

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

+ **CS(OS) No.189/1999**

% **24th September, 2012**

HANSALAYA PROPERTIES

..... Plaintiff
Through: Mr. H.L. Tiku, Senior
Advocate with Ms.
Yashmeet, Advocate.

VERSUS

RESERVATION DATA MAINTENANCE INDIA PRIVATE LIMITED

.... Defendant
Through: Mr. R.K. Mehta, Advocate
with Mr. Kunal Mehta,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit has been filed by the plaintiff/landlord for recovery of an amount of Rs.33,82,258.06/-. The amount claimed is rental charges @ Rs. 4.5 lacs from 1.1.1999 to 16.8.1999.

2. The facts of the case are that the plaintiff/landlord gave on lease the subject premises being Flat Nos.3-G and 3-H admeasuring 3000 sq ft situated on the 3rd floor commonly known as 'Hansalaya' and bearing municipal No.15, Barakhamba Road, New Delhi to the defendant. The first registered lease deed in this regard is dated
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16.12.1993 and which lease expired on 16.8.1998. After this first lease deed came to an end a second lease deed on 25.8.1998 was entered into for the period of one year from 17.8.1998 to 16.8.1999. This second lease deed is again a registered lease deed. The defendant vacated the premises on 12.3.1999 but as per the plaintiff the lease could not be determined before the fixed period of one year expiring on 16.8.1999, and therefore the plaintiff has filed the subject suit for recovery of rent from 1.1.1999 to 16.8.1999. Learned senior counsel for the plaintiff at this stage clarifies that rent has been paid for January, 1999 and the claim in the suit is restricted to rent from 1.2.1999 to 16.8.1999.

3. The defendant contested the suit and the defence which was raised was that the defendant under force, coercion and undue influence had to enter into the registered lease deed dated 25.8.1998 for the period from 17.8.1998 to 16.8.1999. It is claimed that since the plaintiff was a landlord it was in a dominant position and therefore there was coercion upon the defendant. It is pleaded that hence the defendant is not bound by the terms of the lease deed dated 25.8.1998. It is also pleaded that since the defendant handed over possession on 12.3.1998, thereafter it is not liable to pay the rent.

4. The following issues were framed in this suit on 11.8.2008:-

“1. Whether the present suit is barred in view of Section 69 of

the Partnership Act, 1932? OPP

2. Whether the defendant is liable to pay rent/use and occupation charges for the period between March, 1999 to August, 1999 and if so at what rate? OPP

3. Whether the defendant had executed Lease Deed dated 25th August 1998 under force and coercion? OPD

4. Whether the plaintiff is entitled to interest and if so, at what rate and for what period? OPP

5. Relief.”

Issue No.1

5. Plaintiff has filed and proved on record certificates issued from the Registrar of Firms Ex.PW1/2 and Ex.PW1/3 and which show that plaintiff is a duly registered firm under Section 69 of the Partnership Act, 1932. Smt. Pushpa Vadera who has filed the suit is shown at serial No.1 in the list of partners in the document Ex.PW1/2. I therefore decide issue No.1 in favour of the plaintiff and against defendant and hold that suit is not barred under Section 69 of the Partnership Act, 1932.

Issue Nos.2 and 3

6. Issue Nos.2 and 3 are related and therefore are being disposed of together. The basic aspect is the liability of the defendant/tenant to pay rental charges from 1.2.1999 till 16.8.1999 although the defendant has vacated the suit premises on 12.3.1999.

7. The fact that the lease deed dated 25.8.1998 was duly entered into between the parties and registered is not disputed. This lease deed is proved and exhibited as Ex.P1. The defence of the defendant is

that this lease deed is not binding on account of coercion and undue influence. Reliance is placed upon Section 16(3) of the Indian Contract Act, 1872 that the defendant being a tenant and already paying rent, the plaintiff-landlord was in a dominant position and therefore the defendant/tenant had no option but to agree to the terms of the lease deed Ex.P1.

8. Normally, Sections 91 and 92 of the Evidence Act, 1872 will prevent a person from urging anything contrary to the terms as contained in the written document. The terms of the written document being the lease deed dated 25.8.1998 Ex.P1 will therefore be binding upon the parties, provided of course the defendant does not succeed in proving the issue of coercion and undue influence.

