

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

+ **CS(OS) 3018/2011**

PARAMJIT SINGH CHOPRA AND ORS. Plaintiffs

Through: Mr. Bhuvan Gugnani
versus

M/S. MAPLES CORPORATE SERVICES PVT. LTD. AND ORS.

.... Defendants

Through: None

% Date of Decision : November 20, 2012

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The plaintiffs have filed the present suit for recovery of possession, arrears of rent and grant of mesne profits/damages in respect of immovable property bearing No. 1112-A, Chiranjiv Tower, 43 Nehru Place, New Delhi-110019 admeasuring 636 square feet, more particularly shown in 'red' in the site plan annexed with the plaint.

2. The brief facts leading to the filing of the present suit are as follows. The plaintiffs as the owners of the aforesaid immovable property, on 16.07.2009, executed a registered Lease Deed in favour of the defendant No.1 for a period of 3 years commencing from 04.06.2009 to 03.06.2012 at the rent of ₹ 63,600/- per month, apart

from service tax and a sum of ₹ 2,54,400/- paid by the defendant No.1 to the plaintiffs towards interest free security deposit. It is averred that rent was duly paid by the defendant No.1 from June 2009 to July 2010 in terms of the Lease Deed dated 16.07.2009. However, no rent has been paid by the defendant No.1 for the period after July, 2010. Defendant No.1 has also failed to either deposit the tax deducted at source in respect of the rent paid with the Treasury or issue TDS certificates in the names of the plaintiffs. Total tax deducted at source by the defendant No.1 is stated to be in the sum of ₹ 1,02,904/-.

3. It is further averred that the plaintiff No.1, in August, 2011, discovered that the defendant No.1 had clandestinely and malafidely, in breach of Clause 17 of the Lease Deed dated 16.07.2009, sublet the suit premises to M/s ICRI Global Research, the defendant No.2 herein. Under these circumstances, the plaintiffs got issued a legal notice dated 29.08.2011, determining the tenancy of the defendant No.1 and calling upon the defendant nos. 1 and 2 to hand over vacant and peaceful possession of the suit property to the plaintiffs on or before midnight of September 15, 2011, failing which defendant nos. 1 and 2 would be in unauthorized and illegal possession of the suit property. Despite service of said notice by Speed Post A.D. on 02.09.2011, the defendants failed to hand over the vacant and peaceful possession of the suit property to the plaintiffs on or before 15.09.2011.

4. By way of the present suit, the plaintiffs claim possession of the suit premises alongwith arrears of rent for the period from July 2010 to November 2011 at the rate of ₹ 63,600/- per month amounting to ₹ 10,81,200/-. The plaintiffs also claim mesne profits/damages at the

rate of ₹ 1,50,000/- per month w.e.f 15.09.2011 till the date of handing over of suit property on account of unauthorized and illegal use and occupation of the suit property by the defendants.

5. Defendants were proceeded *ex-parte* vide order dated 05.03.2012 in default of appearance despite service of summons upon them.

6. Plaintiffs have adduced their evidence by filing the affidavit of Sh. Paramjit Singh Chopra, PW1. The said witness, in his affidavit by way of evidence, which is marked as Ex PW1/A, has reiterated on oath the averments made in the plaint and proved on record the site plan of the property as Ex PW1/1; original Lease Deed dated 16.07.2009 as Ex PW1/2; Legal Notice dated 29.08.2011 as Ex PW1/3; original dispatch receipts dated 02.09.2011 in respect of legal notice dated 29.08.2011 as Ex PW1/4; and original AD cards indicating service of notice dated 29.08.2011 on the defendant nos. 1 and 2 as Ex PW1/5 and PW1/6 respectively.

7. Heard the learned counsel for the plaintiffs and scrutinized the record. This Court sees no reason to disbelieve the testimony of PW1 and the evidence led which is unrebutted on record. Ex PW1/2 is the registered lease deed for the period from 04.06.2009 to 03.06.2012 at the monthly rent of ₹ 63,600/-. Clause12 of the said Lease Deed provides that if any rent shall be in arrears for two months, it shall be lawful for the lessors to determine the lease, if they so choose and Clause17 of the Lease Deed further provides that the lessee shall not sublet, assign or otherwise part with possession of a part or full of the demised premises. Legal Notice dated 29.08.2011, Exhibit PW1/3

shows that the lease was validly determined by the plaintiffs/lessors on account of non-payment of rent as agreed under the terms of the lease and on account of subletting of the suit property by the defendant No.1 to the defendant No.2, resulting in breach of Clause 17 of the Lease Deed.

