

29.

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

+ RFA NO.344/2009

% Judgment Delivered on: 08.11.2010

DR. SWADESH KUMAR BHATIANI Petitioner
Through : Mr. Subhash Chawla, Adv.

versus

THE ORIENTAL INSURANCE CO.
LTD. & ORS. Respondents
Through : Mr. P.K. Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Present appeal is directed against the judgment / decree dated 1.7.2009 passed by learned Additional District Judge, Delhi, in Civil Suit No.44/2008, by virtue of which, the suit filed by the plaintiff for possession and damages was dismissed on the ground that as per Clause 3 of the Registered Lease Deed, the respondent was entitled for extension of lease for a further period of three years, subject to enhanced payment of rent @ 15 percent.
2. The facts of the case are that parties had entered into a Registered Lease Deed, which admittedly was to expire on 17.9.2007. As the respondent failed to exercise its option as per Clause 3 of the Registered Lease Deed, appellant (landlord) issued a legal notice dated 17.9.2007, by virtue of which, the tenancy was terminated.

On 29.11.2007, respondent replied to the legal notice issued by the appellant, refuting the allegations made therein and also relied upon Clause 3 of the Registered Lease Deed and sought extension.

3. While passing the impugned judgment /decree, learned trial court has held that the tenant had exercised its option as per Clause 3 of the Registered Lease Deed and, thus, dismissed the suit. It is not in dispute that before expiry of the lease the respondent did not call upon the appellant to renew the lease deed. Neither the respondents enhanced the rent showing its intention to renew the lease deed. Thus, the finding of the trial court is on the face of it is erroneous.
4. Learned counsel for the respondents, on instructions, however, submits that respondents are willing to hand over vacant peaceful possession of the suit property to the respondent on or before 30.9.2011. Learned counsel for the appellant has no objection to this, as the adjoining flat belonging to the appellant has also been given to the respondents herein, on rent and a similar statement has been made by the respondents. It is further jointly submitted that there is no finding on the question of mesne profits/damage by the trial court and the matter be remanded back to the trial court to enable the trial court to hear the matter and decide issue no.3. However, learned counsel for the appellant submits that, at this stage, respondents should be directed to pay the enhanced rent by 15 percent as it is the case of the respondents that they had exercised the option for extension of lease for a period of three

years in the year 2007, as per clause 3 of the lease deed. I find force in the submission of counsel for the appellant in view of the defence raised by the respondent that they have exercised their option of renewal and in view of clause 3 of the lease deed, which reads as under:

“3. The lease shall commence on 1st June, 2001 and shall be for a period of three years ending on 31st May, 2004 and shall be renewable at the discretion of the Lessee after every three years with an escalation clause of 15% on the last rent paid.”

5. Accordingly, agreed rent with enhancement of 15 percent, shall be paid by the respondent and shall be accepted by the appellant, without prejudice to their rights and contentions, within eight weeks from today. The question of damage for use and occupation/mesne profits for the period 2007 till the date of handing over possession shall be decided by the trial court on the basis of evidence, which has been placed on record.
6. Learned counsel for the appellant submits that certain cheques, which were handed over to the appellant towards rent have expired. Counsel further submits that respondents should be called upon to revalidate the aforesaid cheques. Ordered accordingly.
7. Appeal is allowed and decree is modified. The parties shall appear before the trial court on 23.11.2010, to enable the trial court to hear the matter and decide issue no.3. The respondents will also file an undertaking in this court within one week clearly stating that they will hand over vacant peaceful possession of the suit property to the respondents on or before 30.09.2011 in the same/better condition

as it was taken. Respondents will also undertake to clear all water and electricity dues directly to the concerned authorities.

8. Accordingly, appeal stands disposed of. No order as to costs.

9. Let the trial court record be sent back.

CM NO.9138/2010

10. Application stands disposed of in view of the orders passed in the appeal.

November 08, 2010

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G.S. SISTANI, J.