

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 84/2009

Reserved on : September 2, 2009

Decision on: September 16, 2009

SPARSH BUILDERS PVT. LTD. Plaintiff
Through: Mr. Sanjay Jain, Senior Advocate
with Mr. Sunil Aggarwal, Mr. Sarfaraz Ahmad
and Ms. Ruchi Jain, Advocates.

versus

MAHARISHI AYURVEDA PRODUCTS
PVT. LTD. Defendant
Through: Mr. M.L. Bhargava with
Mr. Manoj Swarup, Ms. Lalita Kohli,
Mr. K.M. Sharma and
Mr. Abhishek Swarup, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of the local newspapers
be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT
16.09.2009

S. Muralidhar, J.

1. This is a suit for possession, recovery of damages and permanent injunction. At the stage of framing of issues, the parties have been heard on whether any triable issue arises and whether the Plaintiff is entitled to a decree on admissions under Order XII Rule 6 CPC.

The Plaintiff's Case

2. The Plaintiff, Sparsh Builders Pvt. Ltd., states that it is the absolute and exclusive owner of the entire property at A-14, Mohan Cooperative

Industrial Estate, Mathura Road, New Delhi, admeasuring 4617.67

sq.yds. (hereinafter referred to as the `suit property'). It states that it purchased the suit property from the Defendant, Maharishi Ayurvedic Products Pvt. Ltd., on payment of full and final sale consideration of Rs. 4 crores accompanied by transfer of symbolic possession. Along with the registered Agreement to Sell dated 30th December 2004 (affixing requisite stamp duty of Rs.30 lakhs), a registered Power of Attorney, registered Will, registered indemnity bond etc., were executed by the Defendant in favour of the Plaintiff on 30th December 2004.

3. It is stated that at the time of the sale transaction, the Defendant requested the Plaintiff that it would take the property on rent for a period of three years. Accordingly, a separate lease deed dated 30th December 2004 with effect from 1st January 2005 fixing the monthly rent for the said suit property at Rs.14,25,000/- was executed. The Defendant deposited a sum of Rs.42,75,000/- as interest free security, refundable within thirty days of the vacation of the suit property in terms of the lease agreement. Simultaneously a separate memorandum of understanding (MoU) was also entered on 30th December 2004 whereby the Defendant was given option of buying back the suit property on a consideration to be mutually agreed upon between the Plaintiff and the Defendant.

4. The Plaintiff states that on the expiry of the aforesaid lease period of three years, the Defendant further requested the Plaintiff to extend its occupation by another period of 11 months representing that it was still

unable to find alternative premises to shift. Accordingly, a fresh MoU dated 1st January 2008 was entered into. A fresh lease agreement of the same date was also executed. The MoU gave the Defendant an option of buying back the suit property on a consideration to be mutually agreed upon between the parties. It was stated in the lease agreement that the lease was not extendable beyond a period of 11 months and that no extension would be allowed under any circumstances. The increased monthly rent was Rs.18,50,000/- besides service tax or any other tax that may be applicable during the period of 11 months commencing from 1st January 2008 and ending on 30th November 2008. Clause 15 of the lease deed stipulated that the lessee would, on the expiry of the lease period, hand over the vacant and peaceful possession of the suit property to the plaintiff lessor in its original condition. It was stated in para 16 that in the event of the Defendant lessee failing to hand over vacant possession of the suit property to the Plaintiff lessor after the expiry of the period of 11 months, i.e., on 30th November 2008, “the lessee shall be liable to pay rent as well as damages of Rs.50,000/- per day to the lessor for non-compliance of the terms and conditions of this lease agreement. The damages of Rs.50,000/- per day will be applicable after a grace period of seven days, i.e., with effect from 8th December 2008. That this grace period with damages shall be available to the lessee for a maximum period of 30 days after which the said premises shall have to be vacated under all circumstances”. It was again reiterated towards the end of Clause 16 that: “It is hereby made clear that the tenure of this lease for all purposes is 11 months commencing from 1st January 2008 and ending on 30th November 2008. The 30 days as mentioned

hereinabove are just grace period”.

5. Prior to the lease period expiring on 30th November 2008, the Plaintiff wrote to the Defendant on 25th August 2008, asking it to vacate and hand over the actual physical possession of the suit property. It again wrote a letter dated 18th October 2008 requesting the Defendant to indicate the exact time by which the Defendant would hand over the peaceful and vacant possession of the suit property. No response was received to this letter or to reminder sent on 18th November 2008.

6. Since the Defendant did not hand over the possession of the suit premises to the Plaintiff on 30th November 2008, the Plaintiff deputed one Mr. Sanjiv Singhal to be physically present at the site to complete the formalities and take over the possession of the suit property. Mr. Singhal was also authorized to take along with him a Notary Public for the purposes of delivery of possession on 1st December 2008 at 11.30 am.

