

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

+ **Date of Decision: 01.07.2013**

% **CS(OS) No. 278/2008**

SH. LALIT MOHAN MADHAN

..... PLAINTIFF

Through: Mr. Raman Kapur, Sr. Advocate with
Mr. Dhiraj Sachdeva & Mr. Ankur
Gosain, Advocates

versus

ICICI PRUDENTIAL LIFE INSURANCE CO. LTD. Defendant

Through: Mr. Sanjay K. Chadha, Advocate with
Mr. Sanjeev K. Sethi, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. The suit has been preferred by the plaintiff-who is the sole proprietor of M/s Saraswati Construction company, to claim possession and mesne profits in respect of the second and third floors of property bearing No. B-1/26-27, Community Centre, Janakpuri, New Delhi – 110 058 (hereinafter referred to as the, “suit property”).

2. The case of the plaintiff is that it is the owner and landlord of the suit property. The defendant – ICICI Prudential Life Insurance Co. Ltd. approached the plaintiff for taking on lease the same, in all comprising of carpet area of 5810 sq. ft. The defendant agreed to take the same on a monthly lease rental of Rs. 111.50 per sq. ft. It appears that the parties also agreed that the defendant would pay interest free security deposit equivalent

to six months rent amounting to Rs. 38,86,890/-, at the time of signing of the lease agreement, and the plaintiff agreed to provide 60 days rent free period from the date of handing over possession of the suit property for the purpose of renovation to be carried out by the defendant. The lease was agreed to commence from 16.10.2007. The parties entered into a lease agreement on 01.08.2007 (Ex.PW1/D1), clause 6 whereof provided that an interest free refundable security deposit of Rs. 38,86,890/- equivalent to six months lease rental shall be payable to the plaintiff/lessor upon the signing of the lease agreement. As per this lease agreement, the period of the lease was stated to be 3 years + 3 years + 3 years, that is a total of nine years with effect from 01.08.2007. As aforesaid, the initial monthly lease rental was Rs. 6,47,815/- calculated @ Rs. 111.50 per sq. ft. for carpet area of 5810 sq. ft. on the second and third floor, inclusive of building outgoings, municipal taxes, government levies etc. The monthly rental was liable to be increased by 15% on the last paid amount, upon two renewals of three years each.

3. According to the plaintiff, the defendant neither paid the security deposit nor came forward for registration of the lease deed. The plaintiff, accordingly, sent a communication on 28.12.2007 (Ex.P4) to the defendant stating that they had not received the original lease agreement and the six months Security Deposit amount. It was further stated that if the original lease agreement and the security amount with interest is not received by the plaintiff within seven days from the date of the letter, it shall be presumed that the defendant is not interested in the lease deed.

4. It is not in dispute that the defendant had taken possession of the suit property in pursuance of the agreement. It is also not in dispute that the

defendant started making payment of the rent at the agreed rate to the plaintiff. Since the lease was not registered, and it was a lease from month to month, the plaintiff terminated the same vide notice dated 15.01.2008 (Ex.P6) by giving 15 days' notice and called upon the defendant to handover the vacant and peaceful possession of the premises to the plaintiff after 15 days of the receipt of the notice. The plaintiff also stated that in case the defendant continues in possession, the same shall be illegal and unauthorized and that the defendant shall be liable to pay mesne profits to the plaintiff for unauthorized use and occupation of the premises at the rate of Rs. 150/- per sq. ft. per month which was claimed to be the prevailing market rent, till the defendant remains in unauthorized use and occupation of the premises.

5. The defendant has admitted the receipt of the said notice which was sent by the registered post. The plaintiff has placed on record the postal receipts as Ex.P7 and the AD Card received back as Ex.P8. Since the defendant did not vacate the premises in terms of the notice, the present suit came to be filed.

6. During the pendency of the suit, the possession of the suit property has been delivered by the defendant to the plaintiff on 19.05.2009.

7. The defence of the defendant in the written statement was that the defendant had paid the security deposit to the plaintiff by a cheque, details whereof have been provided by the defendant. The defendant also claimed that it has spent a huge amount of money on renovation of the tenanted premises.

