

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CS(OS) 2591/2011**

Reserved on: 14.12.2012

Date of decision: 31.01.2013

IN THE MATTER OF:

CHANDER KIRTI RANI TANDON Plaintiff

Through: Ms. Deepika V. Marwaha, Advocate
with Ms. Jibran Tak, Advocate

versus

M/S VXL LODGING N BOARDING SERVICES PVT LTD Defendant

Through: None

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The plaintiff has instituted the present suit against the defendant for possession of the first and second floors of the residential premises bearing No.S-20, Greater Kailash-I, New Delhi, and for recovery of arrears of rent to the tune of ₹7,25,000/-, apart from future damages w.e.f. October, 2011, for the illegal use and occupation of the demised premises alongwith interest thereon.

2. The brief facts of the case are that the plaintiff is the owner/landlady of premises bearing No.S-20, Greater Kailash-I, New Delhi, and is residing on the ground floor. As per the plaintiff, Shri Ajay Kapoor, Director of the defendant/company had approached her through a property broker in December, 2009 for taking on lease the first and second floors of the demised premises, to which the plaintiff was agreeable. As a result, a Lease Deed dated 24.12.2009 was executed between the parties (Ex.PW1/1).

3. As per Clause-1 of the Lease Deed, the first and second floors of the demised premises were let out by the plaintiff to the defendant on a monthly rent of ₹1,45,000/-, exclusive of the electricity and water charges and the rent was payable in advance on the seventh day of each calendar month. The tenure of the Lease Deed was for a period of three years, commencing from 01.01.2010 and ending on 31.12.2012. The defendant had paid one month's rent in advance to the plaintiff after deducting the TDS. As per Clause-4 of the Lease Deed, the plaintiff received a sum of ₹2,90,000/- towards interest free security deposit, which was refundable at the time of handing over vacant physical possession of the demised premises by the defendant.

Clause-25 of the Lease Deed stipulated that if the defendant/lessee failed to pay the monthly rent, as agreed upon for a period of one month, the lease would stand automatically terminated without any notice and the plaintiff/lessor would be entitled to take over the possession of the demised premises. Clause 25 of the Lease Agreement also stipulated that in case the rent cheques bounce, the lessee would be liable to pay a penalty of ₹10,000/- per day, in addition to the monthly rent.

4. The plaintiff has averred that the defendant had issued her advance cheques towards the monthly rent for the period till December, 2012 but when the said cheques were presented for encashment, they were dishonoured on a number of occasions. It was submitted that upon the commencement of the lease, the first cheque which was for the month of January, 2010, when presented by the plaintiff on 08.01.2010, was dishonoured by the defendant's banker with the remarks, "insufficiency of funds" and thereafter, the defendant had paid the rent for the said month in cash. Similarly, for the next month also, the second cheque of the defendant, when presented by the plaintiff, was dishonoured and this pattern was repeated for the subsequent months as well.

5. Learned counsel for the plaintiff submitted that from the beginning of the year 2011, the defendant became very irregular in the payment of rent and as a number of cheques issued by it were dishonoured by its banker upon being presented and for every such cheque, charges were levied on the plaintiff by her banker, she started depositing the cheques only after verifying from the staff of the defendant as to whether the same ought to be presented to the bank or not. The details of the manner in which the plaintiff had presented the rent cheques on receiving instructions from the defendant for the period from January, 2011 till April, 2011, have been set out in para 7 of the plaint.

6. Counsel for the plaintiff further submitted that not only did the defendant fail to make timely payment of the rent, but it also defaulted in issuing a TDS certificate to the plaintiff for the period w.e.f. 01.04.2010 to 31.03.2011 and it was only after the present suit was instituted and summons were issued to the defendant, did it deposit the TDS for the aforesaid period with the Income Tax Department in February, 2012, except for one month for which, TDS has still not been deposited. When the defendant failed to pay the rent for the month of May, 2011, the plaintiff was constrained to

address a letter at their registered office, terminating the lease of the premises. Upon receiving the said notice, officers of the defendant assured the plaintiff of timely payment, but even after giving the said assurance, none of the post dated rent cheques issued by the defendant were honoured by its banker and all the cheques w.e.f. May, 2011 till August, 2011 were dishonoured on being presented. It was thus submitted by learned counsel that the defendant was in arrears of rent for the months of May, 2011 to September, 2011.

