

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

+ **CS(OS) 2237/2010**

M/S GALAXY BUILDERS PVT LTD & ANR Plaintiffs
Through: Mr. Ashok Chhabra and
Mr. Sanjeev Goel, Advocates
versus

M/S AHA AVIATION & HOSPITALITY
ACADEMY PVT LTD Defendant
Through: Defendant is *ex parte*.

% Date of Decision : March 16, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The afore-mentioned suit has been filed by the plaintiffs for a decree of possession in respect of property No. D-16, Third Floor, South Extension Part-II, New Delhi-110049, recovery of damages in the sum of Rs. 3,50,000/- and for future damages.

2. It is averred in the plaint that the plaintiffs are the joint owners of the premises bearing no. D-16, South Extension Part II, New Delhi – 110 049. The defendant was inducted as tenant in April, 2007 in respect of basement and Third Floor of the above-mentioned property having approximately 6250 Square Feet area at a monthly rental of

Rs. 6,75,000/- (Rupees Six Lakhs and Seventy Five Thousands only) comprising of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousands only) for the basement and Rs. 4,25,000/- (Rupees Four Lakhs and Twenty Five Thousands only) for the Third Floor, which was to be paid by the defendant by means of two cheques of equal amounts in favour of the plaintiff No.1 and plaintiff No.2 each. As per the terms of the lease, the rent was enhanced at the rate of 15% from Rs. 6,75,000/- to Rs. 7,76,250/- with effect from 16th April, 2010.

3. It is alleged that since the inception of the tenancy, the defendant has been defaulting in payment of rent and its cheques were being dishonoured.

4. It is stated that no rent has been paid by the defendant from September, 2009 and the cheques issued by the defendant towards the rent have been dishonoured, the details whereof are set out in paragraph 6 of the plaint.

5. By a communication dated 15.07.2010, the defendant informed the plaintiffs that the defendant was handing over the possession of the basement, which possession was accordingly taken by the

plaintiffs and, thus, the defendant is a tenant only in respect of the Third Floor on a monthly rental of Rs. 4,88,750/- (Rupees Four Lakhs and Eighty Eight Thousands Seven Hundred and Fifty only).

6. It is stated in the plaint that since the status of the defendant was that of a tenant on a month to month basis, the notice under Section 106 of the Transfer of Property Act was served on account of the defaults in payment of the rent. The tenancy of the defendant was terminated by the said notice dated 18.09.2010, whereby the defendant was called upon to hand over peaceful vacant possession of the premises on/before the expiry of 15 days from the receipt of notice. The defendant despite the service of the notice on 20.09.2010 failed to hand over peaceful vacant possession of the suit premises within the stipulated period. Hence, the present suit for possession, recovery of rent and for damages and mesne profits was filed. The current status of the defendant is, thus, that of an unauthorized occupant.

7. Notice of the institution of the suit was duly served on the defendant, but since none appeared to contest the suit, the defendant was proceeded *ex-parte* by an order dated 30.05.2011. By the same

order, the defendant was directed on the application filed by the plaintiff under Order XXXIX Rule 10 of the Code of Civil Procedure to pay the use and occupation charges at the rate of Rs. 4,88,750/- (Rupees Four Lakhs Eighty Eight Thousands Seven Hundred and Fifty only) per month with effect from 5th October, 2010 within a period of eight weeks from the date of the order. However, no amount has been paid by the defendant till date.

8. The plaintiffs herein filed the affidavit of Shri Kamal Narayan Kaul, authorized representative of plaintiff No.2 by way of *ex-parte* evidence, Exhibit PW1/A and proved on record the documents Exhibit PW-1/1 to Exhibit PW-1/15 including (i) original letter of the defendant admitting its failure to pay outstanding rent and setting out a payment schedule therein (**Exhibit PW-1/3**); (ii) original letter of the defendant dated 7.10.2009 (**Exhibit PW-1/5**); (iii) original letter of the defendant dated 12.06.2010 setting out the payment schedule and undertaking to vacate the premises in case of failure to comply (**Exhibit PW-1/6**); (iv) details of the outstanding rent till June, 2010 duly signed by the defendant (**Exhibit PW-1/7-B**); (v) original letter dated 15.07.2010 by the defendant handing over vacant possession of

the basement (**Exhibit PW-1/8**); (vi) the site plan (**Exhibit PW-1/9**); (vii) certified copies of the dishonoured cheques (**Exhibit PW-1/10A to PW-1/10D**); (viii) office copy of the notice of the termination of tenancy dated 18.09.10 along with the proof of service through various modes (**Exhibit PW-1/11A to Exhibit PW1/11F**); (ix) office copy of the corrigendum dated 01.10.2010 to the notice for termination of tenancy (**Exhibit PW-1/12**); and (x) the details of outstanding dues payable by the defendant to the plaintiffs No.1 and 2 (**Exhibit PW-1/13A and PW-1/13B**).

