

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13.07.2010
Pronounced on: 19.07.2010

+

CS (OS) No. 57/2009 & IA No.11575/2009

SHRI KRISHAN KUMAR AGGARWAL & OTHERS

..... Plaintiffs

Through : Mr. Vijay K. Gupta and Shri Mahip Dutta, Advocates

versus

LIFE INSURANCE CORPORATION OF INDIA LTD.

..... Defendants

Through : Mr.Kamal Mehta, Mr. Sudeep Singh and
Mr. Deependra Sharma, Advocates.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

- | | | |
|----|---|-----|
| 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

%

1. In the present suit, the plaintiff seeks money decree for Rs. 21,35,984/- and a further decree for Rs. 3,18,750/- with effect from 01.12.2008.

2. The facts which are not in dispute are described as follows. The plaintiff leased-out the premises, being CGF-1, 2, 3 and 4, Ground Floor, C-Block, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi (hereafter referred to as “the suit premises”) to the defendants through a registered Deed dated 09.05.2008. The premises measure 3700 sq. feet and the lease was with effect from 01.05.2008. The total term of the lease was agreed to be 12 years, renewable at the end of the first three year term, at the option of the lessee, with increase of 15% rent upon the

expiry of three years. The defendants paid Rs. 2,92,485/- by a cheque dated 13.06.2008 towards monthly rental for May 2008 after deducting the tax, at source. It is contended that while the defendants were in possession of the suit premises, a frivolous suit was filed by one Smt. Arvinder Kaur before the Civil Judge, being Suit No. 436/2008, seeking permanent injunction restraining the plaintiff and the first defendant (hereafter referred to as “the LIC”) from entering into a tenancy. The injunction was refused. The suit was later withdrawn on 11.09.2008 and a fresh proceeding, being CS (OS) 2104/2008 was instituted before this Court, seeking cancellation of title documents, inuring in favor of the plaintiff.

3. The plaintiff contends that the LIC was free to use and enjoy the suit premises in terms of the lease deed. It is further alleged that the LIC has been defaulting in the discharge of its contractual obligations and has not paid rents after the initial payment of Rs. 2,92,485/-. The plaintiff adverts to a written notice to the LIC dated 23.08.2008 as well as a legal notice dated 08.11.2008 demanding payment of rentals after 01.06.2008. It is submitted that the defendants have refused to make the payments on frivolous grounds, i.e. pendency of Smt. Arvinder Kaur's suit before the Court, alleging cloud on the title to the leased premises. The plaintiff submits that such excuse is impermissible and, therefore, claims the reliefs sought for in the present case.

4. The plaintiff, besides the pleadings, relies upon the Lease Deed as well as the letter dated 23.08.2008; a copy of the legal notice dated 08.11.2008 and has placed on the record; as also copies of the Flat Buyer's Agreement, claiming to be the owner entitled to full benefits of title in respect of the suit premises.

5. It is urged on behalf of the plaintiff that in terms of Clause-1 (g) of the lease deed, in the event the lessee/LIC opts for termination of the tenancy, it is duty-bound to issue one month's notice and thereafter hand-over peaceful and vacant possession which has not happened. In these circumstances, submits the plaintiff, he is entitled to the money decree sought for. Reliance is also placed upon Sections 108 (g) and 108 (q) of the Transfer of Property Act, 1882, in support of the submission that so long as the premises are under occupation, of a tenant even after the termination of the lease, he is duty-bound to pay the rents or damages, till date of handing over vacant possession.

6. LIC in its written statement resists the suit and contends that the plaintiff has not disclosed certain material facts such as the pre-existing dispute between him and Smt. Arvinder Kaur, which led to filing of Suit No. 600/2007 which was disposed of in terms of the compromise between the parties on 21.06.2008. It is urged that in the said compromise, the plaintiff had accepted Smt. Arvinder Kaur as the lawful owner of the suit property.

