

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. 1348 of 2012 & IA No.18426 of 2012 (u/O 15A R-2 by the Plaintiffs); IA no.4500 of 2013 (u/O XXXVIII R 5 by Plaintiffs) and IA No.8953 of 2012 (u/O XXXIX R 1 & 2 CPC filed by the Plaintiffs)

Reserved on: July 10, 2013

Decision on: July 30, 2013

PYARA LAL TAHEEM & ANR. Plaintiffs

Through: Mr. M.M. Kalra, Advocate with
Mr. Siddharth Silwal, Advocate.

versus

MOHAN MURTI SHANDILYA Defendant

Through: Mr. Mohan Shandilya with
Ms. Ananya Bhattacharya, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

30.07.2013

IA No.18426 of 2012 (under Order 15A Rule 2 CPC by the Plaintiffs)

1. This is an application by the Plaintiffs under Order 15A Rule 2 CPC for striking off the defence of the Defendant on the ground that the Defendant has failed to pay the arrears of rent due from December, 2011 till the date of the filing of the application, i.e., 28th September, 2012.

2. The background to the present application is that the aforementioned suit was filed by the Plaintiffs for a decree of possession of the property at C-

106, Ground Floor and First Floor, NDSE Part-II, New Delhi-110049 (hereafter referred to as the “suit premises”) (shown in red in the site plan attached to the plaint); for a decree of recovery of rent for a sum of Rs.6,40,000; for a decree of *mesne* profits at Rs.2,40,000 per month with effect from 1st April, 2012 and costs.

3. The case of the Plaintiffs is that they are the owners and landlords of the suit premises. The Plaintiffs and the Defendant entered into a lease deed dated 3rd December, 2010 which is duly registered. In terms thereof the Plaintiffs as lessor granted to the Defendant-Lessee the lease of the ground floor and the first floor of the suit premises together with car parking space in the drive way with complete fittings and fixtures, along with one servants quarter with kitchen on a monthly rent of Rs.1,60,000 excluding electricity and water charges. The lease was for a period of three years commencing from 1st December, 2010 and ending on 30th November, 2012. Clause 1 of the lease deed mentions the payment schedule including the three months’ advance rent and three months’ security. Apart from a cheque dated 26th November 2010 for Rs.9,60,000 (towards three months’ advance rent and three months’ security), post-dated cheques for the period beginning from 1st March, 2011 up to 1st December, 2012 for Rs.80,000/- each were issued.

Two cheques dated 1st December, 2011 for Rs.9,60,000 each were towards payment of lease rent for the period 1st December, 2012 to 30th November, 2013.

4. It is stated that when the Plaintiffs presented the two cheques dated 1st December 2011 for payment on 2nd December, 2011 both cheques were returned dishonoured with remarks 'Funds Insufficient'. However, on the Defendant's further instructions the cheques were again presented for payment on 5th December, 2011, 8th December, 2011 & 10th December, 2011 and on each occasion the cheques were dishonoured with the same remarks. The Plaintiffs issued a legal notice dated 8th January, 2012 under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') to the Defendant demanding the amount of the dishonoured cheques. However, when the Defendant failed to pay the amounts of the dishonoured cheques, the Plaintiffs filed a criminal complaint under Section 138 of the NI Act before the Court of Metropolitan Magistrate ('MM').

5. Separately a legal notice dated 3rd February, 2012 was issued by the Plaintiffs to the Defendant terminating the lease deed dated 3rd December, 2010 and demanding that vacant and peaceful possession of the suit

premises be handed over to the Plaintiffs. It is stated that the Defendant failed to reply and also did not pay the lease rent of the suit premises from 1st December, 2011 till the termination of the tenancy.

6. The Plaintiffs claim they are entitled to recover Rs.6,40,000 towards monthly rent from 1st December, 2011 to 31st March, 2012. The Plaintiffs also claim *mesne* profits at Rs.2,40,000 per month on account of unauthorised occupation of the suit premises by the Defendant with effect from 1st April, 2012 till the time peaceful and vacant possession of the suit premises is handed over.

7. At the first hearing of the suit on 11th May, 2012 summons in the suit and notice in the application under Order 39 Rule 10 CPC were directed to be issued. Thereafter in an application filed under Order 39 Rules 1 & 2 CPC (IA No.9765/2012) the Court, after hearing the Defendant who appeared in person, passed an order on 21st May, 2012 recording the undertaking of the Defendant that he had no intention to alienate the suit property and that pending the suit the Defendant or his employees would not part with possession or create any third party interest in respect of the suit premises. The application was accordingly disposed of.

