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HIGH COURT OF DELHI: NEW DELHI

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Order decided on: 31.10.2011

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CS (OS) No.1726/2009

Kalakandar Investment (P) Ltd. & Ors Plaintiffs

Through Mr. Nitesh K. Rana, Adv. with
Mr. Wajeeh Shafiq, Adv.

Versus

M/s. Menlo Consultant India (P) Ltd. & Ors. Defendants

Through: Nemo

CORAM:

HON'BLE MR JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

Case of the plaintiffs

1. The plaintiffs have filed the present suit seeking following reliefs: -

- a. Decree of possession of the suit property.
- b. Direction to the defendants to pay the arrears of rent.
- c. Direction to the defendants to pay the mense profits.
- d. Litigation cost to be awarded in favour of the plaintiffs.
- e. Consequential reliefs.

2. The plaintiffs on 27.12.2007 leased out to the defendants 2 flat bearing Nos.403 and 408 for monthly rental of Rs. 5,88,380/- (Rs. 3,80,184+ Rs. 2,08,196 respectively for flat No.403 and flat

No.408) to be paid quarterly; an amount of Rs. 52, 95,420/- i.e. money equal to the rent for 9 months was to be paid towards security deposit; if the payment of the monthly rent is delayed the tenants/defendants shall pay interest @ 12% p.a.

3. In April 2008, the defendants stopped paying monthly rental to the plaintiffs. The plaintiffs through a notice terminated the lease deed dated 27.12.2007 and further requested to settle the accounts and vacate the premises.

4. Parties entered into a settlement on 13.2.2009 wherein rent was readjusted at Rs. 5,73,780/- per month; security deposits adjusted against the arrears of rent; tenants/ defendants to hand over the possession of the suit property to the landlords/plaintiffs on or before 23.2.2009; tenants/defendants to pay Rs. 700/- for arrears of rent and sum of Rs. 30,000/- to be paid towards electricity and water charges to the landlords/plaintiffs.

5. Defendants made the balance payments of Rs. 651/- and Rs. 30,000/- by way of cheque Nos. 276932 and 276933 dated 14.2.2009 payable at HDFC bank. However, those cheques got dishonored.

6. A suit for eviction and payment of arrears of rent was filed on 08.09.2009. Monthly rental of Rs. 5,73,780/- had only been paid for months, January to March 2008. The defendants appeared on caveat and accepted notice on the first date itself and never appeared thereafter. The Court passed order dated 15.10.2009 wherein the defendants were proceeded ex-parte and there was also a direction to clear the arrears and to continue to pay rent @ Rs. 5,73,780/- . But the

defendants did not honour the order and filed an appeal being FAO No.85/2011 against the order dated 15.10.2009 before a Division Bench of this Court. The Division Bench upheld the order of the Single Bench and the defendants were given a choice to get the ex-parte order recalled after making the payment of arrears of rent within 30 days which was accepted by the defendants.

7. The defendants being on caveat accepted notice and were directed to file their written statement. The defendants did not file the Written Statement nor appeared. Therefore, the court passed an order of ex parte against the defendants and directed the plaintiffs to file ex parte affidavit evidence and also directed the tenants/defendants to make interim payments at the rate of Rs. 5,73,780/- per month till the disposal of the suit and clear the arrears of rent for the unpaid period within four weeks. The said order was passed on 15.10.2009.

8. Defendants did not pay the arrears, which was condition precedent in Order dated 15.10.2009. As the defendants did not pay the admitted rent, the plaintiffs filed an I.A. No. 3330/2010 under Order 15 Rule 5 for striking out defence. The property of the defendants was ordered to be attached and the warrants of arrest were issued against the defendants on 18.3.2010.

9. PW1 Smt Rewa Singh tendered her examination in chief vide affidavit Ex- PW 1/A on 9.3.2010. The defendants got the matter adjourned stating that the copies of the affidavit have been supplied to them in court only. However the defendants did not proceed further with the matters. This Court upon plaintiff's I.A. No. 1726/2009 under Order XXXVIII CPC ordered to attach the property of the

defendants bearing flat No. 11 of 31 Pritviraj Road, New Delhi and also to issue warrants of arrest against the defendants. But, later on, while the warrant of attachment was executed, the arrest warrant was kept in abeyance as the defendants had to put an appearance.

