim with regard to the same. In these circumstances, Mr Bhatia prayed for dismissal of the suit filed by the plaintiffs.

14. I have perused the pleadings as well as the evidence on record. The submissions made by respective counsels have also been considered by me. In the background of the material on record and the submissions made, the following has emerged. It is quite evident, based on the material on record, that plaintiff no. 2 was involved in the execution of the lease deed dated 04.09.1996 (Ex. DW1/P1). The fact that plaintiff no. 2 has appended his signatures as witness shows he was involved in execution of the lease. There is no denial of the fact that the defendant did pay commission/brokerage to plaintiff no. 2 equivalent to 1% of the annual rent, i.e., a sum of Rs 7,12,494/-. Though defendant has claimed that even this commission/brokerage was paid on account of the intimidation and threats meted out by plaintiff no. 2 to its officers; there is no evidence of any such threat being extended except for the averment to that effect of the defendant. Having said

so, there is no evidence on record to demonstrate that the defendant had agreed to the payment of commission equivalent to one month's rent. The reliance placed by Mr Malhotra on the letters issued to the defendant spanning a period commencing from 24.05.1996 and ending on 27.10.1997 does not ipso facto establish the existence of any oral understanding. The mere issuance of such letters would not establish the existence of an oral understanding. The proof of despatch of most of these letters has not come forth from the plaintiffs. The defendant, on the other hand, out of the said letters has accepted receipt of only letters dated 23.09.1996 (Ex. PW1/6), 25.09.1996 (Ex. PW1/7), 19.11.1996 (Ex. PW1/8), 24.12.1996 (Ex. PW1/9), 11.02.1997 (Ex. PW1/10), 14.03.1997 (Ex. PW1/11), 26.03.1997 (Ex. PW1/12), 30.04.1997 (Ex. PW1/14) and fax dated 16.09.1997 (Ex. PW1/19). Though it cannot be denied that in these letters the plaintiffs had sought commission equivalent to one month's rent, the defendant chose to respond only to two letters which are letters dated 26.03.1997 (Ex. PW1/19) and 30.04.1997 (Ex. PW1/14). In the first letter dated 21.04.1997 (Ex. P-10) the defendant categorically stated that it had never agreed to pay one month's rent as commission, and that as per the prevalent market practice taking into account the "nature of the deal involved" the maximum amount payable was 1% of the annual rent. Similarly, in its response dated 05.12.1997 (Ex. PW1/1A) it refuted the claim of the plaintiffs that it is entitled to brokerage/commission equivalent to one month's rent. It is pertinent to note that in the letter dated 30.04.1997 (Ex. PW1/14) the plaintiffs had included, for the first time, the claim for commission with regard to the fourth and sixth floors as well which, of course, was refuted by the defendant by its aforementioned letter dated 05.12.1997.

15. An appreciation of the evidence on record brings to fore that there was no agreement between the parties with regard to payment of commission equivalent to one month's rent. Whether Plaintiff no. 2 carried that impression or not is immaterial as the defendant was certainly not ad idem on this score. The plaintiffs similarly seem to have trotted a claim for commission even for the fourth and sixth floors. There is no evidence on record to establish its claim in respect of the same. A perusal of the pleadings would

show that the plaintiffs have not even given the dates with regard to the execution of the lease deed in respect of fourth and sixth floors in the plaint. In the evidence of PW1, it has clearly emerged that he is not even aware of the month and the year as to when the lease deed was executed vis-à-vis the fourth and sixth floor situate in the Great Indian Plaza Building. Therefore, the question of payment of commission in respect of the said portions does not, in my view, arise at all. The plaintiffs have failed to establish their claim in that regard as well. This fact also emerges on a bare reading of the legal notice dated 10.10.1997 (Ex. P1/G) issued by the plaintiffs in which there is no reference to the claim for fourth and sixth floors. This clearly reveals that the claim with respect to brokerage/commission for the fourth and sixth floors situate in Great Indian Plaza Building was an afterthought. As correctly noticed by this Court, in its order dated 14.09.2000, passed in IA No. 7868/1999 filed by plaintiffs under Order 12 Rule 6, the admission, if any, of the defendant to pay commission/brokerage to plaintiff no. 2 is confined to 1% of the annual rent. Therefore, on an appreciation of evidence, while it cannot be disputed that services were rendered by plaintiff no. 2 to the defendant in securing lease of the first, second and third floors situate in Great Indian Plaza Building, the plaintiffs have been failed to establish that they were eligible for payment of commission equivalent to one month's rent. The defendant having accepted that the agreement obtaining between them envisaged payment of commission equivalent to 1% of the annual rent no further amount can be ordered to be paid by the defendant in favour of the plaintiffs.

16. As regards the stand of the defendant that they had no privity with regard to plaintiff 1, appears to be correct. As per the plaintiffs' own case, the MOU was executed on 15.05.1996 whereas the lease deed was executed in September, 1996. The averment of the plaintiff is that they informed the defendant about the transfer of the business only in September, 1996. The services with respect to the defendant securing the lease of the first, second and third floors was, therefore, completed by plaintiff no. 2 and, hence, the

stand taken by the defendant that there is no privity of contract with plaintiff no. 1, appears to be correct.

17. In view of the above, my answers to the issues is as follows:

Issue No. 1:

This issue is found in favour of the defendant and against the plaintiffs. There being no privity of contract between plaintiff no. 1 and the defendant.

Issue Nos. 2&3:

In so far as issue nos. 2 and 3 are concerned, there was a contract between plaintiff no. 2 and the defendant in terms of that contract plaintiff no. 2 had rendered services to the defendant. Both these issues are found in favour of the plaintiffs.

Issue No. 4:

In so far as issue no. 4 is concerned in view of the answers given vis-à-vis issue nos. 2 and 3 and based on the evidence on records it is clear that plaintiff No 1 was entitled to a commission equivalent to 1% of the annual rent.

Issue No. 5:

In view of the fact that the defendant was always ready and willing to offer payment of commission equivalent to 1% of the annual rent, plaintiff No 1 is not entitled to any further commission. This is evident from the defendant's letter dated 21.04.1997. As a matter of fact, admittedly the said commission has been received by the plaintiffs during the pendency of the suit pursuant to order dated 14.09.2000.

18. In these circumstances, I am of the view that the suit deserves to be dismissed. It is ordered accordingly. The cost will follow the result of the suit.

RAJIV SHAKDHER, J

NOVEMBER 25, 2010
kk