8. Thereafter the parties were referred to mediation but no settlement could be arrived at. On 25th July, 2012 the Court passed the following order:

“Mediation report has not been received. However, the counsel for the parties state that efforts to settle the matter have failed.

Accordingly, list before the Joint Registrar on 13th August, 2012 for completion of pleadings of the parties in the suit as well as in the applications and before the Court on 1st November, 2012 for hearing of IA No.9765/2012. The defendant shall clear all arrears of rent which are stated to be due from December, 2011 within eight weeks.”

9. IA No.4500/2013 was filed by the Plaintiffs under Order 38 Rule 5 CPC seeking attachment of the movable properties of the Defendant and for a direction to furnish security in the sum of Rs.40,00,000 to satisfy the decree which was likely to be passed.

10. On 15th April, 2013, senior counsel for the Defendant informed the Court that the Defendant would vacate the suit premises by 30th April, 2013 and hand over the keys thereof on 1st May, 2013. This was stated to be without prejudice to the rights and contentions of the Defendant.

11. Thereafter on 1st May, 2013 the Court noted that the Defendant had handed over the keys of the first floor of the suit premises to the counsel for the Plaintiffs and sought two weeks time to surrender the possession of the

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remaining portion to the Plaintiffs. On 24th May, 2013, the Plaintiffs informed the Court that the Defendant had not honoured the above undertaking. The Court has now been informed that the Defendant finally handed over the remaining portion of the suit premises on 27th May, 2013.

12. Mr. M.M. Kalra, learned counsel appearing for the Plaintiffs submits that the Defendant has failed to deposit rent in terms of the orders dated 25th July, 2012 and therefore his defence is liable to be struck off. Despite giving an undertaking to the Court that he will vacate the premises by 30th April, 2013, he surrendered only the first floor of the suit premises on 1st May, 2013. The remaining portion was surrendered only on 27th May, 2013. It is stated that even the electricity charges were not paid. It is submitted that the termination of the lease was occasioned by the failure of the Defendant to abide by the terms & conditions of the lease agreement. Consequently it is Clause 17 of the lease deed, and not Clause 10, which applies. It is pointed out that after adjusting the security deposit furnished by the Defendant, a sum of Rs.23,45,430 was still payable to the Plaintiffs.

13. The Defendant who appeared in person, on the other hand, submitted that the tenancy was month-to-month. A sum of Rs.9,60,000 issued by the two cheques dated 1st December, 2011 was only for security. The case of *CS(OS) No. 1348 of 2012*

the Defendant is that the Plaintiffs ought not to have presented the cheques for payment when the rent was payable on the first of every month as has been done till the previous year. It is stated that the presentation of cheques was done only to harass the Defendant and that proceedings under Section 138 of the NI Act was without cause. Reliance was placed by the Defendant appearing in person on the answers given by the Plaintiffs/complainants in the criminal case (being CC No.238/2012). It is further submitted that the application under Order 39 Rule 10 CPC was yet to be considered. It is alleged that the Plaintiffs were holding cheques of Rs.9,60,000 in addition to Rs.4,80,000 and a total of Rs.15,40,000 towards rent of nine months. It is claimed that Rs.9,60,000 was paid to avoid the unpleasantness created by the Plaintiffs. It is stated that without adjudicating the application under Order 39 Rule 10 the Court could not have issued any direction to the Defendant to pay the arrears of rent. It is submitted that the Plaintiffs have failed to comply with Clause 10 of the lease deed, and that far from the Defendants owing any sum to the Plaintiffs, it is the Plaintiffs who have to pay the Defendant compensation in terms of Clause 10 of the lease deed. It is submitted that there is a difference when the cheques get dishonoured and when the circumstances are deliberately created so as to ensure that the cheques get dishonoured. It is contended that the Defendant has complied

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with the order of the Court and therefore the application is liable to be dismissed.

14. The above submissions have been considered. The registered lease deed entered into between the parties on 3rd December, 2010 makes it absolutely clear that the lease period is three years. There is no basis for the Defendant to contend that it was a month to month tenancy. It is clear that the rents were collected in advance. This explains why post-dated cheques were issued by the Defendant. There is nothing in the lease deed to indicate that the Plaintiffs would not present the cheques as and when the dates fell due or that the said amount was taken by the Plaintiffs as security. If indeed the cheques have been dishonoured upon presentation then there is a violation of the lease deed by the Defendant. Clauses 10 and 17 of the lease deed which are relevant for the present purposes read as under:

“10. That in case Lessee desires to terminate the Lease Agreement, for any reason, whatsoever, earlier than the initial period of Three Years, the Lessee shall give two months notice in writing, in advance, of his intention to terminate the Lease Agreement. However, the Lessee shall not terminate the Lease Agreement in the first two years and six months of the Lease Agreement. In the event of the Lessee terminates the present agreement before the completion of the First Two Years and Six Months, the Lessee shall be liable to pay the Lease Rent for the balance of the months remaining. The same shall apply to the Lessors also.