7. It is stated that on 28th November 2008 the Plaintiff received from the Defendant a letter dated 25th November 2008 expressing its desire to purchase the suit property. This was seen by the Plaintiff merely a delaying tactic and to avoid handing over possession. This was followed by another letter dated 28th November 2008 written by the Plaintiff to the Defendant expressing its hope that the Defendant would hand over the vacant and peaceful possession of the suit property on 1st December 2008 at 11.30 am to its authorized representative.

8. When Mr. Sanjiv Singhal visited the suit property on 1st December 2008, Shri Santosh Singh one of the Directors of the Defendant refused to hand over the vacant physical possession to him in the presence of Mr. Vishwajit Mangla, Notary Public. It is stated that Shri Santosh Singh refused to receive the letter/notice dated 1st December 2008 on the some pretext. It is stated that there had was no consensus between the parties, on the consideration for which the Defendant would buy back the suit property from the Plaintiff. The right of buying back really did not fructify. It is stated that since the lease period came to an end by an efflux of time on 30th November 2008, the Defendant was bound to hand over vacant possession of the suit property to the Plaintiff.

9. A reply dated 23rd December 2008 was received by the Plaintiff's counsel from the counsel for the Defendant to the notice dated 12th December 2008. It was stated in the said reply that the Defendant was in possession of the suit property in the capacity of an absolute owner. It was stated that the Defendant never intended to sell the suit property to the Plaintiff; that the Plaintiff had advanced a loan of Rs.4 crores to the Defendant; that in order to secure the said loan amount the Defendant had executed certain documents including the registered documents, i.e., agreement to sell, power of attorney, will and indemnity bond. The loan was to carry interest at 3.5% per month and therefore in order to protect its rights, a MoU was also executed so that the Defendant would have a buy back option. It was stated that since the Defendant was not in any event willing to part with the possession of the suit property, a lease

deed dated 30th December 2004 was entered into between the parties.

10. The Plaintiff contested the Defendant's version of there being a loan transaction between the Plaintiff and the Defendant as it was concocted and contradicted by the very documents referred to by the Defendant. Further, the payment of rent, after deducting TDS, belied the stand of the Defendant about there having been a loan transaction or that the Plaintiff was not the lawful owner of the suit property.

11. On the basis of the above averments, the Plaintiff has filed the present suit claiming possession as well as damages and mesne profits. The suit having been filed on 12th January 2009, the rent recoverable till then, i.e., after the expiry of the lease period, calculated at Rs.25,06,450/- and damages at Rs.17,50,000/- together with damages of Rs.22,000/- totaling Rs.42,78,450/- was also claimed. Along with the suit, the Plaintiff also filed IA No. 540 of 2009 under Order XXXIX Rules 1 & 2 CPC. By an order dated 16th January 2009, this Court directed the Defendant not to sell, transfer, alienate, encumber or part with the possession of the property or create any third party rights in the property till the disposal of the suit.

12. As regards IA No.541 of 2009 filed by the Plaintiff under Order XXXIX Rule 10 CPC, this Court on 16th January 2009 recorded the statement of the counsel for the Defendant that the Defendant shall

continue to pay the amounts including taxes as being last paid by the Defendant to the Plaintiff. It was observed that the Plaintiff's claim for the damages would be adjudicated upon at a later date.

Defendant's version

13. In its written statement filed on 16th February 2009, the Defendant reiterated the stand taken by it in reply dated 23rd December 2008 to the Plaintiff's legal notice dated 12th December 2008. It was maintained that the agreement dated 30th December 2004 was only to secure the loan of Rs. 4 crores advanced by the Plaintiff to the Defendant; that the loan was advanced at an exorbitant rate of interest i.e. 3.5% per month and that the lease agreements dated 30th December 2004 and 1st January 2008 were for recovering the interest; that the said documents were in fact not lease agreements but "rent notes". It was stated that the Defendant has exercised its option of buying back the suit property by the letter dated 25th August 2008 well within the time stipulated. It was the Plaintiff which was trying to defraud the Defendant in order to "run away from understanding and to grab the valuable property any how".

14. In the additional pleas in paras 26 to 47 of the written statement, it is pleaded by the Defendant (in para 32) that on 30th December 2004 the agreement to sell, MoU, lease deed, PoA and Indemnity Bond were executed. It is claimed that "since the defendant was never interested in parting with ownership or possession lease deed dated 30th December 2004 was also executed for a period of three years and to cover the

interest the rent was fixed @ 14,25,000.00 per month.” It is contended in para 41 that the Defendant expressed its intention to buy back the suit property by the letter dated 25th August 2008 and further orally requested the Plaintiff to seek the agreed price which according to the Defendant is approximately Rs. 4-5 crores including all expenses incurred by the Plaintiff.”

15. In its replication, the Plaintiff denied the above averments of the Defendant and reiterated the contents of the plaint.