9. I am unable to agree with the contention of the defendant that there was any coercion and undue influence in entering into the lease deed Ex.P1 dated 25.8.1998. Firstly, the defendant is a company and surely it cannot be said that there is coercion and undue influence on the entire Board of Directors of the defendant. Further, the defendant has in fact acted upon this lease deed Ex.P1, paid the rent from 17.8.1998 to 31.12.1998 @ Rs. 3 lacs per month, and thus taken benefit of the same. Having acted upon the lease deed and having taken benefit of the same, the defendant is estopped from raising the plea of undue influence or

coercion.

10. Further, if really the lease deed Ex.P1 was got entered into through coercion and undue influence, nothing prevented the defendant from immediately writing a letter after the lease deed dated 25.8.1998 was entered into that the lease deed is not binding on account of coercion and undue influence, however, no such notice was immediately sent or even for many months after the lease deed Ex.P1 was entered into between the parties. The first communication alleging coercion on behalf of the defendant is the letter dated 25.1.1999, Ex.DW1/9 wherein the defendant has alleged coercion and undue influence. I thus refuse to believe this argument of undue influence and coercion which has been raised for the first time around five months after the lease deed Ex.P1 was entered into and acted upon between the parties. Obviously, this communication Ex.DW1/9 is a convenient communication on behalf of the defendant. I therefore hold that there was no undue influence or coercion on the defendant for entering into of the lease deed dated 25.8.1998, Ex.P1.

11. The next issue is that whether the defendant is liable to pay the rent from 1.2.1999 to 16.8.1999. I may note that the lease deed in question Ex.P1 is a lease for a specified period of one year from 17.8.1998 to 16.8.1999. This lease deed does not contain any termination

clause whereby the defendant could have terminated the lease by giving of a notice i.e there is no clause of no fault termination by giving a notice of one month or two months etc. Once, there is no clause entitling termination of lease by the tenant, and which lease is for one year, the lease in fact will be for a fixed period of one year. Once the lease is for a fixed period of one year and if the tenant wants to vacate earlier, the tenant in law will be bound to pay the rental charges for the entire period of one year. Of course, it was open to the defendant to plead and prove that the plaintiff in spite of breach of contract by the defendant in vacating the premises earlier than the fixed period expiring on 16.8.1999 did not suffer a loss to claim the rent from 1.2.1999 to 16.8.1999, however, there is no such pleading of the defendant and no such issue is framed. Pleading and framing of an issue would have been relevant because notice then would have been given to the plaintiff who could/would have led evidence to show that in spite of his taking steps no tenant could be found from 13.3.1999 to 16.8.1999, and which period in any case is not a long period, but only of about five months. In any case, I need not say anything further on this aspect because neither there is any pleading nor an issue raised by the defendant in this regard.

12. I therefore hold that there was no force, coercion or undue influence upon the defendant at the time of entering into of the lease deed

Ex.P1. I refuse to accept this argument that merely because the defendant was a tenant in the same premises, the plaintiff was in a dominant position being the landlord. The relations are commercial relations and the documents are commercial documentation and therefore I cannot accept the plea urged on behalf of the defendant with respect to that the plaintiff allegedly being the landlord was in a dominant position. Obviously, the lease was taken for the benefit of the defendant inasmuch as though the defendant has purchased another premises, but in those premises work was going on and therefore the defendant was in no position to shift from suit premises and therefore the lease Ex.P1 was entered into between the parties. I also hold that in view of the lease being for a period of one year without a no-fault termination clause, the defendant/tenant is liable to pay rent from 13.3.1999 to 16.8.1999.

13(i) Counsel for the defendant has sought to argue that the plaintiff cannot claim the amount of rent from 1.2.1999 to 16.8.1999 inasmuch as the plaintiff itself had terminated the lease vide letters dated 16.12.1998, Ex.PW1/5 and 1.1.1999, Ex.PW1/7. On the basis of these letters, it is argued that plaintiff had terminated the lease.

(ii) So far as the letter dated 16.12.1998, Ex.PW1/5 is concerned, there is not even a whisper in the same for the termination of the lease, and which only seeks payment of rent.