17. That if the Lessee makes any violation of any of the clause of the Lease Agreement, in that case, the Lease will be deemed to have been automatically cancelled/terminated without any further notice and the vacant physical possession of the Demises Premises should be handed over to the Lessors by the Lessee forthwith.”

15. The wording of the above clauses is unambiguous. In terms of Clause 17, dishonour of the cheques paid towards rent constitutes a violation of the lease agreement. Learned counsel for the Plaintiffs is justified in invoking Clause 17 of the lease deed which provides for automatic termination and cancellation of the lease “without any further notice”, in the event of such violation. Clause 10, on the other hand is applicable where, even in the absence of any violation or breach of the lease agreement, the Plaintiffs desire to terminate the lease. In such an event the lessor is to give two months advance notice to the lessee. Since there was a ‘deemed’ automatic termination of the lease, the question of the Plaintiffs’ failure to issue two months’ notice to the Defendant under Clause 10 of the lease deed did not arise.

16. It is futile for the Defendant to contend at this stage that the tenancy was month-to-month or that the cheques in the sum of Rs.9,60,000 were only towards security. Such a stand does not appear to have been taken by the

Defendant earlier. Therefore there was no question of the Plaintiff having to compensate the Defendant for an alleged violation of Clause 10 of the lease deed.

17. In para 9 of the affidavit dated 3rd October, 2012 the Defendant has admitted that a sum of Rs.16,00,000 was owed to the Plaintiffs. The payment schedule in the lease deed clearly mentions that the cheques, the details of which have been set out in the said paragraph, are towards payment of lease rent for the period 1st December, 2012 to 30th November, 2013.

18. The answers given by the landlord in the cross-examination in the criminal proceedings under Section 138 of the NI Act cannot be relied upon by the Defendant at this stage. Those proceedings are independent of the present proceedings. The counter claim of the Defendant is also, for the reasons discussed, untenable as such. The submission that the Plaintiff was in breach of the lease agreement is totally misconceived.

19. Order 15A of the CPC, being a Delhi amendment, is unambiguous in its terms that where a Defendant who is required to deposit rent as per the directions of Court, fails to do so his defence is liable to be struck off. It

gives statutory expression to the law earlier explained in several decisions. In *M/s. Jwala Pershad Ashok Kumar Chopra HUF v. M/s. Nath Tubes Pvt. Ltd.* AIR 1994 Del 317, the Court held that it can, in a case of this kind, in fair exercise of its judicial discretion, order for deposit of money pending the decision of the suit. In *Erum Travels v. Kanwar Rani*, 69 (1997) DLT 567, the Court considered the permissibility of striking off the defence for non-payment of rent/damages under Section 151 and Order XXXIX Rule 10 CPC. The Court held “The combined effect of Order XII Rule 1 and Order XXXIX Rule 10 of the Code of Civil Procedure is that a Court can, in a case of this kind, in fair exercise of its judicial discretion order for deposit of money pending decision of a suit. Surely, the provisions of Section 151 of the Code of Civil Procedure can be invited in aid to cover all such cases as are analogous to these principles.”

20. In the instant case, the Defendant has no valid explanation for not obeying the order dated 25th July, 2012 even without challenging it. In the circumstances, there can be no manner of doubt that the Defendant has failed to comply with the order passed by this Court on 25th July, 2012 requiring him to pay the arrears of rent.

21. Accordingly the application is allowed and the defence of the Defendant is struck off.

22. Prayer (a) of the suit does not survive as possession has now been handed back to the Plaintiffs of the suit premises.

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23. A decree is passed in favour of the Plaintiffs and against the Defendant for arrears of rent. After adjustment of the monies paid by the Defendant including security deposit, the Defendant is liable to pay the Plaintiffs Rs.23,45,430 towards arrears of rent. The said amount will be paid by the Defendants to the Plaintiffs within a period of eight weeks from today failing which it would carry simple interest at 12 per cent per annum till the actual date of payment.

24. The suit is decreed in the above terms with no orders as to costs. All pending applications are disposed of.

S. MURALIDHAR, J.

JULY 30, 2013

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