16. After the completion of pleadings, the case was listed before this Court for framing of issues on 5th May 2009. At that stage, the Plaintiff's IA No. 5710 of 2009 praying for recording of the statement of Mr. Anand Prakash Srivastava the Managing Director of the Defendant, was heard. Counsel for the Plaintiff also made a submission that the Plaintiff was entitled to a decree on admissions. The Court, after perusing the pleadings required in the presence of Mr. Anand Prakash Srivastava on the next date of hearing for recording his statement under Order X Rule 2 CPC, IA 5710 of 2009 was accordingly allowed. The case was listed on 21st July 2009. Mr. Anand Prakash Srivastava appeared on 21st July 2009 and made a statement. The case was thereafter directed to be listed in the category of short cause.

Submission of Counsel

17. The arguments of Mr. Sanjay Jain, the learned Senior Counsel
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appearing for the Plaintiff and Mr. M.L. Bhargava, the learned counsel, appearing for the Defendant have been heard.

18. It is submitted on behalf of the plaintiff that many of the critical documents on the basis of which the Plaintiff is claiming relief, have not been denied by the Defendant during the admission/denial of the documents. It is submitted that the signatures of the Defendant on all documents barring a few like the possession letter have been admitted. Only the General Power of Attorney (GPA) of the previous owner, and the letters dated 22nd September 2008, 18th October 2008 and 28th November 2008 written by the plaintiff has been denied. As regards the contents of the documents, it is submitted that receipt for a sum of Rs.4 crores executed by the Defendant, the Will, the MoU dated 30th December 2004, MoU dated 1st January 2008, the letter dated 25th August 2008, the Plaintiff's letter dated 25th and 27th November 2008 have all been admitted. He submits that the denial of the contents of the registered documents like the agreement to sell dated 30th December 2004 and GPA dated 30th December 2004 or the lease agreement dated 30th December 2004 is meaningless because in the examination of Mr. Anand Prakash Srivastava, the MD of the Defendant Company in Court on 21st July 2009 he stated that he was aware of the contents of those documents but claimed that there was "a certain understanding" between the parties that the defendant had taken a loan of Rs.4 crores from the Plaintiff and that all these documents were furnished as security. Mr. Srivastava had also admitted that the so called understanding was not

reflected in the documents because the Defendant was not in a bargaining position.

19. Moreover, the TDS certificates which are official documents, clearly show indicates that what was paid by the Defendant was rent for the suit premises. It is submitted that it is impermissible for the Defendant to lead oral evidence which contradicts what is stated in the documents which admittedly were executed by the Defendant. Reliance is placed on the decisions in *Roop Kumar v. Mohan Thedani AIR 2003 SC 2418*; *Gurdial Singh v. Raj Kumar Aneja (2002) 2 SCC 445* and *Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd. 66 (1997) DLT 54 (DB)*.

20. It is submitted that in the face of the above admissions, the suit has to be decreed as the Defendant really had no defence whatsoever and the main pleas remain uncontested. As regards the decree for possession, it is submitted that as long as the Defendant admits to the above documents, its continued possession of the suit premises is not lawful. As regards the decree for damages, it is submitted that since the lease agreement stands admitted in para 8 of the written statement, as well as para 32 of the additional pleas in the written statement, this relief is also uncontested.

21. On behalf of the Defendant, it is submitted that if the written statement and the documents are read together, it would be plain that the transaction was really a one of a loan of Rs.4 crores having been borrowed by the Defendant from the Plaintiff for which the aforementioned documents were offered as security. It is submitted that the fact that the MoU incorporated a buy back clause, showed that the intention of the parties was to recognize the Defendant as the owner of the suit property. It is submitted that once the Defendant had, in terms of the MoU dated 1st January 2008 exercised the buy-back option by writing a letter dated 25th August 2008, then it was obligatory for the Plaintiff to perform its part and come forward to finalise the terms on which the property should be sold to the Defendant. It is submitted that in any event the registered document was only an agreement to sell and in terms of Section 17 of the Registration Act, a sale deed was required to be compulsorily registered. In the absence of any registered sale deed, it cannot be said that the ownership and title of the suit property passed on to the Plaintiff. Since there was no registered sale deed in favour of the Plaintiff, it could not be said that the Plaintiff can seek relief as if it is the owner. As regards the registered lease deed, it is contended that this is really in the nature of a rent note. It is further contended that this rent note actually had to be treated as constituting the interest component of the loans. The rent note signed by the Defendant, should be read as acknowledgment of the payment of interest. Counsel for the Defendant places reliance on the judgment in *Sachdeva & Sons Industries Pvt. Ltd. v. Directorate of Revenue Intelligence 2009 (109) DRJ 365* to contend that for passing a decree based on admissions in terms of Order *CS(OS) No.84/2009*

XII Rule 6 CPC, the admissions should be unqualified, unambiguous and unequivocal. Reliance is also placed on the judgments in *Parivar Seva Sansthan v. Venna Kalra AIR 2000 Delhi 349*; *Dudh Nath Pandey v. Suresh Chandra Bhattasali (dead by LRs) AIR 1986 SC 1509*; *Balraj Taneja v. Sunil Madan AIR 1999 SC 3381*; *Gurdial Singh v. Raj Kumar Aneja* (supra); *Kaliaperumal v. Rajagopal JT 2009 (7) SC 124*.

