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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : March 07, 2012*
Judgment Pronounced on: March 14, 2012

+ RFA(OS) 62/2007

ASSOCIATED JOURNAL LIMITED Appellant
Represented by: Mr. A.K. Singla, Senior Advocate
instructed by Mr. Gautam Anand,
Advocate.

versus

ICRA LIMITED Respondent
Represented by: Mr. Kirat Singh Nagra, Advocate.

RFA(OS) 63/2007

ASSOCIATED JOURNAL LIMITED Appellant
Represented by: Mr. A.K. Singla, Senior Advocate
instructed by Mr. Gautam Anand,
Advocate.

versus

ICRA LIMITED Respondent
Represented by: Mr. Kirat Singh Nagra, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Suit filed by the respondent and counter-claim filed by the appellant have been disposed of, decreeing respondent's suit in sum of ₹46,72,500/- together with simple interest @9% per annum with effect from November 27, 1997

till date of payment and dismissing the counter claim filed by the appellant. Hence, the two appeals in our lap.

2. The parties are not at variance on facts and thus we note the admitted facts.

3. Vide lease-deed dated April 24, 1996, Ex.D-1, respondent took on lease from the appellant 4450 sq.ft. area on the fourth floor of a building popularly called 'Herald House' at Bahadur Shah Zafar Marg and for which the monthly rental agreed was ₹125/- per sq.ft., to be increased by 15% on May 01, 1998. The lease commenced on May 01, 1996 and vide clause-3, duration was 8 years. As recorded in clause-4 of the lease deed an interest free security deposit in sum of ₹66,75,000/- was received by the appellant and three months' service charges, adjustable in the following 12 months in sum of ₹16,68,750/- were also received. The security deposit had to be refunded within 7 days upon termination/determination of the lease and vide clause-21 of the lease deed, the respondent was entitled to terminate the lease by giving three months' notice in writing or three months' rent in lieu thereof. The appellant was enjoined, vide clause-6, to supply at least 20 KW power for the respondent to maintain and operate its air-conditioners and other electronic office gadgets. The appellant was obliged to ensure that there was no leakage from the overhead water tanks at the roof.

4. Vide Ex.D-2, a letter dated November 18, 1997, the respondent terminated the lease alleging water leakage and inadequate electricity supply resulting in non-effective air-conditioning; and calling upon the appellant to adjust three months' rent, required the appellant to return ₹50,06,250/-. It was informed that the lease would stand determined with

effect from November 19, 1997. The appellant responded vide Ex.D-3 on November 22, 1997, stating that low voltage was due to DESU supplying electricity with low voltage and as regards the seepage, stated that its engineers would be rectifying the problem shortly. Appellant requested the respondent not to insist upon the lease being determined.

5. The respondent insisted that it was no longer interested in continuing with the lease and informed the appellant that it had moved out to another premises and told the appellant to take vacant possession of the tenanted property and since 7 days had expired after the lease was determined, it should refund ₹50,06,250/-.

6. On April 18, 1998, vide Ex.D-4, appellant wrote to the respondent that its act of vacating the premises and shifting to a new building is of no avail and that it was not entitled to any security deposit being refunded because it did not deliver possession of the tenanted premises. The respondent responded on April 30, 1998, vide Ex.D-5, informing that it had repeatedly offered possession to be taken over, but it was the appellant which was playing truant.

7. The sparring bout continued with the parties exchanging letters Ex.D-7 on July 30, 1998, a legal notice dated September 05, 1998, Ex.D-8, and a response thereto on September 12, 1998 being Ex.D-9.

8. In between, the respondent wrote a letter dated May 28, 1998 Ex.PW-1/DA on the subject of defective air-conditioning to which the appellant responded on June 29, 1998 vide Ex.D-6 informing that its technicians would look into the problem.

9. The respondent filed the suit claiming decree in sum of ₹46,72,500/-, calculating the same as ₹66,75,000/- less three months notice in lieu of notice i.e. ₹16,68,750/-, less rental from November 01, 1997 to November 18, 1997, i.e. ₹3,33,750/-. Key of the tenanted premises was deposited in Court, after the suit was filed, on December 07, 1998.