8. On the basis of the pleadings, this Court framed the issues on 05.09.2008. The following issues were framed:-

- (i) Whether the plaintiff has, vide legal notice dated 15.1.2008 terminated the tenancy of the defendant, if so, to what effect? OPP
- (ii) Whether the plaintiff is entitled to the recovery of mesne profit/damages for use and occupation, if so, at what rate and for what period? OPP
- (iii) Whether the plaintiff is entitled to interest on arrears of mesne profits, if so at what rate and for what period? OPP
- (iv) Whether the plaintiff is stopped from claimed the relief of possession and mesne profit for the reason of having executed the document dated 01.08.2007 with the defendant? OPD
- (v) Whether the defendant was ready and willing to and abide by the terms and conditions of the document dated 01.08.2007, if so, to what effect? OPD
- (vi) Whether the defendant is entitled to the benefit of Section 53A of the Transfer of Property Act? OPD
- (vii) Whether the plaintiff has waived the termination of tenancy? OPD
- (viii) Whether the plaintiff, owing to the document dated 01.08.2007 was/is not entitled to determine the tenancy? OPD
- (ix) Relief.

9. The parties have led their evidence. The plaintiff has examined two witnesses, namely, Shri Lalit Mohan Madhan i.e. the plaintiff himself as PW1. Mr. Krishan Kumar, LDC from the office of the Sub Registrar – II, Janakpuri, New Delhi, was examined as PW2, who has produced Ex.PW2/1. The defendant has also led its evidence of one witness, namely, Shri Pankaj

Kaushik, Senior Manager – Administration with ICICI Prudential Life Insurance Co. Ltd, as DW1.

10. Since the possession of the suit property already stands delivered to the plaintiff, the only issues which need adjudication at this stage are with regard to the legality of the legal notice dated 15.01.2008 (Ex.P6) as, if the said notice is found to be legal and effective, the claim for mesne profits/damages for the use and occupation of the tenanted premises by the defendant from the date the notice of termination took effect, till the date on which possession was delivered by the defendant to the plaintiff and interest, if any, shall become admissible.

11. The lease, admittedly, is not a registered lease. Therefore, the same was only a lease from month to month. Such a lease could be terminated by virtue of Section 106 of the Transfer of Property Act by giving 15 days' clear notice in the light of the fact that the same was neither claimed to be for an agricultural or manufacturing purpose. A perusal of the notice (Ex.P6) shows that the plaintiff gave clear 15 days' notice to the defendant while terminating the lease. In the said notice, the plaintiff, inter alia, stated as follows:

“10. That accordingly, my client does not wish to keep you, the company as tenant any more in the premises and therefore, the tenancy of the company with respect to the premises, shall stand terminated upon expiry of 15 days of receipt of this notice by you, the company. The company is, therefore, required to hand over vacant and peaceful possession of the premises to my client after 15 days of receipt of this notice. In case the company continues in illegal and unauthorized occupation of the premises after termination of the tenancy, the company will liable to pay mesne profits to my client for unauthorized use

and occupation of the premises at the prevailing market rate of Rs. 150/- per sq. feet per month till the company remains in unauthorized use and occupation of the premises. Any amount sent by the company to my client after termination of the tenancy, the same shall be adjusted towards part payment of mesne profits by the company to my client for unauthorized use and occupation of the premises.

11. In case the company fails to comply with the above i.e. vacate and handover vacant and peaceful possession of the premises to my client upon expiry of 15 days of receipt of this notice, my client will be left with no other alternative but to initiate legal proceedings for recovery of possession of the premises as well as mesne profits entirely at the risk and costs of the company. Company is also liable to remit a sum of Rs. 22,000/- towards costs of this notice, to my client.”

11. As aforesaid, the receipt of the said notice is not in dispute. Consequently, this notice of termination of the lease took effect and the lease stood validly terminated with the close of 31.01.2008.

12. The defence of the defendant that it had paid the security deposit to the plaintiff, in any event, has no bearing on the legality and effectiveness of the notice of termination of the lease dated 15.01.2008 (Ex.P6). Though, the pleading of the defendant was that the said security deposit had been paid to the plaintiff, it has come out in the cross examination of the defendant's witness (DW1) that the defendant could not establish as to how the said security deposit had been paid to the plaintiff. Learned counsel for the defendant, during his submissions, has submitted that though the cheque for the security deposit was tendered to the plaintiff, the same was deliberately not encashed by the plaintiff. This is, however, not the pleading in the written statement and, therefore, cannot be accepted. Even if the security deposit were to be tendered and accepted by the plaintiff, it would make no

difference to the situation since the lease is not a registered lease, and the term thereof, therefore, cannot be enforced in the light of Section 49 of the Registration Act, 1908. Therefore, it follows that the defendant's lease stood validly terminated by the notice dated 15.01.2008 (Ex.P6). Consequently, with effect from 01.02.2008, the continued use and occupation of the tenanted premises by the defendant became unauthorized and the defendant became liable to pay damages to the plaintiff at the prevalent market rent.