Decree on admissions

22. The scope of the present proceedings requires the Court to briefly examine the law in relation to the judgment on admissions in terms of Order XII Rule 6 CPC. Under Order XII Rule 6(1) CPC where admissions of fact have been made “either in the pleading or otherwise, whether orally or in writing, the court may, at any stage of the suit, make a judgment having regard to such admissions”. The said rule further makes it clear that “such a judgment will be given by the court at any stage of the suit either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties”. The rule itself therefore explains that it is not necessary that the Plaintiff should actually file an application under Order XII Rule 6 CPC for the Court to pass a judgment on admissions.

23. It has been explained in a series of judgments including *Dudh Nath Pandey v. Suresh Chandra Bhattasali* and *Balraj Taneja v. Sunil Madan*, that the admissions must be clear and unambiguous,

unconditional and unqualified. The above law has been reiterated by this Court in *State Bank of India v. Midland Industries AIR 1988 Delhi 1953*; *Raj Kumar Chawla v. Lucas Indian Services AIR 2006 Delhi 266* and *Parivar Seva Sansthan v. Venna Kalra* (supra). This Court has in turn relied upon the judgment of the Supreme Court in *Balraj Taneja* (supra) and *Dudh Nath Pandey* (supra).

24. In *Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd.*, where the Plaintiff had filed a suit for possession and mesne profits together with interest, this Court held that the factors that ought to be taken into consideration for deciding whether the suit could be decreed on admissions are : (a) existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as a tenant; and (b) determination of such relation in any of the contingencies as envisaged in Section 111 of the Transfer of Property Act (TP Act). It was observed “one of the modes stated therein is by efflux of time limited by the lease. Only on unequivocal admission of the above two factors will entitle the plaintiff to a decree on admission. Admission need not be made expressly in the pleadings. Even on constructive admissions Court can proceed to pass a decree in plaintiff’s favour”.

25. Turning to the facts in the present case, it is not in dispute that several of the documents through which the Plaintiff claims to have purchased the suit property from the Defendant are registered documents. Prior to the amendment to the Delhi Stamp Act, 2008, the

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agreement to sell, a leasehold property along with other documents like GPA, Will, letter of possession etc., were not being compulsorily registered. An amendment brought about to the Delhi Stamp Act now envisages that stamp duty on 90 per cent of the sale consideration should be paid for registration of the agreement to sell, the GPA, Will etc. In the instant case, therefore, the agreement to sell dated 30th December 2004, GPA of the same date, the receipt, Will, possession letter being registered documents, cannot be brushed aside as if they do not constitute documents of title. Likewise the lease agreement is also a registered document. The Defendant assailing the contents of such documents while admitting the signatures thereon, will have a very heavy burden to discharge in order to prove that the said documents were in fact written up later on blank stamp papers got signed by the Defendant. Intention of parties has to be ascertained from the documents themselves.

26. A brief mention at this juncture may be made of Section 53-A of the TP Act. Even if one were to consider the mandatory nature of the Section 17 of the Registration Act subsequent to the amendment in the Delhi Stamp Act read with Section 53A of the TP Act, it appears that a registered agreement to sell, on which the stamp duty has been paid to the extent of 90% of the sale consideration, stands on a different footing than any other mere agreement to sell. This agreement to sell together with the GPA, the receipt as well as the indemnity bond, are also registered, should be held to confer upon the Plaintiff all rights that it would have as an owner of the property. Otherwise it would really be

meaningless for the purchaser of the property to pay so much stamp duty before the Sub Registrar including both sale consideration and got all the supporting documents in his favour, executed and registered by the seller in accordance with law. The Court, therefore, rejects the plea of the Defendant that what the Plaintiff has, is mere agreement to sell and not a sale deed, and therefore, could not be recognized as the owner of the property for the purposes of seeking eviction from the suit property.

27. There is absolutely not a single phrase in any of the above documents to suggest that the sum of Rs.4 crores was given as a loan by the Defendant to the Plaintiff. By no stretch of imagination, upon reading any of these documents, can such a transaction be said to be evident either directly or indirectly.

28. As explained by this Court in *Sudir Engineering Company v. Nitco Roadways Ltd.* 1995 (2) AD (Delhi) 189, “any document filed by either party passes through three stages: (a) when they are filed (b) when they are tendered or produced in evidence and (iii) when they were are held to be either proved or not proved by the court.” Under Order XIII Rule 4 (1) CPC every document admitted in evidence in the suit should bear the number and title of the suit; name of the person producing the documents, the date on which it is produced and statement of its having been so admitted and the endorsement shall be signed or initialed by the Judge. It was held that the right of the party disputing the document to argue that it was not proved, will not be taken away merely because it

had not objected to the admissibility of such document. It was held that the admission of a document in evidence is therefore not be confused with proof of a document. It was held that “when called upon to form a judicial opinion whether document has been disproved or not proved, the Court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record”.

