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HIGH COURT OF DELHI: NEW DELHI

Judgment reserved on: December 14, 2010
Judgment pronounced on: December 23, 2010

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**C.S. (OS) No. 1545/2007 &
I.A. No. 9526/2007**

% M/s. Niam Holdings Pvt. Ltd. ... Plaintiff
Through: Mr. Naresh K. Thanai, Advocate.

versus

M/s. Bank of Baroda ... Defendant
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. Recovery of possession of ground floor in premises bearing No. M-9 Cannaught Circus, New Delhi, (hereinafter referred to as Suit property) is sought by the plaintiff from the defendant, to whom the suit premises was leased w.e.f. 1st May, 2002, vide a registered lease deed of 17th January, 2003, at a monthly rental of Rs.9009/- per month. An additional portion of 270 sq. ft. with fitting and fixtures in the aforesaid premises was also taken on rent at a rental of Rs.7011/- p.m. w.e.f. 17th January, 2005, upto 1st May, 2007, in terms of another registered Lease Deed of 17th May, 2005.

According to the plaintiff, the aforesaid additional portion stood merged

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with the original area in the suit premises and the consolidated rent of Rs.16,109/- p.m. was being paid by the defendant to the plaintiff till May,

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2007, when the tenancy under both these Lease Deeds came to an end by afflux of time.

2. It is the case of the plaintiff that by tendering the enhanced amount/rent of Rs.20,136/- for the month of June, 2007, renewal of Lease Deed or creation of fresh Lease Deed did not come into effect, as had the defendant intended to exercise the option to renew the Lease Deed then such a request in writing had to be made three months prior to the expiry of the Lease Deed and this was not done. It is asserted by the plaintiff that tender of enhanced amount/rent does not amount to waiver of Notice as the plaintiff had never assented to renewal of the Lease Deed. Vide Registered/AD Notice of 25th June, 2007, the tenancy of the suit premises in favour of the defendant stood determined. In reply of 19th July, 2007, defendant had informed that vide letter of 6th January, 2007, option to extend the Lease Deed for a further period of five years was exercised. Receipt of aforesaid letter of 6th January, 2007, is denied by the plaintiff and so it is said that there was no renewal of Lease Deed and the possession of the defendant over the suit premises is unauthorized, for which the defendant is liable to pay damages at the prevailing rental in the market i.e. at the rate of Rs.200/- per sq. ft. per month since 2nd August, 2007. On these averments, decree for possession of the suit premises and damages for its unauthorized use and occupation is claimed in this suit.

3. Defendant in the written statement does not dispute being a lessee of the plaintiff in the suit premises, but asserts that the Lease Deed in question was renewed for five years vide communication of 6th January, 2007, (Annexure-R.1) and the plaintiff had accepted the enhanced rent

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without demur or protest. Thus, it is asserted by the Defendant that arbitrary termination of the Lease Deed in question is not at all justified and this suit is not maintainable as its subject matter is arbitrable in terms of the Lease Deed in question. Replication filed controverts the contents of the written statement and reiterates the averments made in the plaint.

4. At trial, the following issues were claimed:

- (i) *Whether the Plaintiff is entitled to a decree for possession in respect of the suit premises against the Defendant? OPP*
- (ii) *Whether the Plaintiff is entitled to damages from the Defendant w.e.f. 2.8.2007 till the delivery of vacant and peaceful possession of the premises by the Defendant and, if so, at what rate? OPP*
- (iii) *Whether the subject matter of the present suit is governed by the Arbitration Clause contained in the lease deeds dated 17.1.2003 and 7.1.2005 in respect of the suit premises? OPD*
- (iv) *Whether the Plaintiff can initiate single proceeding against the Defendant arising out the two different lease deeds for two different premises and two different periods of lease, without leave of the Court? If so, its effect? OPD*
- (v) *Whether the Defendant has exercised the option period for extension of lease vide its letter dated 6.1.2007? If so, its effect? OPD*
- (vi) *Whether the Plaintiff is realizing enhanced rate of rent (by 25%) from Defendant as per covenants of lease deed? If so, its effect? OPD*
- (vii) *Relief.*

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5. The evidence lead comprises of the deposition of Shri A.C. Sharma (PW.1), Director of the plaintiff-Company, Shri S.K. Jain (DW.1), Chief Branch Manager and of Shri A. Sheshappa (DW.2) Senior Branch Manager of the defendant-Bank.