7. The defendants urge, besides, that they have spent considerable amounts to the extent of about Rs. 8 lakhs towards renovation of the premises but could not enjoy the same on account of physical obstructions at the instance of Smt. Arvinder Kaur Sethi. It is claimed that the agreement between the plaintiff and Smt. Arvinder Kaur clearly stipulated that the Lease Deed in LIC's favor had enjoined that the lawful owner was Ms. Arvinder Kaur Sethi. In these circumstances, contends the LIC, it sought for refund of the amount paid to the plaintiff and also expressed desired to vacate the premises. Reliance is placed in this regard on LIC's letters dated 22.07.2009, 23.08.2009 and 20.09.2009. It is submitted that despite these requests, the plaintiff prevaricated and took no steps; instead he has chosen to come forward with a baseless claim for a money decree. The defendant has placed on record the letters relied upon by it.

8. During the course of submissions, the defendant had volunteered to vacate the premises - a statement to that effect was recorded by the Court on 19.02.2010. The Court, therefore, appointed a Local Commissioner to facilitate the process of handing-over vacant possession and directed that the keys to the suit premises should be deposited in Court. In these circumstances, the parties agreed that the suit should be heard on the existing materials as the only question which required adjudication was as to the entitlement of the plaintiff to the money decrees or amounts claimed.

9. The relevant parts of the lease deed (produced as Annexure P-1) to the suit are as follows:

“XXXXXX XXXXXX XXXXXX

FOR LEASE DEED AGREEMENT

THIS INDENTURE MADE AT Delhi. This 9th day of May BETWEEN Sh. Krishan Kumar resident of B-31 Phase-1, Ashok Vihar, New Delhi (hereinafter referred to as 'the

Lessor' which expression shall unless repugnant to the context or meaning thereof be deemed to include their respective heirs, executors, administrators and assigns) of the one part AND THE LIFE INSURANCE CORPORATION OF INDIA, a Corporation established by the Life Insurance Corporation Act, 1956 and having its Divisional Office-II at SCOPE MINAR 9th Floor, Laxmi Nagar, Distt. Centre, Delhi-92, hereinafter called Corporation (which expression shall include its successors and assigns whatever the context or meaning shall so require or permit) of the other part.

WHEREAS the Lessor is seized and possessed of or otherwise well and sufficiently entitled to the land and building situated at CGF-1, 2, 3, 4 Ground Floor, C Block, Dilkhush Industrial Estate, GT Karnal Road, Delhi.

AND WHEREAS the Lessors have agreed to let to the Corporation and the Corporation has agreed to take on lease from the Lessors Mr. Krishan Kumar, Ground Floor, of the said building bearing no. CGF-1, 2, 3, 4 Ground Floor, C Block, Dilkhush Industrial Estate, GT Karnal Road, Delhi, Ground Floor aggregating in all to 3750 sq. ft. more particularly described in the schedule hereunder written for the consideration and at the rent and upon the terms and conditions hereinafter contained.

NOW THIS INDENTURE WITNESSETH THAT IN pursuance of the said agreement and in consideration of the rents hereinafter reserved and the covenants terms and conditions hereinafter contained and to be observed and performed the lessors do hereby demise unto the Corporation a Carpet Area admeasuring in all 3750 sq. ft. and comprising of entire ground floor of the building, situated at CGF-1, 2, 3, 4 Ground Floor, C Block Dilkhush Industrial Estate, GT Karnal Road, Delhi the registration district and sub-District of Delhi together with the use of the fittings and fixtures and the water closets, lavatories, staircase and other conveniences in the said premises hereby demised and together also with the right for the Corporation its servants, employees, visitors customers and all other persons authorized by the Corporation to use in common with the tenants and other occupiers of other portions of the said building the entrance, doorways, lobbies, passages, and corridors in the said building leading to and from the portion hereby let for the purpose of ingress thereto and agrees there from and together with also with the further right to use the compound and other open space pertaining to the demised premises for the use thereof by the Corporation its servants, occupiers, visitors, customers and all other persons concerned or interested with the business of the Corporation for their parking of Cars, Trucks, Cycles and other vehicles mechanical and or hand driven and also for going to and out of the demised premises all of the said land and fittings and fixtures and appurtenances for the sake of brevity hereinafter referred to as the demised premises to hold the demised premises unto the Corporation and from 1.5.2008 XXXXXXXX for the term of three yrs, yielding and paying therefore during the said terms and the monthly rent Rs.3,18,750/- (Rs. Three lack eighteen thousand seven hundred fifty) + Service Tax as applicable, only inclusive of providing fully AC arrangement, shall be paid on or before the 5th of the next month of each month and the subsequent rent on or before 5th of the next month of each month and the subsequent rent on or before the 5th of each succeeding month. Further the lessee will have the option to terminate the lease by giving one month's advance notice.