29. The other point that is relevant is whether a party can give oral evidence concerning the intention of the parties at the time of the execution of a document which is not reflected in such document. It was explained by the Supreme Court in *Roop Kumar v. Mohan Thedani* that Section 91 of the Evidence Act, 1872 (EA) “merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known some times as the "best evidence rule". It is in really declaring a doctrine of the substantive law, namely, in the case of a written contract, that of all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it”.

30. It was further explained in paras 17 to 18 in *Roop Kumar* (supra) as under (AIR SC @) p.2424-25):-

“17. It is likewise a general and most inflexible rule that wherever written instrument are appointed, either by the

requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See Strakie on Evidence p. 648).

18. In Section 92 the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract; but, no such limitations are imposed under Section 91. Having regard to the jural position of Sections 91 and 92 and the deliberate omission from Section 91 of such words of limitation, it must be taken note of that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to in a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing.”

31. In para 21 of the ***Roop Kumar*** (supra), after discussing the rationale behind Sections 91 and 92 of the EA, it was held as under (AIR SC @ p.2425):-

“21. The grounds of exclusion of extrinsic evidence are (1) to admit inferior evidence when law requires superior would amount to nullifying the law, (ii) when parties have deliberately put their agreement into writing. It is

conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be paced beyond the reach of future controversy, bad faith and treacherous memory.”

32. Keeping the above position of law in view, this court proceeds to examine the nature of the documents tendered by the Plaintiff and the stand of the Defendant vis-à-vis such documents. What is important to note here is that the documents sought to be relied upon by the Plaintiff are registered documents which are purportedly executed in the presence of the Sub Registrar in whose office, the documents were registered. The key document, of course, is the agreement to sell dated 30th December 2004. The document has been engrossed on stamp papers worth Rs.30 lakhs (which is divisible as Rs.18 lakhs towards Stamp Duty @ 4.5% and Rs.12 lakhs towards Corporation Tax @ 3 per cent). The photographs of the parties have been affixed on the document. The reverse to the second page sets out the certificate number of registered as 17008 as well as the date. It bears the signature of the Sub Registrar which states that the said document was presented by Sri Anand Prakash Srivastava on 30th December 2004. Names of the witnesses are also indicated. Again there is an endorsement on the bottom of the reverse of the second page to the effect that the “contents of the documents explained to the parties who understand the conditions and admit them as correct. Having satisfied myself that this document was duly executed by Shri Anand Prakash Srivastava in his official capacity, his attendance and signature are dispensed with and the document is admitted to

register”. It is further noted that the vendor admits prior receipt of the entire consideration of Rs.4 crore. It is not possible to countenance the stand of the Defendant that he denies the contents of the said documents. The photographs of the parties apart from being engrossed on the first page of the agreement to sell are embedded on the last page as well. The registration No.17008 is computer generated and printed. The photographs of the witnesses are also embedded. The whole purpose of the Sub Registrar’s office taking so many precautions, is to lend authenticity to the documents being registered. If despite all these precautionary and the endorsement by the Sub Registrar himself, a party is permitted to deny the contents of such documents, even while admitting to his signatures thereon, it will reduce the whole exercise even of registration to a mockery. To accept such a plea would in effect be permitting the party whose presence before the Sub Registrar is recorded, to contend that he affixed signatures before the Sub Registrar on blank papers or that he did not care to read what was written in the entire document which was engrossed on stamp papers of Rs.30 lakhs or that these stamp papers were in fact blank when he affixed his signatures thereon. This plea is absurd and deserves rejection outright.

33. Interestingly, when he was examined under Order X Rule 2 CPC by this Court on 24th July 2009, Anand Prakash Srivastava stated that he was aware of these documents. The question by the Court and his answer reads as under:-

“Q.1. In your written statement, you have admitted execution of set of five documents, viz. Agreement to Sell

dated 30.12.2004 (Exhibit P2), Memorandum of Understanding dated 01.01.2008 (Exhibits P10 and P12), Lease Deed dated 01.01.2008 (Exhibit P11), Power of Attorney dated 30.12.2004 (Exhibit P3) and Indemnity Bond dated 30.12.2004 (Exhibit P8). But during the course of admission/denial of the documents, you have made an endorsement on each of the documents to the effect that you admit the signatures thereon, but deny the contents. Can you explain the contradiction?

A.1. I was well aware of the contents of the documents executed by me, but we had a certain understanding at the time of the execution of the documents. We had taken a loan of Rs.4 crores from the plaintiff and given the suit property by way of security to the plaintiff.”

34. The above statement should be taken as proof by the Defendant’s witness itself that the said document was in fact an agreement to sell signed by the Defendant in the presence of the Sub Registrar. The plea of the defendant that “we have a certain understanding at the time of the execution of the documents”, is not borne out by any of the documents. This explains the next two questions and the answers thereto which read thus:-

“Q.2. Is this understanding reflected in the documents itself. If not, why did you not insist upon the said understanding being reflected in the documents?