6. At the final hearing, Mr. Naresh K. Thanai, learned counsel for the plaintiff, has come forward to make submissions whereas, there was no representation on behalf of the defendant-Bank. Upon scrutiny of the evidence on record, the findings returned on the Issues framed, are as follows:-

Issue No. (iii)

7. It is true that the Lease Deeds of 17th January, 2003, and 17th January, 2005, do contain an arbitration Clause, but it is not the case of the defendant that at any point of time, the aforesaid arbitration Clause was invoked by either side to seek resolution of the dispute herein. Mere existence of an Arbitration Clause is by itself not sufficient to oust the plaintiff. After the issues were framed, counsel for the defendant had at no point of time claimed that this Issue be treated as a preliminary issue. The burden of proving this Issue was upon the defendant, who has not led any evidence to establish the invocation of the aforesaid Arbitration Clause at the first instance or even thereafter. This Issue is decided against the Defendant while holding that the mere existence of an Arbitration Clause without being invoked would not non-suit the Plaintiff.

Issue No.(iv)

8. This Issue relating to maintainability of this composite suit in respect of Lease Deeds of 17th January, 2003 and 17th January, 2005 was framed on the objection of the Defendant and the burden of proving this Issue was

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on the Defendant. Neither any evidence has been led nor it has been shown as to how this suit is not maintainable, in respect of the aforesaid two Lease Deeds of 17th January, 2003 and 17th January, 2005, especially when it pertain to the same premises and the parties to these two Lease Deeds are the same and because consolidated rent in respect of these two lease deeds was being tendered by the Defendant. In the considered opinion of this Court, this suit is very well maintainable in its present form and accordingly, this Issue is decided against the Defendant.

Issue No.(v) & (vi)

9. Defendant claims to have exercised the option to extend the lease of the suit premises on enhanced rent, for a period of five years, w.e.f., 1st May 2007 upto 1st May 2012, vide letter of 6th January, 2007 (Ex. DW-2/1). This communication was purportedly sent by Defendant to the Plaintiff vide UPC receipt (Ex.DW-2/2). The stand taken by learned counsel for the Plaintiff is that without going into the proof of service of this communication, it would suffice to assert that extension/renewal of lease for more than one year, by a mere letter cannot take place, as admittedly, the aforesaid letter/communication is not a registered document. To assert so, learned counsel for the Plaintiff relies upon decisions in '**Singer India Ltd. vs. Anita Gupta**', (88) 2000 DLT 186; '**Surjit Sachdev vs. Kazakhstan investment Services Pvt. Ltd.**', (66) 1997 DLT 54; and '**Uptron Powertronics Ltd. vs. G.L. Rawal**', 80 (1999) DLT 706.

10. Upon going through the aforesaid citations, I find that learned counsel for the Plaintiff is right in his submissions. Mere acceptance of rent after issuance of *notice to quit*, does not amount to creation of a new tenancy and the *notice to quit* is not waived by mere acceptance of rent. It

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has been so held by a Division Bench of this Court in '**Punjab National Bank vs. Riviera Apartments Pvt. Ltd.**', 2007 (140) DLT 649.

11. In the light of the aforesaid position of law, and in view of the evidence on record, it is held that renewal/ extension of lease can take place by written instrument, which is duly stamped and registered and not otherwise and mere acceptance of enhanced rent for the month of June 2007, would not amount to waiver of *notice to quit* of 25th June 2007, as there is no evidence on record to establish that the Plaintiff had intended to continue the lease. Both these issues are accordingly decided against the Defendants.

Issue No.(i), (ii) & (vii)

12. Receipt of *notice of quit* of 25th June 2007 (Ex. PW-1/4), sent by postal receipts (Ex. PW-1/5 to Ex. PW-1/7) is not denied by the Defendant, who in reply thereto, had set up the plea of renewal of the Lease in question, which already stands negated while deciding Issues No.(v) & (vi). Therefore, there is no impediment in holding that the Lease Deeds of 17th January, 2003 and 17th January, 2005 stood validly terminated vide aforesaid *notice to quit* and the possession of the Defendant over the suit premises thereupon is unauthorised. Accordingly, it is held that the Plaintiff is entitled to a decree of possession of the suit premises against the Defendant.

13. So far as question of damages is concerned, Plaintiff has not led any evidence to show as to how Plaintiff is entitled to recover more than the rent of the suit premises, after adjusting what has been already paid to the Plaintiff, during the pendency of this case. Therefore, it is held that the

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Plaintiff is not entitled to the damages as claimed from 2nd August 2007 but only to user charges at ₹20,136/- per month, w.e.f. 2nd August 2007 till date of vacation of suit premises. While Issue no.(i) is decided in favour of the Plaintiff, Issue no.(ii) is answered as aforesaid. Both these Issues are answered accordingly.

14. Accordingly, a decree for possession of the suit premises, as detailed in Annexure A to the plaint, with arrears of user charges indicated as above, is hereby passed against the Defendant.

15. This suit stands partly decreed while leave the parties to bear their own costs. Decree sheet be drawn forthwith subject to deposit of Court fee, if any, on arrears of user charges as determined.

16. This suit of the Plaintiff as well as pending application being I.A. No. 9526/2007 (under Order 2 Rule 3 & 4 CPC) stand disposed of.


Sunil Gaur, J.

December 23, 2010

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