13. So far as the aspect of computation of the market rent is concerned, for purposes of computation of mesne profits, the plaintiff has led evidence of PW2 Krishan Kumar, LDC from the office of the Sub Registrar II, Janakpuri, New Delhi, who has produced the summoned record i.e. the record of lease deed dated 08.01.2008 with respect to property i.e. Shop Nos. 45-46, Tilak Nagar, New Delhi i.e. Ex.PW2/1. The lease has been entered into between the landlords, namely, Ajinder Pal Singh, Ramesh Chander and Kailash Chander and the tenant ICICI Securities Limited. The lease is in respect of two shops bearing Nos. 45-46, admeasuring 1146 sq. ft. The lease is for a period of nine years. For the first three years, the rent agreed in this lease is Rs. 3,81,618/- for the period 08.01.2008 to 07.01.2011. This translates to Rs. 375/- per sq. ft.

14. The plaintiff's witness PW1, in his cross-examination, has admitted that Janakpuri and Tilak Nagar were two separate colonies. However, he states that they are located nearby to each other. The defendant's suggestion that the suit property is not centrally located in the market has been denied

by the plaintiff. On the aspect of mesne profits/damages, the defendant has led no evidence at all.

15. The submission of Mr. Kapur, learned Senior Counsel for the plaintiff is that even though the property at Tilak Nagar are two shops situated at the ground floor, whereas the suit property is one situated at second and third floors, the properties are proximate. He submits that this Court should assess the market rent of the suit property at the relevant time by relying upon the said instance.

16. On the other hand, the submission of learned counsel for the defendant is that the two properties are not comparable since the property at Tilak Nagar is situated at the ground floor, consisting of two shops, whereas the suit property is situated on the second and third floors and the area is much larger. The submission is-larger the area, the lower the rate of rent per sq. ft.

17. Though the lease is not a registered document, it can be looked into for collateral purpose. The admitted position is that the agreed rent for the first three years period i.e. for the period 01.08.2007 to 31.07.2010 was Rs. 111.50/- per sq. ft. for carpet area of 5810 sq. ft. on second and third floor of the suit property. The increase in the rent, as per the said agreement, was to take place only on the expiry of the three years period i.e. with effect from 01.08.2010 by increase of 15% over the last paid amount. Before that date arrived, the defendant vacated the suit property and delivered possession to the plaintiff. The instance relied upon by the plaintiff pertains to a different locality. The plaintiff has not led any evidence to show that as to how these two properties are comparable. Merely because they are

situated within a radius of 1 to 3 kilometers, it does not mean that the rate of rent would be the same. The location of the premises i.e. whether it is in residential or commercial area; the width of the road and accessibility to the premises; the visibility of the premises; the nature and age of construction and other factors would play a role in determining the prevalent market rent of any given premises. The lease in question was entered into between the parties on 01.08.2007 whereas the lease of the property in Tilak Nagar was entered into on 08.01.2008. Therefore, there is not much time gap so far as the period of execution of the two leases is concerned. The periods for which these leases were to operate also overlapped.

18. Having considered all the aforesaid aspects, I am of the view that the damages/mesne profits for the period 01.02.2008 to 19.05.2009 could fairly be computed at the rate of Rs. 125/- per sq. ft. While arriving at the said assessment, I have taken into consideration all the aforesaid factors, including the factor that the suit property is situated on the second and third floors and has a much larger area when compared to the instance cited by the plaintiff. The defendant has paid the rent at the agreed rate of Rs. 111.50/- per sq. feet for the aforesaid period i.e. 01.02.2008 to 19.05.2009. Consequently, the plaintiff would now be entitled to damages/mesne profits @ Rs. 13.50 per sq. ft per month for the said period. So far as the claim for interest is concerned, in the facts and circumstances of the case, I am not inclined to grant any interest for the past period. However, in case the amount now found due and payable by the defendant is not paid to the plaintiff within two months from today, the same shall carry interest @ 10% till realization. It is decreed accordingly.

19. The suit stands disposed of leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

JULY 01, 2013
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