A.2. We did not insist because we were not in a bargaining position.

Q.3. By way of these documents, you accepted that the ownership rights vested in the plaintiff and further that you were being allowed to take possession as a lessee

only.

A.3. I was aware of these facts. This was one of the conditions imposed upon for plaintiff's agreeing to advance Rs.4 crores to us."

35. Counsel for the Defendant was unable to show even a single line in any of the documents to substantiate the plea of the Defendant having borrowed Rs.4 crores from the Plaintiff and that these documents were being offered as security for the said loan.

36. There is also a certain inconsistency in this plea when one examines the position vis-à-vis the other documents. For instance the receipt for a sum of Rs.4 crores, the original of which has been placed on record, reads as under:-

"RECEIPT

We Maharishi Ayurveda Corporation Private Limited, a company incorporated under the Companies Act 1956, having its Regd. Office at A-14, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi, through our Director Sh. Anand Prakash Shrivastava, S/o. Sh. J.P. Shrivastava, R/o. A-214, New Friends Colony, New Delhi – 110065, have received a sum of Rs.4,00,00,000/- (Rupees Four Crores Only) as per details given below, from Sparsh Builders Pvt. Ltd., Regd. Office 51/47, Naya Ganj, Kanpur (U.P.), through its Director, Sh. Shishir Agarwal, S/o. Sh. V.K. Agarwal, R/o. 3/7, Navsheel Apartments, 56, Cantt, Kanpur (U.P.) as FULL & FINAL Payment towards the Sale of entire industrial built up property bearing No.A-14, Mohan Co-operative

Industrial Estate, Mathura Road, New Delhi alongwith sub-lease hold rights in the land underneath measuring 4617.67 sq. yards and nothing remains due or payable in this connection.

Details of Payments

CHEQUE/PAY ORDER NO.	DATE	AMOUNT(Rs.)	DRAWN ON
531251	04.08.2003	25,00,000/-	IndusInd Bank, Preet Vihar, Delhi
531252	05.08.2003	25,00,000/-	----do----
531253	06.08.2003	25,00,000/-	----do----
531254	07.08.2003	25,00,000/-	----do----
504613	30.12.2004	50,00,000/-	----do----
504614	30.12.2004	50,00,000/-	----do----
504615	30.12.2004	50,00,000/-	----do----
504616	30.12.2004	50,00,000/-	----do----
504617	30.12.2004	50,00,000/-	----do----
504618	30.12.2004	50,00,000/-	-----do-----
TOTAL		4,00,00,000/-	

New Delhi 30th Day of December 2004

Executants

For Maharishi Ayurveda Corp. Pvt. Ltd.

WITNESS

- 1. Santosh Singh
S/o late Sh. B.B. Singh
C-32, Sec 41, Noida
- 2. Yugantar Saxena
S/o Sh. Saran Saxena
493-B-8 Vasundhara Encl.
Delhi-96”

37. Interestingly, the defendant admits this entire document without reservation. The said document categorically states that the consideration of Rs.4 crores was paid “as full and final payment towards the sale of

entire industrial built up property bearing No.A-14, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi”. In the face of such a document which interestingly also has a photograph of the Defendant duly attested by the Notary Public, execution of which the Defendant admits, the question of there not having taken place any sale of the suit property to the Plaintiff as contended by the Defendant cannot be accepted by this Court.

38. The Defendant when confronted with the letter dated 23rd May 2006 written by the Defendant, was again unable to deny it. That letter reads as under:-

“To,

M/s Sparsh Builders Pvt. Ltd.
61/47 Naya Ganj
KANPUR

Dear Sir,

Sub.: Information regarding Amalgamation of M/s Maharishi Ayurveda Corporation (P) Ltd. with M/s Maharishi Ayurveda Products Limited & subsequent change in name

REG. : Property No.A-14 Mohan Co-op. Indl. Estate, Mathura Road, New Delhi-44

RENT AGREEMENT

We wish to inform you that M/s Maharishi Ayurveda Corporation (P) Ltd. (MACPL) has been amalgamated with M/s Maharishi Ayurveda Products Limited (MAPL). We wish to inform you that name of the company Maharishi Ayurveda Products Limited has also been changed to Maharishi Ayurveda Products Pvt. Limited. A copy of the certificate issued by the Registrar of Companies giving effect to the above change is enclosed herewith.

We would request you to kindly take effect of the above changes in your record with respect to the Rent Agreement executed for the property mentioned above. Henceforth, the rent against the said property will be paid by M/s Maharishi Ayurveda Products Pvt. Limited, w.e.f. 01.06.2006.