XXXXXX XXXXXX XXXXXX”

“XXXXXX XXXXXX XXXXXX

1. The Corporation to the intent that the obligations may continues through out the term hereby created and hereby covenant with the lessors as follows:

a) To pay to the Lessors the rent hereby reserved on the days and the manner herein before appointed for payment thereof.

b) To pay the charges for the electricity and water consumed by the Corporation and registered in separate electric and water meters provided by the lessors for these purposes.

c) To use the demised premises for the purpose of business of the Corporation and for other purposes connected therewith.

d) At the expiration or sooner determination of this lease to and renewed lease as agreed upon to peacefully and quietly yield up the demised premises and the lessor's fixtures and fittings therein (except the Lessee's Fixtures and fittings) in good condition reasonable wear and tear excepted and put the lessor is vacant possession thereof.

XXXXXX XXXXXX XXXXXX”

10. The LIC's letters dated 22.07.2008, 23.08.2008 and 20.09.2008 are reproduced below:

“XXXXXX XXXXXX XXXXXX

22.07.2008

Ref: Estate 12T

***Sh. Krishan Kumar
S/O Late Sh. Muni Lal
R/O B-31 Ashok Vihar Phase-I.
Delhi-110052***

Dear Sir,

Re: Possession of Premises situated at CGF-1, 2, 3, 4 Ground Floor, C Block Dilkhush Industrial Estate, G.T. Karnal Road, Delhi.

We have taken the abovementioned premises on lease for our Branch office 12T w.e.f. 01.05.2008. As you are aware that Smt. Harvinder Kaur has filed a suite regarding the

same premises against you and LIC. Due to litigation we are not interested to shift into this premises.

Please refer our various Telephonic Conversation requesting to take the possession back of the abovementioned premises. But you have not responded in this regard so far.

You are again requested to take the possession of the abovementioned premises and Deposit back the amount of rent which was paid to you for the month of may 2008.

Yours faithfully

Sd/-

Manager (O.S.)

XXXXXX XXXXXX XXXXXX”

“XXXXXX XXXXXX XXXXXX

23.08.2008

Ref: Estate 12T

**Sh. Krishan Kumar
S/O Late Sh. Muni Lal
R/O B-31 Ashok Vihar Phase-I.
Delhi-110052**

Dear Sir,

Re: Possession of Premises situated at CGF-1, 2, 3, 4 Ground Floor, C Block Dilkhush Industrial Estate, G.T. Karnal Road, Delhi.

Please refer our various Telephonic Conversation and letter dated 22.07.2008 requesting to take the possession back of the abovementioned premises. But you have not responded in this regard so far.

You are once again requested to take the possession of the abovementioned premises and Deposit back the amount of rent which was paid to you for the month of may 2008.

Yours faithfully

Sd/-

Manager (O.S.)