7. To establish the status of the cheques of rent issued by the defendant and presented for encashment, the plaintiff has filed a copy of her bank statement maintained with the Punjab National Bank, Greater Kailash Branch, marked as Ex.PW1/A and enclosed with her affidavit by way of evidence (Ex.PW1/X). The original cheques issued by the defendant towards payment of rent for the months of June and July, 2011, which were dishonoured, have also been filed by the plaintiff and exhibited as Ex.PW1/B and Ex.PW1/C. The original return memos of the aforesaid cheques issued by the bank are exhibited as Ex.PW1/D and Ex.PW1/E.

8. Counsel for the plaintiff contended that the defendant had not even cleared the arrears of the electricity charges of the two meters

installed on the first and second floors of the demised premises and as per the demand letter dated 10.01.2012, issued by the BSES for the first floor of the demised premises, a sum of ₹37,540/- was shown as outstanding (Ex.PW1/2) and similarly, another demand letter dated 10.01.2012 for the second floor showed an outstanding amount of ₹17,180/- (Ex.PW1/3). The electricity bills of the first and second floors of the demised premises have been filed and marked as Ex.PW1/4 and Ex.PW1/5. Finally, on account of a threat of disconnection, the plaintiff was constrained to make the payment of the aforesaid outstanding electricity bills. The payment receipts dated 09.02.2012, issued by the BSES have been marked as Ex.PW1/6 and PW1/7. Similarly, the plaintiff has claimed that the defendant had not cleared the outstanding water charges with respect to the second floor. A copy of the bill dated 31.01.2012 for a sum of ₹15,857/- raised by the DJB has been filed by the plaintiff and is marked as Ex.PW1/8. The plaintiff has stated that as the said bill also remained unpaid by the defendant, she had to clear the same by issuing a cheque for ₹15,857/- dated 21.02.2012.

9. Finally, in view of non-payment of rent by the defendant and on account of violation of other terms and conditions of the Lease Deed,

the plaintiff despatched a legal notice dated 06.09.2011 to the defendant at its registered office situated at E-214, Greater Kailash-II, New Delhi and also at the tenanted premises. The said notice was also sent via e-mail to the defendant at the e-mail ID, as given on its official website. A copy of the e-mail is filed and marked as Ex.PW1/12. To establish the e-mail ID of the defendant, the plaintiff has filed a print out of a page from its official website which is marked as Mark 'A' and 'B'. The carbon duplicate of the aforesaid legal notice, which was dispatched by the plaintiff to the defendant is marked as Ex.PW1/13. The aforesaid notices that were despatched at both the aforesaid addresses of the defendant were however returned by the postal authorities. The notice despatched at the registered office of the defendant was returned with the remarks 'premises locked' and the one despatched at the tenanted premises of the defendant was returned with the remarks 'unclaimed'. The AD Cards, envelopes and postal receipts of the legal notice are marked as Ex.PW1/14 (colly). It is however stated that the notice sent by e-mail was duly delivered to the defendant but neither did it reply to the said notice, nor did it clear the arrears of the rent/occupation charges.

10. Learned counsel for the plaintiff submitted that although the plaintiff was not under an obligation to issue a legal notice to the defendant for terminating the Lease Deed in terms of Clause 25 of the Lease Deed, which stipulated that non-payment of the monthly rent for a period of one month would result in an automatic termination of the tenancy, the aforesaid legal notice was issued to the defendant by way of abundant caution. She further stated that in view of the very same Clause-25, which stipulated that in case the rent cheques given by the defendant would bounce, it would be liable to pay a penalty of ₹10,000/- per day in addition to the monthly rent, the plaintiff is entitled to claim penalty @ ₹10,000/- per day from the defendant over and above the outstanding monthly rent. As a result, the plaintiff has prayed for a decree of possession of the demised premises which is alleged to be under the unauthorized occupation of the defendant, alongwith damages for use and occupation of the demised premises @₹4,45,000/- per month from the month of October, 2011 onwards till vacation thereof, while confining her claim to ₹1,45,000/- per month towards arrears of rent for the period from May, 2011 to September, 2011 alongwith interest thereon. Additionally, the plaintiff has sought recovery of the electricity and water charges in respect of the demised premises that had to be borne by her due to non-payment of the same