Thanking you,
Yours sincerely,
For **Maharishi Ayurveda Products Pvt. Ltd.**

(Authorised Signatory)”

39. The rent agreement being referred to in the above letter is in fact the lease deed dated 30th December 2004. As regards this lease agreement, the signatures thereon were admitted by the Defendant but not its contents. The admission of the letter dated 23rd May 2006 *in toto*, puts paid to this so called denial. The lease agreement dated 30th November 2004 was accompanied by the MoU dated 30th December 2004 which in any event is being relied upon by the Defendant itself. Likewise, the Defendant also relies upon the MoU dated 1st January 2008 to contend that it had made its offer to buy back the property in terms of that MoU. The said MoU refers to the lease agreement dated 1st January 2008. It is, therefore, futile for the Defendant to deny the contents of the lease agreement dated 1st January 2008. The lease agreement is an admission of the relation of the parties as landlord and tenant, i.e., an acceptance by the Defendant of the Plaintiff as a landlord.

40. There is also merit in the contention of the learned Senior Counsel

for the Plaintiff that the TDS form in Form No.16A relatable to Rule 31b of the Income-Tax Rules 1961 is further proof of the relationship between the Plaintiff and the Defendant as landlord and tenant respectively. The TDS forms are statutory forms signed by the Defendant. These are Exhibits P-18 to P-22. In the column of nature of payments, it is stated “pay to rent”. The PAN/GIR number of the Plaintiff has also been specified. It is futile for the Defendant to contradict this by endorsing thereon “deposit admitted nature of payment denied”. It is not open to the Defendant to question the nature of document which is in a printed form deposited with the statutory authority. This is clearly a desperate attempt by the Defendant to wriggle out of the legal status which stares at it in the face.

41. In the letter dated 25th August 2008, written by the Defendant to the Plaintiff, it is stated as under:-

“25th August 2008

The Director
M/s. Sparsh Builders Pvt Ltd.
51/47, Naya Ganj
Kanpur, U.P

Dear Sir,

I, Anand Shrivastava, Authorised Signatory as Director of Maharishi Ayurveda Corporation Pvt Ltd now known as Maharishi Ayurveda Products Pvt Ltd, in exercise of the option vested on us vide Memorandum of Understanding (MOU) with you dated 1st January 2008 and as mentioned in its para no.3, do hereby inform you that we are very much willing to avail our right to buy back the property no. A-14, Mohan Co-operative Industrial

Estate, Mathura Road, New Delhi-110 044, which is in our absolute possession and was earlier owned by us on the same terms as agreed upon between us in the aforesaid MOU.

You are, therefore, hereby informed to kindly take all required suitable steps to pave the way for us to buy back the aforesaid property.

This letter of willingness should be treated as three months advance notice as required by MOU dated 1st January 2008.

With best wishes,

Thanking you,

Yours sincerely,

For MAHARISHI AYURVEDA PRODUCTS PVT LTD

(ANAND SHRIVASTAVA)

Director”

42. The above letter, which is written by the Defendant itself, categorically states that the said property was “earlier owned by us”. The Defendant states that it is “very much willing to avail our right to buy back the property.....on the same terms as agreed upon between us in the aforesaid MOU”. The MoU is dated 1st January 2008 which has been admitted by the Defendant. That MoU dated 1st January 2008 clearly states that the Plaintiffs “are the absolute and lawful owners of all that entire built up property bearing No.A-14, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi.....”

43. The above documentation is more than sufficient admission by the

Defendant about the Plaintiffs being the owners of the suit property as well as the Plaintiffs being the landlord and the Defendant being tenant for the period the lease was subsisting. As explained by the Supreme Court in *Roop Kumar v. Mohan Thedani*, the Defendant cannot be permitted to lead oral evidence to deny the contents of these registered documents, as such a practice “would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence”. It also militates against the rule of best evidence as contained in Sections 91 and 92 of the EA.

44. In the considered view of this Court, the burden was on the Defendant to show some contemporaneous evidence which would reflect the intention of the parties different from what is stated in the above documents. This is also the requirement of law in terms of Sections 91 and 92 EA as explained by the Supreme Court in the aforementioned judgment of *Roop Kumar v. Mohan Thedani*. The Defendant has miserably failed to discharge its burden. In answer to Question No.4, the Defendant has in fact stated that “the entire documentation effected was to show that the ownership rights vested in the plaintiff and tenancy rights in the defendant company, but in fact it was not so”. However, the Defendant has been unable to show any document which can reflect such imputation.

45. The other document sought to be relied upon by the Defendant is its letter dated 25th November 2008 where again there is no mention made

of any loan of Rs.4 crores having been borrowed by the Defendant and this document have been offered as security. In fact, this again refers to the agreement to sell dated 30th December 2004 as well as MoU dated 30th December. It further refers to the buy-back option.

46. Then we have admission in the pleadings. In para 7 of the written statement, while denying the contents of the para 7 of the plant, it is stated by the Defendant that “however it is admitted that a rent note/ lease deed dated 1st January 2008 in respect of the property in suit was executed and the alleged rent was enhanced for the reasons given in the forgoing paras and subject to the additional pleas”. In para 8 again, it is stated that the lease agreement dated 1st January 2008 was not a lease agreement but a ‘rent note’. When asked to explain what was the difference between the lease deed and a rent note and whether this changed the relationship between the parties which was one of landlord and tenant, the learned counsel for the Defendant was unable to give any satisfactory explanation. To this Court, it appears that this is merely an exercise in semantics. The fact remains that the lease agreement dated 1st January 2008 has been referred to in the MoU dated 1st January 2008 the execution of which is not denied by the Defendant.