XXXXXX XXXXXX XXXXXX”

“XXXXXX XXXXXX XXXXXX

20.09.2008

Ref: Estate 12T

**Sh. Krishan Kumar
S/O Late Sh. Muni Lal
R/O B-31 Ashok Vihar Phase-I.
Delhi-110052**

Dear Sir,

Re: Possession of Premises situated at CGF-1, 2, 3, 4 Ground Floor, C Block Dilkhush Industrial Estate, G.T. Karnal Road, Delhi.

We have taken the abovementioned premises on lease for our Branch office 12T w.e.f. 01.05.2008. As you are aware that Smt. Harvinder Kaur has filed a suite regarding the same premises against you and LIC. Due to litigation we are not interested to shift into this premises.

Please refer our various Telephonic Conversation and letters dated 22.07.2008 and 23.08.2008 in which you were requested to take the possession back of the abovementioned premises. But you have not responded in this regard so far.

You are again requested to take the possession of the abovementioned premises and Deposit back the amount of rent which was paid to you for the month of may 2008.

Yours faithfully

Sd/-

Manager (O.S.)

XXXXXX XXXXXX XXXXXX”

11. The plaintiff claims to have replied to the LIC on 23.08.2008 and later issued a legal notice on 08.11.2008; the same are reproduced below:

“XXXXXX XXXXXX XXXXXX

23rd August, 2008

Life Insurance Corporation
Divisional Office
II Scope Minar, 9th Floor,
Laxmi Nagar District Centre,
Delhi-110092.

Kind Attn. : Mr. Bajaj/Mr. Pandita

Sub. Leasing out of premises being commercial flats bearing Nos. CGF-1, 2, 3 & 4, Dilkhush Industrial Estate, G.T. Karnal Road, Azadpur, Delhi, vide lease deed dated 09.05.2008 duly registered before the Sub-Registrar.

Sir,

This is to inform you that we are the lawful owner of the four commercial flats bearing No. CGF-1, 2, 3 & 4, Dilkhush Industrial Estate, G.T. Karnal Road, Azadpur, Delhi, and have lawfully leased out the said four flats to you vide aforesaid lease deed. The lease has already come into existence and already commenced w.e.f. 01.05.2008. We are further acknowledged having received a sum of Rs. 2,92,485/- vide cheque no. 593632 dated 13.06.2008 towards monthly rental for the month of May, 2008 after deducting tax at source. You are required to send certificate to tax deduction at source for income tax purposes.

One Smt. Arvinder Kaur alleging herself to be the owner of the entire complex has filed a frivolous suit, being suit No. 436/08, which is presently pending adjudication before the court. The peaceful legal possession has already been delivered to you in terms of the said registered lease deed, as much the said suit has become infructuous being filed only on 23.06.2008 i.e. much after the commencement of your lease. It is pertinent to mention that there is no declaration of title sought by Smt. Arvinder Kaur in the said suit. Thus the suit as a whole has become infructuous and is liable to be dismissed.

As regards the fabricated documents created by Smt. Arvinder Kaur along with her husband Mr. J.S. Sethi, a counter claim has been made to declare the said agreement to be null and void being fraudulently obtained by them under the false pretext of a maintenance agreement. They represented to be running maintenance agency in the said complex and as such we had agreed that in case they were authorized to render maintenance, they could charge maintenance charges etc. without knowing or having any idea about their underlying intention. The fact remains there was no such agreement ever intended to be entered into by us nor such fabricated and forged document has any legal tenability. In any case counter claim has been filed in the court and a copy of the same would be forwarded to your shortly. In the prevailing facts and circumstances, you have no privity of contract with any other person except the lessors in terms of the said lease deed and you are within your rights to enjoy the said four flats by running your office. We assure that we would protect and safeguard your interest under the said lease deed and would take adequate legal measures in the court of law to raise your comfort level. Necessary directions in this regard would be obtained from the court so that no prejudice

is likely to be caused to you for the use and enjoyment of the leased flats as above. We hope that you would cooperate with us to take the matter to a logical end.