by the defendant during the pendency of the suit, apart from costs of the suit.

11. The present suit was instituted by the plaintiff on 03.10.2011, and was listed for admission on 17.10.2011. Summons were issued to the defendants, returnable for 05.01.2012. On the aforesaid date, on the interim application filed by the plaintiff, registered as I.A.No.16644/2011, the defendant was directed not to part with the possession of the demised premises. On 05.01.2012, Mr. Sayed Hasan, Advocate, had appeared on behalf of the defendant and had undertaken to file his Power of Attorney within three days. On the said date, in his submission to the Joint Registrar he had stated that a complete set of the paper book had not been furnished to him and some papers from his paper book were missing, which were thereafter furnished to him on the same date. The defendant was directed to file a written statement within four weeks, whereafter the plaintiff was directed to file the replication and the suit was adjourned to 17.04.2012 for the parties to conduct admission and denial of documents.

12. Thereafter, the plaintiff had filed an application under Order XV-A read with Section 151 CPC, registered as I.A. No. 1255/2012 stating

inter alia that the defendant had not filed the written statement and further that it had locked the demised premises and that it owed her arrears of rent to the tune of over ₹13,05,000/-, if calculated at the rate of the last paid rent, i.e., @₹1,45,000/- per month. By the aforesaid application, the plaintiff sought directions to the defendant to deposit the arrears of rent totalling to ₹13,05,000/- and continue paying damages for the use and occupation of the demised premises at the same rate. Despite service of the aforesaid application on the defendant, none had appeared on its behalf. Consequently, vide order dated 15.03.2012, the defendant was directed to deposit with the Registrar General arrears of rent @ ₹1,40,000/- per month after deducting the TDS w.e.f. May, 2011 till the date of passing of the order, within four weeks. Besides the above, the defendant was also directed to continue depositing the current rent @ ₹1,40,000/- per month on a monthly basis, failing which the plaintiff was granted liberty to file an application for striking off the defence of the defendant.

13. A perusal of the order sheets reveal that the defendant had failed to appear or contest the present suit and finally vide order dated 01.08.2012, it was proceeded against ex-parte and the plaintiff was

called upon to file an affidavit by way of evidence. On 27.09.2012, the plaintiff had appeared before the Joint Registrar as PW1 and had tendered her affidavit by way of evidence as her examination in chief. The said affidavit is marked as Ex.PW1/X. The plaintiff identified her signatures on the said affidavit and also tendered documents in evidence that were exhibited as Ex.PW1/1 to PW1/14 and Mark-A & B. After closing the said *ex-parte* evidence, the suit was placed before the Court for final arguments.

14. The Court has heard the counsel for the plaintiff and has perused the averments made in the plaint, the affidavit by way of evidence filed by the plaintiff and the documents that have been placed on record.

15. In view of the aforesaid unrebutted testimony of the plaintiff, as discussed above and having regard to the evidence placed on record both documentary and oral, it is held that the defendant is in unauthorized occupation of the demised premises and has failed to vacate the same in spite of a valid legal notice of termination of tenancy, which was duly served upon it. The defendant is also held to be in arrears of rent for a sum of ₹7,25,000/- w.e.f. May, 2011 to

September, 2011 calculated @ ₹1,45,000/- per month in terms of the Lease Deed.