(iii) In the second letter dated 1.1.1999, Ex.PW1/7, all that the plaintiff has done is that it has put the defendant to notice that in case of failure to pay rent the lease would stand determined. There is a difference between the expressions 'would be terminable' and 'lease is terminated'. A lease would be determined only when it is actually terminated with effect from a particular date. The threat to terminate lease is different from actual termination of the lease. The letter Ex.PW1/7 does not terminate the lease as is sought to be urged on behalf of the defendant.

(iv) The argument of the defendant is therefore rejected that the plaintiff itself had terminated the lease in terms of the letters Ex.PW1/5 and Ex.PW1/7.

14. Learned counsel for the defendant has cited the following judgments:-

(i) ***ICRA Limited Vs. Associated Journals Limited 2007 (8) AD (Delhi) 437.***

(ii) ***Hansalaya Vs. RDM India Pvt. Ltd. 86 (2000) DLT 734.***

(iii) ***Ram Prakash Vs. Amitosh Moitra 2010 (170) DLT 347.***

(iv) ***Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd. & Ors. AIR 2005 SC 439.***

15. So far as first judgment is concerned, it has been cited on the ***CS(OS) No.189/1999***

proposition that after possession is handed over, the tenant is not liable to pay the rent. The second judgment is the interim order in this very suit. The third judgment is on the same proposition as the first judgment. The last judgment is on the proposition that an attorney who is not aware of the facts of the case and which are in the knowledge of the principal cannot depose on such facts.

16. So far as the first judgment in the case of *ICRA Limited (supra)* is concerned the same has no application to the facts of the present case where the lease is a fixed period lease of one year. Of course, after vacation of premises, a tenant is not liable to pay the rent, however, when the lease is for a fixed period of one year and the tenant vacates premises before the fixed period it is ordinarily liable to pay rent for the balance period, subject to the defence of the tenant under Section 74 of the Contract Act, 1872, that plaintiff did not suffer a loss as it could have but failed to let out the premises for the balance period of the lease and which defence is not set up by the defendant in the present case.

The judgment in the case of *ICRA Limited (supra)* therefore does not apply to the facts of the present case.

17. So far as the second judgment in the case of *Hansalaya (supra)* dealing with interim proceedings in this very suit is concerned, all need say is that a judgment at an interim stage does not bind the parties at

the stage of final arguments in the suit after evidence has been led.

18. So far as third judgment in the case of ***Ram Prakash (supra)***, besides the fact that it is under Section 138 of Negotiable Instruments Act, 1881, the same is distinguishable on the same reasons which have been given qua the first judgment of ***ICRA Limited (supra)***.

19. So far as the last judgment in the case of ***Janki Vashdeo Bhojwani (supra)*** is concerned, the same does not apply to the facts of the present case where the witness has specifically deposed that he is aware of the facts and hence competent to depose. Also, as the discussion in the present judgment shows, the findings and conclusions basically turn upon the reading of the documents being the lease deed and the notice exchanged, besides the conduct of the defendant in acting upon it by taking benefit of the lease deed dated 25.8.1998, and therefore, the judgment in the case of ***Janki Vashdeo Bhojwani (supra)*** has no application to the facts of the present case.

Issue No.4

20. Once the plaintiff is entitled to arrears of rent from 1.2.1999 to 16.8.1999, in terms of the judgment of the Supreme Court in the case of ***Indian Oil Corporation vs. Saroj Baweja 2005(12) SCC 298***, the plaintiff will also be entitled to interest on arrears of rent payable. I grant interest @ 12% per annum from end of the month for which the rent was

payable till the date the amount is paid. Plaintiff will also be entitled to pendente lite and future interest till payment of decretal amount @ 12% per annum simple.

Relief

21. In view of the above, the suit of the plaintiff is decreed for rent @ ₹ 4.5 lacs per month for the period from 1.2.1999 to 16.8.1999 alongwith interest @ 12% per annum simple from the end of the tenancy month for which the rent was payable. Plaintiff will also be entitled to same rate of interest pendente lite and future till payment of decretal amount. Plaintiff will also be entitled to costs in terms of Rules of this Court. In case, any amount has been paid by the defendant during the pendency of the suit for the period from 1.2.1999, then, the defendant will be entitled to adjustment of such amount paid to the plaintiff, and which aspect will be seen in the execution proceedings, if any. Suit is decreed and disposed of accordingly. Decree sheet be prepared.

VALMIKI J. MEHTA, J

SEPTEMBER 24, 2012

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