Thanking you

Yours sincerely,

Sd/-

(K.K. AGGARWAL)

B-31, Ashok Vihar,

Phase-I, Delhi-110052.

Copy to: Life Insurance Corporation, B-1, Panchvati, Adarsh Nagar, G.T. Karnal Road, Delhi.

XXXXXX XXXXXX XXXXXX”

The legal notice reads as follows :

8th November 2008

*Life Insurance Corporation
Divisional Office
II Scope Minar, 9th Floor,
Laxmi Nagar District Centre,
Delhi-110092.*

Sub: Leasing out of premises being commercial flats bearing nos. CGF-1, 2, 3 & 4, Dilkhush Industrial Estate, G.T. Karnal Road, Azadpur, Delhi, vide lease deed dated 09.05.2008 duly registered under the Sub Registrar.

Sir,

We act and represent on behalf of Mr. K.K. Aggarwal, R/o B-31, Ashok Vihar, Delhi-110052 (hereinafter called as 'our client'), to serve upon you a notice as under:

This is to inform you that in terms of the lease deed you are in peaceful and legal possession of the leased premises as mentioned above. The suit filed by one Smt. Arvinder Kaur being civil suit No. 436/08 has since been dismissed. There is no interim order operating in respect of the said property. In a fresh suit filed by Smt. Arvinder Kaur before Hon'ble High Court being CS (OS) No. 2104/08, no injunction has been granted in her favor. It is important to bring to your kind notice that the aforesaid matter came up for consideration before Hon'ble High Court on 04.11.2008, on which date the Ld. Judge

was pleased to summon the records of the Civil Court for perusal and passing appropriate orders and it was indicated that the parties would not create trouble and after perusing the record of the Civil Judge, appropriate orders would be passed.

The suit before the Civil Judge has been dismissed on 11.09.2008. A copy of which is being annexed herewith and no injunction has been granted by Hon'ble High Court in the pending suit. In this manner there is no impediment for you to use and enjoy the said leased premises.

It was your own decision to keep the premises locked under your control. We have no controlling powers upon you for the user of the said premises. We have been regularly writing letters to you including letter dated 12.08.2008 and you are called upon to pay the agreed monthly rental in terms of the lease deed.

It is surprising that instead of adhering to your contractual obligation, you are insisting for the refund of the amount paid by you in terms of the lease deed. We may make the position very clear that you are a lessee in terms of the lease deed as aforementioned and you are liable to pay a monthly rent of Rs. 3,18,750/- together with service tax etc. and other charges payable on 5th of each English calendar month in advance in terms of the duly registered lease deed dated 09.05.2008. You are under a contractual obligation to honour your commitment in terms of the said lease deed. So far you have only paid rent for one month after deducting TDS vide Pay Order No. 593632 dated 13.06.2008 drawn on Corporation Bank on deducting applicable TDS and service tax. As such you have been in default in making payment of leased rental w.e.f. June - July, 2008 onwards till date. You are requested to pay leased rental in terms of lease agreement including arrears of rent accrued as on date and you are further called upon to pay rent every month.

It is further made clear to you that it is your own decision to keep premises locked and in no manner you can escape liability of payment of rent. A copy of this notice is being forwarded to the Chairman for needful action in the matter so that our client is not illegally deprived of his legal rights.

A copy of this notice is being retained in our office for follow up action.

Sd/-

(VIJAY K. GUPTA)

Advocate

Copy to: 1. Chairman, LIC Building, Connaught Place, New Delhi.

2. Life Insurance Corporation, B-1, Panchvati, Adarsh Nagar, G.T. Karnal Road, Delhi.

XXXXXX XXXXXX XXXXXX"

12. The relevant portion of the agreement alleged to have been entered into between the plaintiff and Smt. Arvinder Kaur on 21.06.2008 are extracted below:

“XXXXXX XXXXXX XXXXXX

Agreement

This agreement is made between Sh. K.K. Aggarwal, S/o Sh. Mani Lal, R/o B-31, Ashok Vihar Ph-1, New Delhi hereafter called the 1st party and Smt. Arvinder Kaur Sethi, W/o Sh. Joginder Singh Sethi R/o C-30, Rajouri Garden, New Delhi hereafter the 2nd party.