16. Though the plaintiff has claimed recovery of penalty from the defendant @ ₹10,000/- per day for the unauthorized use and occupation of the demised premises in terms of Clause 25 of the Lease Deed, in addition to the monthly rent w.e.f. October, 2011, in the course of arguments, learned counsel for the plaintiff had submitted that the plaintiff does not insist on recovery of penalty at the above rate. Instead, she had requested the Court to take judicial notice of the increase of rentals in Delhi for purposes of determining the *mesne* profits payable by the defendant as the plaintiff had not led any evidence on this aspect.

17. There are a *catena* of decisions that have held that while determining *mesne* profits, the Courts are well entitled to take judicial notice of the increase of rentals of the area where the property is situated under Sections 56 and 57 of the Indian Evidence Act, 1872. Some of the decisions on the aforesaid lines are catalogued as below:-

- (i) Bakshi Sachdev (D) by LRs vs. Concord; **(I) 1993 (1) Raj LR 563.**
- (ii) Vinod Khanna and Ors. vs. Bakshi Sachdev (Deceased) through LRs and Ors; **AIR 1996 (Delhi) 32 (DB)**

- (iii) Motor & General Finance Ltd. vs. Nirulas and Ors.; **92 (2001) DLT 97**
- (iv) Anant Raj Agencies Properties vs. State Bank of Patiala; **2002 IV AD (Delhi) 733 (DB).**
- (v) National Radio & Electronic Co. Ltd. vs. Motion Pictures Association **122 (2005) DLT 629 (DB)**
- (vi) State Bank of Bikaner and Jaipur vs. I.S. Ratta and Ors. **120 (2005) DLT 407 (DB)**
- (vii) M.R. Sahni vs. Doris Randhawa; **2008(104) DRJ 246**

18. In the case of Anant Raj Agencies Properties (supra), a Division Bench of this Court was considering a case where the suit premises was situated in the heart of Delhi and on the basis of the evidence placed on record, payment of *mesne* profits in respect of the suit premises was allowed @ ₹50/- per sq.ft. per month. It was further held that as the suit had remained pending for a period of nine years, the trial court ought to have taken judicial notice of the manifold increase of rents in the area in question. While making the aforesaid observation, the Division Bench had placed reliance on the decision of the Supreme Court in the case of D.C. Oswal vs. V.K. Subbiah and Ors. reported as **AIR 1992 SC 184.**

19. Placing reliance on the very same judgment in the case of D.C. Oswal (supra), a Division Bench had observed in the case of Vinod

Khanna (supra), that the trial court had not committed any illegality in taking judicial notice of increase of rents and proceeded to determine the compensation accordingly. The observations of the Division Bench in this context are apposite and are reproduced hereinbelow:-

"21. The learned Counsel for the appellants also urged before us that the learned Trial Court was not justified in taking a judicial notice of the fact of increase of rents like the suit property and also in providing ₹10,000/- per month as fair amount towards damages/mesne profits in favour of the plaintiffs. **It is true that no substantial evidence has been led by the plaintiffs in respect of the increase of rent in the properties like that of the suit property. However, it is a well known fact that the amount of rent for various properties in and around Delhi has been rising staggeringly and we cannot see why such judicial notice could not be taken of the fact about such increase of rents in the premises in and around Delhi which is a city of growing importance being the capital of the country which is a matter of public history.** At this stage we may appropriately refer to the Court taking judicial notice of the increase of price of land rapidly in the urban areas in connection with the land acquisition matters. **Even the Apex Court has taken judicial notice of the fact of universal escalation of rent and even raised rent of disputed premises by taking such judicial in case of D.C. Oswal v. V.K. Subbiah reported in AIR 1992 SC 184;**

22. In that view of the matter we have no hesitation in our mind in holding that the Trial Court did not commit any illegality in taking judicial notice of the fact of increase of rents and determining the compensation in respect of the suit premises at ₹10,000/- per month w.e.f. 19.1.1989, in view of the fact that the rent fixed for the said premises was at ₹6,000/- per month as far back as in the year 1974.