8. In view of the fact that the plaintiffs have validly terminated the Lease Deed and the tenancy, even otherwise has expired by efflux of time on 03.06.2012, there is no doubt that the defendants are in unauthorized and illegal occupation of the suit property and the plaintiffs are entitled to vacant and physical possession from the defendants.

9. Insofar as the prayer of the plaintiffs for arrears of rent is concerned, the Plaintiffs not having received any rent from July, 2010 onwards, are also entitled to arrears of rent from the defendant No.1 from July, 2010 onwards. In view of the provisions of Section 106 of the Transfer of Property Act, the tenancy of the defendant No.1 had come to an end after expiry of 15 days from the date of the legal notice expiring with the end of a month of the tenancy, i.e., on 03.11.2011. Calculated at the rate of ₹ 63,600/- per month, the arrears of rent from July, 2010 to 03.11.2011, come to ₹ 10,17,600/-, to which the plaintiffs are held entitled.

10. The plaintiffs have also claimed *mesne* profits w.e.f 15.09.2011 at the rate of ₹ 1,50,000/- per month till the handing over of the suit premises on account of unauthorized and illegal use and occupation of the suit premises by the defendants till date. The plaintiffs are undoubtedly entitled to the claim of *mesne* profits/damages from the

defendants. However, in the absence of any evidence led by the plaintiffs as to the market rate of the property similarly situate, I am not inclined to award *mesne* profits at the rate of ₹ 1,50,000/- per month, as claimed by the plaintiffs, which is more than double the contractual rate of rent. Reliance placed in this regard by the counsel for the plaintiffs on Clause 5 of the Lease Deed, which stipulates that if the lessee does not vacate the said property on the expiry of the lease period or earlier determination thereof as provided in the lease, then the lessee shall be in unlawful possession of the demised premises, and would pay damages/mesne profits to the lessors at the rate of ₹ 5,000/- per day for use and occupation of the said property till the date premises are vacated, is also misplaced.

11. It is trite that where, on account of breach of contract, damages can be proved, there cannot be any validity of a clause which gives liquidated damages. The amount which the premises can fetch if let out on rent during the period of its illegal occupation by the tenant can be easily proved by placing on record lease deeds in respect of similarly situated properties. The plaintiffs, instead of leading any evidence, have relied upon the aforesaid Clause 5 of the Lease Deed, which clause is a clause *in terrorem* and violative of Section 74 of the Contract Act, 1872. Reference may usefully be made in this context to the decision of this Court in the case of ***M. C. Agrawal HUF vs. Sahara India and Ors.* 183 (2011) DLT 105**. In this case, this Court set aside the judgment of the trial court to the extent it directed that the landlord was entitled to double the contractual rate of rent as *mesne* profits on the ground as the landlord could have but did not lead any

evidence with respect to rent of similar premises in the locality during the relevant period or any other evidence to show the rent which would be payable for the subject premises every month during the period of illegal occupation by the tenant. The plaintiffs, thus, cannot be held entitled to *mesne* profits at the rate of ₹ 5,000/- per day (i.e. ₹ 1,50,000/- per month). In my considered opinion, it would meet the ends of justice if *mesne* profits at the rate of 15% over and above the contractual rate are awarded, which comes out to ₹ 73,140/- (₹ 63,600 + 15% of ₹ 63,600), rounded off to ₹ 75,000/- per month.

12. In view of the above, a decree of possession, arrears of rent and *mesne* profits is passed in favour of the plaintiffs and against the defendants in respect of property bearing No. 1112-A, Chiranjiv Tower, 43 Nehru Place, New Delhi-110019 as shown in the site plan, Ex PW-1/1. The defendants shall hand over peaceful and vacant possession of the suit premises to the plaintiffs within four weeks from today. Defendant no. 1 shall also pay a sum of ₹ 10,17,600/- to the plaintiffs as arrears of rent for the period from July, 2010 to 03.11.2011 within four weeks from today. Defendant no. 1 shall also pay *mesne* profits to the plaintiffs at the rate of ₹ 75,000/- per month from 04.11.2011 till handing over of the premises to the plaintiffs.

13. CS(OS) 3018/2011 and IA No.19371/2011 stand disposed of in the above terms.

**REVA KHETRAPAL
JUDGE**

November 20, 2012