10. The defendants also filed application under section 8 of the Arbitration and Conciliation Act 1996.

11. The matter was again directed to be listed before the Learned Joint Registrar on 27.4.2010 for recording of evidence. when this case was listed again before the Learned Joint Registrar on 7.5.2010 for recording of evidence, the defendants again got it adjourned stating that the copies of the affidavit in evidence have been supplied at 9.00 pm a day before.

12. In the meanwhile, the plaintiff filed Execution Application No. 366 of 2010 on 2.11.2010, seeking execution of the order dated 15.10.2009. Notice was issued. Thereafter, the bank account of the defendants was attached.

13. This Court vide order dated 14.1.2011 passed in execution, directed the defendants to file affidavit of assets and income in Form 16A, Appendix E, Under Order 21 Rule 41 (2) of CPC. The defendants did not comply with it.

14. Defendants vide letter dated 13.12.2010 written to the caretaker of the Mercantile House, K.G. Marg, where the premises in question is situated, conveyed their intention to vacate the property in dispute.

15. The defendants through their counsel proposed to handover the possession of the suit property. This court vide order

dated 24.1.2011 appointed Mr. H.R. Tyagi (Retired Executive Engineer C.W.P.D) as Local Commissioner to ascertain improvement allegedly made by the defendants and the damage caused by the tenants/defendants to the suit property.

16. The Local Commissioner on 14.2.2011 inspected the suit property and handed over the keys of the suit property to the plaintiffs.

17. The defence of the defendants made in the written statement were also struck off vide order dated 23.3.2011 passed in I.A. No. 3330/2010. The Local Commissioner filed his report. In view of the fact that this Court heard the main matter itself learned counsel for the plaintiff withdrew the pending execution after seeking liberty to file the fresh execution on deciding the main case itself as this court has agreed to exercise its discretion to pass the final order in view of the provision of order XV of the Code of Civil Procedure, 1908.

18. It is the admitted position that the defendants have delivered the possession of the suit property to the plaintiffs but at the same time, the defendants, as per the material available on record, did not pay the rent from April 2008. The plaintiffs thereafter issued a notice dated 02.07.2008 terminated the lease. Still the defendants did not hand over the possession of the suit property despite the said termination of the lease.

19. The defendants again on 13.02.2009 in written agreement undertook to vacate the suit property by 23.02.2009 otherwise, the security deposit for a sum of Rs.52,95,420/- was to be appropriated by

the plaintiffs towards arrears of rent. It was also agreed by the defendants in the said agreement that the rate of rent would be reduced to Rs.5,73,780/- per month which was to be paid retrospectively in terms of clause 2.5 of the said agreement.

20. After the adjustment of the security deposit, the arrears of rent was Rs.700/- on the date of the agreement. Now the remaining liability of the defendants to pay the rent to the plaintiffs in terms of agreement dated 13.02.2009 was Rs.5,73,780/- from the admitted date of vacation of the property on 23.02.2009 till March 2011 when the possession was handed over to the plaintiffs.

21. The case of the plaintiffs is that admittedly for the said period, i.e., 23.02.2009 till March 2011, the rent was not paid by the defendants as the defendants unauthorizedly kept the suit property till February 2011. The possession of the property was given to the plaintiffs on 14.02.2011, so the prayer made in the plaint has become infructuous.

22. As far as other prayer is concerned, as per clause 2 of the lease agreement dated 27.12.2007, the defendants had agreed to pay interest @12% per annum upon the delayed payment of rent. Therefore, in the absence of any contrary argument, the plaintiffs are entitled to balance/outstanding amount of rent. The plaintiffs are also entitled to interest @12% per annum. The plaintiffs are also entitled to cost of the suit.

23. The suit of the plaintiff is accordingly decreed to the following effect:

- a. That the defendants shall pay arrears of rent from the date of 23.02.2009 till March 2011 @ Rs.5,73,780/- per month along with interest which is payable @12% per annum from the date of amount due till the date of realization of the amount.
- b. The defendants shall pay all the electricity and water charges as well as TDS.
- c. The defendants shall also pay the penalty if it is likely to be imposed upon the plaintiffs by the Income Tax Department for delay in payment of TDS.
- d. As far as damages/compensation for causing damage to the suit property are concerned, the plaintiffs have not been able to prove the said claim. Therefore, the said claim is declined.

24. The suit of the plaintiffs is decreed accordingly in terms of the preceding para of this order. Decree be drawn accordingly. All pending applications stand disposed of.

MANMOHAN SINGH, J.

OCTOBER 31, 2011

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