WHEREAS the 1st party had acquired & was in possession of CGF-1, 2, 3 & 4 Dilkhush Estate, G.T. Karnal Road, Delhi-110033 the same very four flats admeasuring a total area 3750 Sq. ft. was purposed to be let-out to Life Insurance Corporation of India at a monthly rent of Rs. 85/- per Sq. ft. vide agreement of lease dated 09/05/2008 excluding maintenance charges and the LIC was purported to start its business in the aforesaid 4 flats from 23.06.2008 but the 2nd party who had acquired her rights in the absolute owner of the said property, the property known as Dilkhush Industrial Estate measuring 8712 Sq. Yards (1.8 acres) bearing khasra no. 387, 388 & 389 min in the revenue estate of Village Malikpur, Chawni, now known as Model Town, Delhi by way of sale deed dated 25/06/2007 executed by its previous owner Sh. Narinder Chadha and when It came in the knowledge of 2nd party regarding creation of third party rights in favor of LIC, the 2nd party filed a suit for permanent injunction against 1st party and LIC before the vacation judge which is now listed for hearing on 23.06.2008.

AND the parties of this agreement have decided now to settle their disputes amicably therefore the parties of this agreement have decided to settle their all disputes on the following terms & conditions.

TERMS & CONDITIONS

That the First Party, who was having possession xxxxxxxxxxxxxxxx shall protect the rights of the 2nd party as vested by way of sale deed xxxxxxxxxxxxxxxx request the xxxxxxxxx to execute required Lease Agreement in this respect pertaining to CGF-1, 2, 3 & 4, Dilkhush Estate, G.T. Karnal Road, Delhi-110033 in favor of the 2nd party where in the 1st party shall have no objection and the lease deed dated 09/05/08 hereby stands revoked/cancelled unconditionally or transferred to the owner xxxxxxxxxxxxx.

That the 2nd party shall be at liberty to approach LIC for protecting her rights and get executed legal documents pertaining to the aforesaid four flats in which the 1st party has no objection/Claim what so ever of any nature.

That the 1st party is in receipt of Rs. 292485/- which the first party undertake will refund to LIC unconditionally and after there shall be no claim of any nature whatsoever from 2nd party or LIC or the owner Smt. A.K. Sethi hence for all disputes, Claim etc. stand settled after the execution of this agreement against the above mentioned property.

The possession is hereby stands surrendered to the 2nd party owner. The possession of the property CGF-1, 2, 3 & 4 Dilkhush Estate, G.T. Karnal Road, Delhi-110033 may be given to LIC of India by the owner or However the owner likes where in the first party has no objection or claim to that and the Flat Buyers Agreement stands null & void after the execution of this agreement all original documents shall be submitted to the 2nd party in due course by the first party.

That the 2nd party shall withdraw in her aforesaid suit after making necessary statement before the court.

AND the parties of this agreement have executed this agreement with their free and sweat will without any force, pressure, coercion, fraud, misrepresentation and undue influence from any corner whatsoever.

AND the parties of this agreement have put their respective signature in the presence of following witnesses on this date 21/06/2008.

Sd/- Sd/- Sd/-

J.S. SETHI A.K. SETHI K.K. Aggarwal

Witness:

Sd/-

S.K. Gupta

20/10, Shakti Nagar,

Delhi-110007

Sd/-

*SATISH CHADHA
F71, KIRTI NAGAR,
NEW DELHI.*

XXXXXX XXXXXX XXXXXX”

13. The plaintiff disputes the genuineness and validity of the above agreement and had submitted during the course of hearing that review/recall of compromise recorded by the Court

has been sought. In view of the above facts, the question requiring adjudication is whether the LIC is liable to pay the agreed lease rental amounts, till the day it vacated the premises.