47. In paras 31 and 32 of the additional pleas in written statement it is stated as under:-

“31. That in 2004 defendant was in desperate need of some finances and plaintiff offered Rs.4 Crores against

the security of the property worth more than (*sic then*) three times approximately Rs.12 Crores of the loan amount at a very high interest rate i.e. 3.5% per month and as a security asked for execution of certain documents.

32. That after due deliberations plaintiff suggested certain documents to be executed and agreed that after repayment of the amount the rights in the property will be reverted back to the defendant. As a result following documents were executed on 30.12.2004.

- (a) Agreement to Sell
- (b) Memorandum of understanding
- (c) Lease deed.
- (d) Power of Attorney
- (e) Indemnity bond.”

48. It requires to be pointed out that that the plea taken in para 31 is not supported by any document placed on record by the Defendant. Such a plea, therefore, cannot be accepted at all. As regards para 32, it in fact constitutes an admission of those documents mentioned therein. Therefore, the attempt by the Defendant to admit its signatures on the agreement to sell while denying the contents thereof is futile and to no avail.

49. It was sought to be contended that the Defendant by exercising the buy-back option it performed its part of the MoU, and it was for the Plaintiff to have come forward to sell the property to it. This plea cannot be entertained in a suit filed by the Plaintiff seeking possession of the

suit property. Interestingly, the Defendant has not filed any counter-claim in the present suit seeking specific performance of any clauses of the MoU. The Defendant is caught in its own web of inconsistency. In order to seek specific performance, the Defendant would have to unequivocally state that the Plaintiff is the absolute owner of the suit property. This, the Defendant is not prepared to do. Therefore, while maintaining that the Plaintiff is not the owner of the suit property, the Defendant is seeking to enforce the Plaintiff's obligation to sell the suit property to it. Such a plea can simply not be countenanced in law.

50. The question that arises is whether these pleas of the Defendant are unambiguous and unequivocal. As explained by the Supreme Court in *Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd.*, the pleadings will have to be taken as a whole to determine if the admissions by the Defendants are constructive even though not express. The Defendant, as noticed hereinabove admits to the relationship between the Plaintiff and it, of landlord and tenant respectively. In various documents, which have not been denied by it including the MoU dated 1st January 2008, it has acknowledged the Plaintiff to be the owner of the suit property. The fact that it repeatedly asserts that it has exercised a "buy-back option" itself shows that the Defendant accepts the Plaintiff as the owner of the suit property.

51. The Defendant has not been able to show to this Court on what basis it is in possession of the suit property. The Defendant has attempted to deny the relationship of the landlord and tenant between the Plaintiff and

it, and has attempted to deny the Plaintiff as owner of the suit property. On both counts, its admissions on record are contrary. It must be held, therefore, that the Defendant is continuing to occupy the suit property without any lawful authority and therefore the Plaintiff is entitled to succeed in getting a decree for possession in its favour.

52. The next question is whether there is any admission as regards the damages payable by the Defendant. Here again we have clause 16 of the lease deed dated 1st January 2008 which has been held by this Court to have been impliedly admitted by the Defendant, constructively since it has not denied the MoU dated 1st January 2008, which MoU implicitly refers to the lease deed. Clause 16 of the lease deed specifies the rent payable during the period of the lease and the grace period as well as the damages payable thereafter. As long as the lease deed including the above clause stands admitted, the liability of the Defendant to pay the damages as specified also stands admitted. Therefore, there should not be difficulty in passing a decree as regards damages as well.

53. For all of the aforementioned reasons, the suit is decreed in terms of prayers (a) and (b). Accordingly, a decree is passed in favour of the Plaintiff and against the Defendant in the following terms:-

(a) There will be a decree of possession in favour of the Plaintiff and against the Defendant in respect of the entire suit property

bearing No.A-14, Mohan Co-operative Industrial Estate, Mathura

Road, New Delhi.

(b) There will be a decree for recovery in favour of the Plaintiff and against the Defendant for a sum of Rs.42,78,450/- being the arrears of damages, towards use and occupation charges for the period from 1st December 2008 till the date of the filing of the present suit and to pay a further sum of Rs.18,50,000/- per month towards charges of use and occupation, equivalent to the last paid monthly rent and a sum of Rs.50,000/- per day as damages in terms of Clause 16 of the lease agreement dated 1st January 2008 from the date of the filing of the present suit till the defendant vacates and hand over the peaceful physical possession of the suit property to the Plaintiff.

(c) The suit is decreed with costs. The decree sheet be drawn up accordingly.

54. The original documents on record be returned to the respective parties in accordance with law.

S. MURALIDHAR, J.

SEPTEMBER 16, 2009
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