9. On perusal of the aforesaid documents proved on record by the plaintiffs, it is amply clear that the defendant admits the relationship of landlord and tenant *qua* the plaintiffs, and the rent being above Rs.3,500/-. The plaintiffs have also proved through Exhibit PW-1/10A, PW-1/10B, PW-1/10C and PW-1/10D, being the certified copies of the cheques given as rent which were dishonoured and with regard to which a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed, that the defendant has been a habitual defaulter in the payment of rent. Service of notice under Section 106 of the Transfer of Property Act, 1882 also stands duly

established as well as the delivery proof being courier receipts, postal receipts, e-mail, online delivery report and A.D. Cards as Exhibit PW-1/11A to PW-1/11F.

10. The aforesaid evidence of the plaintiffs is unrebutted and there is no denial thereof, as such the plaintiffs are entitled to a decree for possession in respect of the suit premises as shown in the site plan Exhibit PW-1/9. However, while the suit was reserved for orders, learned counsel for the plaintiffs apprised the Court that possession of the premises in question has been handed over by the defendant to the plaintiffs in the course of proceedings before the trial court under Section 138 of the Negotiable Instruments Act, 1881 on 31.01.2012.

11. Thus, the only aspect of the matter left to be considered by this Court is of damages and mesne profits. The plaintiffs have claimed damages at the rate of Rs. 3,50,000/- (Rupees Three Lakhs and Fifty Thousands only) for the period from 05.10.2010 till 20.10.2010. This is admittedly the agreed rent for 15 days for the Third Floor of the premises as in the meantime the possession of basement was surrendered by the defendant and the plaintiffs are entitled to receive the same.

12. It is trite that the status of the defendant after the service of the notice dated 18.09.2010 is of an unauthorized occupant, liable to pay damages/mesne profits. The plaintiffs in this regard have placed on record a lease deed in respect of adjoining premises, that is, D-15, South Extension, Part II, New Delhi-110049, a certified copy whereof is exhibited as Exhibit PW-1/14 and copy of the lease agreement is exhibited as Exhibit PW-1/15. The said lease deed purports to be executed on 22.02.2011 between the landlords, Mr. Sheel Jain and Mrs. Vibha Jain, and the tenant M/s Jindal Architecture Limited at a monthly rent of Rs. 254/- per sq. ft. In the absence of any other evidence on record, the current rent of premises similarly situated is accordingly deemed to be in the range of Rs. 250/- per sq. ft. The area of the premises in respect of which the defendant is liable to pay mesne profits is 3750 sq. ft. and, thus, calculated at the rate aforesaid, the damages payable by the defendant would work out to Rs. 9,37,500/- per month. However, keeping in view the fact that the defendants were inducted as tenants in April, 2007 when the rent for the Third Floor was Rs. 4,25,000/- (approximately Rs.113/- per sq.ft.), which was enhanced at the rate of 15% with effect from

16.04.2010, that is, Rs.4,88,750/- (approximately Rs. 130/- per sq. ft.), it is deemed just and proper to calculate mesne profits taking the monthly rent of the premises to be Rs.150/- per sq. ft., that is, Rs. 5,62,500/-.

13. In view of the above, a decree for mesne profits is passed in favour of the plaintiffs and against the defendant in respect of property No. D-16, Third Floor, South Extension, Part II, New Delhi-110049 as shown in the site plan (**Exhibit PW-1/9**) for the period from 20.10.2010 to 31.01.2012 totalling Rs.86,25,000/- (i.e. Rs.150/- x 3750 per sq. ft. x 15 months and 10 days). The plaintiffs are also awarded a sum of Rs. 3,50,000/- (Rupees Three Lakhs and Fifty Thousands only) towards damages for the period from 05.10.2010 till 20.10.2010, in all, a sum of Rs. 89,75,000/- (Rupees eighty nine lakhs and seventy five thousands only).

14. The suit stands disposed of accordingly.

**REVA KHETRAPAL
(JUDGE)**

March 16, 2012
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