14. There is no dispute about the essential facts, leading to the execution of the lease deed, the amount of rent, that LIC did not pay the amounts after 1-6-2008, the filing of suit by Ms. Arvinder Kaur, its withdrawal, and filing of another suit in this court, etc. The plaintiff disputes that he had entered into a compromise in an earlier suit, (with the said Ms. Kaur) and submits that such compromise (acknowledging Ms Kaur's ownership of the premises) has been challenged in court, and recall of orders, sought. He asserts that a conjoint reading of Clause 1(g) and Section 108 obliges LIC to pay the rental amounts agreed, so long as it continues to occupy the premises, and does not hand over vacant possession. LIC, on the other hand, points out that right from July, 2008, it has unequivocally expressed the intention to vacate the premises, but the plaintiff never came forward to claim possession, and it was therefore left with no alternative, but to continue. It also says that since it could not use or enjoy the premises, on account of obstruction by Ms. Arvinder Kaur's security guards, there is no question of paying any rent, or amount.

15. The plaintiff relies on Clause 1(g) of the Lease Deed; the same is in the following terms:

1. The Corporation to the intent that the obligations may continues through out the term hereby created and hereby covenant with the lessors as follows:

a) To pay to the Lessors the rent hereby reserved on the days and the manner herein before appointed for payment thereof.

d) At the expiration or sooner determination of this lease to and renewed lease as agreed upon to peacefully and quietly yield up the demised premises and the lessor's fixtures and fittings therein (except the Lessee's Fixtures and fittings) in good condition reasonable wear and tear excepted and put the lessor is vacant possession thereof..."

Reliance is also placed on Section 108 of the Transfer of Property Act, which is to the following effect:

"108. RIGHTS AND LIABILITIES OF LESSOR AND LESSEE.

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

(A) RIGHTS AND LIABILITIES OF THE LESSOR

(B) RIGHTS AND LIABILITIES OF THE LESSEE

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.”

16. The key to a proper appreciation of the case depends on the intention of the parties, and whether LIC expressed or manifested the desire to vacate the premises. Its first letter, of 22nd July, 2008, to the plaintiff, *inter alia*, states that:

“...Please refer our various Telephonic Conversation requesting to take the possession back of the abovementioned premises. But you have not responded in this regard so far.

You are again requested to take the possession of the abovementioned premises and Deposit back the amount of rent which was paid to you for the month of may 2008...”

The letter of 23rd August, 2008, is in identical lines; it states, *inter alia*, that:

“Please refer our various Telephonic Conversation and letter dated 22.07.2008 requesting to take the possession back of the abovementioned premises. But you have not responded in this regard so far.

You are once again requested to take the possession of the abovementioned premises and Deposit back the amount of rent which was paid to you for the month of May 2008.”

The letter of 20th September, 2008 too is in the same vein; it also mentions that “As you are aware that Smt. Harvinder Kaur has filed a suite regarding the same premises against you and LIC. Due to litigation we are not interested to shift into this premises.” The same demand for

refund of the rent paid for May, 2008 to LIC, is reiterated. The plaintiff had replied to the letters of 22-7-2008 and 23rd August, 2008, on the latter date, i.e 23rd August, 2008, assuring that the claim of Arvinder Kaur, was false, and that appropriate action to set aside the document claimed by her, was being taken. He assured that the LIC's continued, and was valid, and that it should take charge of the premises, and pay the rents. The plaintiff's legal notice, dated 8th December, 2008, extracted in the previous part of this judgment, mentions that the suit filed by Arvinder Kaur was withdrawn on 11th September, 2008, and that there was no impediment in the enjoyment of the lease. The notice further stated that the plaintiff's decision to keep the premises under lock and key did not result in obliteration of its responsibility to pay lease rents.

