

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

% Date of *Judgment*: 24.05.2011

+ **R.S.A.No. 236/2010**

SHRI P.S. VERMA Appellant

Through: Mr. L.C. Rajput, Advocate.

Versus

HINDUSTAN COCA COLA BEVERAGES PVT. LTD.

.....Respondent

Through: Mr. Parag Chaudhary,
Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (oral)

1 This appeal has impugned the judgment and decree dated 09.08.2010 which has endorsed the finding of the trial Judge dated 08.04.2010 whereby the suit filed by the plaintiff P.S. Verma seeking possession of the suit property (i.e. property bearing No. 142, State Bank Nagar, Pashim Vihar, New Delhi) as also recovery of damages had been dismissed; counter claim preferred by the defendant had been decreed; he had been held

entitled to refund of ₹90,000/- which was the security amount deposited by him with the plaintiff/landlord together with interest @ 24% per annum.

2 Certain facts are admitted. The plaintiff is the owner and landlord of the suit property. He had tenanted out the suit property to the defendant for a period of two years on monthly rent of ₹15,000/- which was exclusive of water and electricity charges. It was for a residential purpose. The security amount of ₹90,000/- had been paid by the tenant/defendant to the plaintiff in terms of the aforementioned agreement; this agreement has been proved as Ex. PW-1/D2 dated 18.06.2001. It is also not in dispute that the premises have since been handed over to the landlord on 06.09.2005; this was during the pendency of the proceedings. The defendant vide notice dated 27.08.2002 Ex.PW-1/1 had given a one month notice to the defendant; informing him that he wished to vacate the suit premises i.e. by 26.09.2002. Further correspondences were also exchanged between the parties i.e. Ex.PW-1/2 which was the reply dated 09.09.2002 written by the plaintiff to the defendant. Ex.PW-1/7 was another letter written by the defendant to the plaintiff dated 26.11.2002 again requesting him to take the premises to which reply dated 20.12.2002 (Ex.PW-

1/8) had given by the plaintiff stating therein that certain dues were still due from the defendant.

3 This is a second appeal. It has been admitted and on 24.01.2011, the following substantial question of law was formulated:-

“Whether the finding in the impugned judgment dated 09.08.2010 decreeing the suit for refund of security amount by the appellant/landlord to the tenant in the sum of Rs.90,000/- with interest @ 24% per annum is a perverse finding for the reasons that the physical possession of the premises had been handed over to the landlord only on 06.09.2005; further if the landlord was entitled to rent for the period prior thereto, if so, its effect?”

4 On behalf of the appellant, it has been urged that the finding of the two courts below had illegally interpreted the agreement for security deposit; the whole purpose of security is destroyed; it has wrongly been interpreted to hold that the tenant is entitled to the refund of the security amount notwithstanding the fact that he had returned the keys of the premises admittedly on 06.09.2005 and the plaintiff not being entitled to recover rent for this intervening period and the security amount not being liable to be adjusted is a perverse finding.

5 Arguments have been refuted. It is pointed out that finding of the two fact finding courts calls for no interference.

6 Record has been perused. The agreement for security

deposit is Ex.PW-1/D2. It has to be read in its entirety and no one clause can be picked up or read in isolation. Clauses 2, 3 & 4 are relevant. They read as under:-

2. The Lessee has agreed to deposit with the Lessor and keep deposited with him, an interest-free refundable sum of Rs. 90,000/- (Rupees Ninety thousand only) by way of security deposit during the Term (hereinafter "Security Deposit"). Accordingly, the Lessee shall at the time of taking over possession of the Demise Premises, hand over to the Lessor Pay Order or Account payee Cheque for the sum of Rs. 90,000/- (Rupees Ninety thousand only) as security which shall not carry any interest and the Security Deposit shall be refunded to the Lessee in whole at the end of the Term.

3. In the event of the Lessee and/or the Occupier and/or his/her family members failing and/or their/its articles and effects from the demised Premises, the Lessor shall be entitled to withhold the Security Deposit until the Lessee hands over vacant possession of the Demised Premises to the Lessor.