10. Vide impugned judgment and decree dated August 24, 2007, the learned Single Judge has held that the respondent was entitled to terminate the lease as per clause-21 and since it had validly determined the lease and had offered possession to the appellant, which was declined by the appellant, constructive possession would be deemed to be with the appellant and hence the decree in sum of ₹46,72,500/- and counter-claim denied; basis whereof laid by the appellant was that since possession was delivered on December 07, 1998, it would be entitled to receive rent till said date.

11. Learned counsel for the appellant urged that the letter Ex.PW-1/DA written by the respondent would reveal that the respondent was still occupying the premises and was using the same, evidenced by the fact that the respondent had written that due to AC cooling units not working *'it had become difficult to work under these conditions as it became hot during the day'*. Thus, counsel urged that the said letter exploded the myth created by the respondent by writing in various letters that it had moved to another premises.

12. The response of learned counsel for the respondent to the said letter was, in conformity with the view taken by the learned Single Judge in para 21 of the impugned decision, that compelled to keep staff for security reasons at the tenanted

premises, the respondent was justified that air-conditioning should function properly. It be highlighted that the witness of the appellant, Sh.Alok Gupta, DW-1, during cross-examination admitted that the respondent had shifted their operational work to an office at Kailash Building, Kasturba Gandhi Marg.

13. Thus, the appellant is not justified in taking a stand that the respondent, speaking as a matter of fact, did not vacate the tenanted premises and that it was not in a position to deliver vacant possession thereof to the appellant.

14. Clause-21 of the lease deed Ex.D-1 reads as under:-

“21. If the lessee fails to pay monthly rent and service charges payable by the lessee as stated above and should there be arrears of unpaid rent and service charges for consecutive three calendar months after the same ought to have been paid, then it would be lawful for the lessor to terminate the tenancy with calendar month's notice in writing. Notwithstanding anything contained herein, the lessee shall be entitled to terminate this lease before the expiry of present terms or any extension thereof by giving the lessor or their authorized agent three months' notice in writing or three month's rent in lieu thereof.”

15. Thus, it was the absolute right of the respondent to terminate the lease by either giving three months' prior notice of the lease being determined or rent in lieu thereof. This right was not contingent upon any default committed by the appellant. Thus, it hardly matters whether the air-conditioning in the demised premises was defective and/or there was seepage on account of water overflowing from the water tanks atop the roof of the demised premises.

16. Vide Ex.D-2, respondent terminated the lease and offered vacant possession to be received the very next day i.e. on November 19, 1997. The respondent clearly told the

appellant that in lieu of three months' notice, it could appropriate three months' rent and thus required ₹16,68,750/- to be adjusted from the security deposit and the balance refunded. It was for the appellant to have taken possession and within seven days of lease being determined to have returned the balance security deposit. The appellant did not do so. Vide Ex.D-3, apologizing for the low voltage and shortcoming in the civil engineering work resulting in seepage, it requested the respondent to re-think on the subject, a request which was refuted by the respondent.

17. Now, Section 111 of the Transfer of Property Act deals with the modes of determination of the lease and vide clause (e) thereof provides that a lease can be determined by express surrender and vide clause (f) by an implied surrender. Clause (h) deals with the notice of intention to determine the lease. It is true that as per clause (q) of Section 108 of the Transfer of Property Act, the lessee is bound to put the lessor in possession of the property leased, but this would mean that it is inherent that the landlord should accept the possession of the property whenever it is delivered and cannot claim a right to receive the possession only upon the lessee paying dues or otherwise. We highlight immediately, that in the instant case, it is not the case of the appellant that it had any dues, by way of damages or otherwise, against the respondent. Vacation of a leased property by the lessee together with a notice to the lessor to take delivery of the possession would sufficiently discharge the lessee of any further obligation to pay the rent and any impediment put by the lessor in the matter of delivery of possession would amount to possession being delivered and it shall be deemed for all purposes that as soon as the

property was vacated and possession offered, constructive possession would be with the lessor. Even if the lessor has any claim, by way of damage to the property or otherwise, the right of the lessor is not to decline to receive possession and then insist that further lease rental had accrued each month. The right of the lessor is to sue and recover the damages.

18. We agree with the reasoning of the learned Single Judge and thus we dismiss both appeals, but refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 14, 2012
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