We may, however, note here that the learned Counsel for the appellants did not seriously challenge the findings of the learned Judge that ₹10,000/- per month would be the fair market rent of the suit premises. Accordingly, in view of the aforesaid findings arrived at by us the submissions of the learned Counsel for the appellants in our view have no substance at all."

20. Similarly, in the case of S. Kumar vs. G.K. Kathpalia reported as **1991 (1) RCR 431**, a Division Bench of this Court had noticed that the landlord therein had not led any documentary evidence on the prevalent market rates of other properties in the area and then gone on to fix the damages/*mesne* profits by taking into consideration the prime location of the suit premises, its proximity to the community centre and the commercial activity.

21. The essence of the aforesaid decisions of the Supreme Court and this Court is that judicial notice of the increase of rents in urban areas can be taken note of by courts by applying the provisions of Sections 57 and 114 of the Evidence Act, 1872 and while calculating the *mesne* profits, certain amount of guess work by the court, is inevitable and acceptable.

22. In the present case, considering the fact that the demised premises is situated in one of the prime residential localities in Delhi, i.e., Greater Kailash-I, this Court is of the opinion that it would be just,

fit and proper if an increase of 15% per annum over and above the contractual rent be awarded to the plaintiff for the first year commencing w.e.f. 01.10.2011 till 30.09.2012. For the second year of illegal occupation, i.e., w.e.f. 01.10.2012 onwards, the defendant is held liable to pay an increase of 15% per annum, over and above the original contractual rent plus an additional 15% rent that has been found to be payable for the first year. Same would remain the standard of calculating *mesne* profits for the subsequent period, till the demised premises is vacated by the defendant and possession handed over to the plaintiff.

23. As regards the claim of interest, the plaintiff has sought payment of interest calculated @ 18 % per annum on the awarded amount. However, given the facts and circumstances of the present case, the Court is not inclined to award interest at the rate as claimed by the plaintiff. Instead, it is deemed appropriate to award simple interest @ 10 % per annum on the aforesaid amount for the period of default/delay in making payment of rent/occupation charges, till realization. The said interest shall be calculated on the outstanding rent on a monthly basis, reckoned at the end of each month. The plaintiff is also held entitled to recover the electricity and water

charges payable in respect of the tenanted premises. Besides the above, the defendant is held liable to issue TDS certificates to the plaintiff for the amounts deducted by it from the rent paid to the plaintiff or in the alternate, pay to her amounts so deducted if not deposited with the Income Tax Department.

24. The plaintiff is thus entitled to a decree in the following terms:-

- (i) A decree of ejectment/possession is passed in favour of the plaintiff and against the defendant in respect of the first and second floors of the demised premises bearing No.S-20, Greater Kailash-I, New Delhi, as detailed in the Lease Deed dated 24.12.2009 (Ex.PW1/1).
- (ii) A decree of arrears of rent to the tune of ₹7,25,000/- for the period w.e.f. May, 2011 till September, 2011.
- (iii) A decree of *mesne* profits @ 15% over and above the contractual rent calculated at the rate of ₹1,45,000/- w.e.f. 01.10.2011 till 30.09.2012 and @ 15% over and above the original contractual rent plus additional 15% rent payable for the first year, from 01.10.2012 till the date of handing over possession of the demised premises.

- (iv) Interest @ 10% p.a. is awarded on the aforesaid amount that shall be payable by the defendant as mentioned in para 23 above, till realization of the awarded amount.
- (v) The plaintiff shall also be entitled to a decree of ₹70,577/- towards the electricity and water charges that were payable by the defendant in respect of the demised premises.
- (vi) The plaintiff shall also be entitled to receive TDS certificate(s) on the amounts deducted by the defendant towards TDS and deposited with the Income Tax Department, or in the alternative, the plaintiff shall be entitled to recover the amount so deducted by the defendant towards TDS.
- (vii) Lastly, the plaintiff shall be entitled to costs of the suit apart from counsel's fees that is quantified at ₹20,000/-.

Decree sheet be drawn accordingly. The suit is disposed of.

JANUARY 31, 2013
rkb/sk

(HIMA KOHLI)
JUDGE