4. Notwithstanding anything contained in the Lease Deed in the event of failure on the part of the Lessor to refund the Security Deposit in whole to the Lessee as aforesaid and also to settle all accounts between the Lessor and the Lessee under any Deed or Agreement entered into between the Parties including but not limited to the said Lease Deed, the Lessee shall, until the Lessor refund the Security Deposit in whole, be entitled to continue to use and occupy the Demised Premises without payment of any rent or compensation whatsoever, until the Lessor refund the Security Deposit in whole and such staying over the Lessee under the Lease Deed in the Demised Premises shall not constitute a default by the Lessee under the Lease Deed. Further, if in spite of the readiness and willingness of the Lessee to vacate the Demised Premises, the Lessor commits a default in forthwith refunding the Security Deposit in whole against vacant charge and possession of the Demised Premises agreed to be handed over to the Lessor, the Lessor shall be liable to pay to the Lessee interest on the Security Deposit at the rate of 24% (twenty four per cent) compounded quarterly from the date of default until repayment

to or realisation thereof by the Lessee. The payment of the Security Deposit shall be effected by a Demand Draft payable at New Delhi.

7 The court below had adverted to clauses 2 & 4 but had omitted clause 3. Clause 3 specifically postulates that in the event the lessee does not remove himself from the demised premises, the lessor shall be entitled to withhold the security deposit until the lessee hands over vacant possession of the demised premises to the lessor. The contention of the defendant that he had actually handed over the disputed premises to the landlord/plaintiff on 28.08.2002 which is evident from the joint inspection carried out by the parties is belied by letter dated 05.02.2003 (Ex.PW-1/23). This is a letter written on behalf of the defendant to the plaintiff wherein in para 4 it was specifically stated that until and unless the security amount is refunded, his client is entitled to use and occupy the demised premises without paying rent or compensation thereof. This document clearly acknowledges that even upto February, 2003, the possession of suit property was with the defendant; defendant was till then asserting his right to continue in occupation of the suit premises.

8 The finding returned in the impugned judgment calls for an interference. It had illegally and perversely dealt with a pick and

choose policy of the clauses of the security agreement without advertent to it in its entirety. The whole purpose of a security agreement which is to safeguard the interest of the landlord is destroyed in spite of the admitted fact that the keys of the suit property continued to remain with the tenant yet the courts below had thought it a fit case to hold that the plaintiff is not entitled to any adjustment against the security and this security amount is liable to be refunded back to the defendant with interest @ 24% per annum w.e.f. 06.09.2005 i.e. the date on which the suit premises had been handed back to the plaintiff.

9 Correspondences exchanged between the parties (as noted supra) clearly show that although the defendant had written to the plaintiff asking him to take back the suit premises yet the reply of the plaintiff all along was that the electricity and water charges as also other dues were still due and payable; a complete clearance is yet to be made. Mark 'B' (Ex.PW-1/3) dated 18.10.2002, mark 'C' (Ex.PW-1/4) dated 30.10.2002; mark 'D' (Ex.PW-1/5) dated 13.11.2002, mark 'E' (Ex.PW-1/11) dated 05.12.2002, mark 'F' (Ex.PW-1/13) dated 17.01.2003, mark 'G' (Ex.PW-1/14) dated 29.03.2003 and mark 'H' (Ex.PW-1/21) dated 01.05.2003 were all letters written by the plaintiff to the defendant reiterating the position that dues of the plaintiff have not been paid and

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possession of the suit property has also not been handed over. These are all admitted documents. This documentary evidence in fact establishes that the plaintiff was requesting the defendant to handover the possession of the suit property and to take back his security amount but for one reason or the other these negotiations could not fructify between the parties; admittedly the keys of the premises were handed over by the defendant to the plaintiff only on 06.09.2005. It cannot in these circumstances be said that it was the fault of the plaintiff that the keys were not received by him from the defendant. The parties were living in Delhi and nothing prevented the defendant to handover the key to the plaintiff. The purpose of a security amount would be nullified if inspite of the fact that the possession of the suit property is being retained by the defendant; yet the plaintiff/landlord is precluded from adjusting his dues against the said security amount. The plaintiff admittedly could not use the suit property till 06.09.2005; it is also not the case of the defendant that the suit property had been put to use by the defendant in this period.

10 The impugned judgment dismissing the suit of the plaintiff and decreeing the counter claim of the defendant is a perversity. It calls for an interference. The claim of the plaintiff as per

averment in the plaint is that the rate of rent @ ₹15,000/- (admitted fact) has not been paid w.e.f. September, 2002 and this amount is due upto September 2005 when the suit property was delivered to him. This is an intervening period of 36 months; rent calculated @ ₹15,000/- per month would work out to ₹5,40,000/-; this has to be adjusted against the security deposit of ₹90,000/-. Thus the amount due and payable by the defendant is ₹4,50,000/-.

11 Substantial question of law is answered in favour of the appellant and against the respondent. Appeal is allowed. Counter claim of the defendant is dismissed. Suit of the plaintiff is decreed in the sum of ₹4,50,000/- with interest @ 9% per annum.

INDERMEET KAUR, J.

MAY 24, 2011
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