17. The plaintiff's argument is that the defendant never really intended to hand over vacant possession of the premises, and that its continuation with the lease, obligated it to pay lease rent, till the possession was actually handed over. On the other hand, LIC contends that the materials by way of letters written to the plaintiff suggest that it (LIC) continuously and consistently maintained the intention to surrender the premises, and the plaintiff, with ulterior motive, to claim the amounts sought in the suit, did not act to take back the premises.

18. The court, on an overall consideration of the circumstances, is of the opinion that the plaintiff has been unable to establish his claim. The defendant LIC's letters stating that in view of the dispute pertaining to the ownership of the premises, it did not wish to continue in the premises, are not denied. These letters, written contemporaneously, in July, August, and September, 2008, reveal two things, i.e. that LIC had not occupied the premises, and two, that it wanted the plaintiff to take back vacant possession. The court is unable to discern any oblique motive on the part of the LIC to continue to hand on to the premises, without paying rent, as is urged by the plaintiff. The concern expressed, i.e. about dispute regarding ownership, which led it to decide to hand back the premises, is not only reasonable; it is legitimate under the circumstances. In this factual background the court does not see any further duty (other than intimating the plaintiff about its intention to hand over possession) such as approaching the court, or taking further steps. The plaintiff, as a reasonable lessor, ought to have taken back the premises without prejudice to his rights to recover the rent amounts, or such part of it, as was recoverable. However, his evasion in this regard, casts a doubt on his real intentions. Further, the plaintiff's legal notice of 8th December, 2008, mentions about a letter written to the defendant on

12th September, 2008. Yet no copy of such letter, or what was written in it has been revealed to the Court.

19. The plaintiff's arguments about the defendant's obligations under Clause 1 (g) and Section 108 of the Transfer of Property Act, in this court's opinion, are groundless. The said contractual term, and Section 108 emphasize about a lessee's obligation to pay regular rent or lease money during subsistence of the lease, and the further liability to hand over the premises after termination of the lease, and in the absence of such course, to pay damages for occupation of the premises. Here, however, the factual matrix is entirely different. The tenant (LIC) had been demanding the plaintiff to take back the premises from 22 July 2008; it is a matter of record that the tenant also never moved into the premises. As held earlier, its concern about ownership of the premises, is not illusory, but a legitimate one. Having expressed the intention to terminate the lease, which amounted to a notice, the LIC could legitimately say that the plaintiff's inaction in this regard disentitles him to any payment. The plaintiff has been unable to show any rule, or authority, obliging a lessee who terminates the lease, and expresses the desire to hand over possession, but who is made to pay the rent because the lessor refuses to take back the premises. Doing so would in fact result in rewarding a dishonest lessor.

20. For the above reasons, the court is of the opinion that the suit cannot succeed. However, since the defendant concededly did not pay any rent after May, the plaintiff would be entitled to rent for the period till the lease could be reasonably construed as having been terminated. Under the agreement, LIC had to issue one months' notice. The letter dated 22nd July, 2008 in fact amounts to such notice. Therefore, the plaintiff's claim is entitled to succeed, only for rents upto end of August, 2008.

21. This court is mindful of the circumstance that keys of the premises were deposited, during the pendency of the present proceedings. However, there are rival claims of ownership of the premises, which are subject matter of CS (OS) 2104/2008 pending on the file of this Court. In the circumstances, the registry is directed to ensure that the keys to the premises placed on the file in this court, are kept in the record in CS (OS) 2104/2008, and made subject to orders in that suit. The Registry is also directed to suitably inform the court, by placing a copy of the present judgment and order, on the file, in that court.

22. In view of the above findings, the suit has to succeed partly, and is decreed to the extent of Rs. 9,56,250/- (Rupees Nine lakhs fifty six thousand, two hundred and fifty only). There shall, however, be no order as to costs. The pending application IA No. 11575/2009 is disposed of accordingly.

July 19, 2010

(S.RAVINDRA BHAT)

JUDGE