

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

Decided on: 12.03.2013

+ RFA(OS) 85/2012 & CM No.16543/2012

VIGNESHWARA DEVELOPMENT PVT LTD & ANR
..... Appellants

Through : Mr. Naveen Sharma, Adv.

versus

NARENDER GUPTA
..... Respondent

Through : Mr. S. Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appellant, the unsuccessful defendant before the learned Single Judge, questions the impugned decree dated 13.8.2012, in Civil Suit No.114 of 2010. The suit had claimed decree for possession, damages, mesne profits for use and occupation of the premises being G-20, Aggarwal Cyber Plaza, Netaji Subhash Place (herein after called the suit premises). The appellant had entered into a lease with the plaintiff/owner of the suit premises (Respondent in this case). He had executed a registered lease deed in favour of the appellant on 20.12.2007 for 33 months with a lock in period of 11

months, during which the appellant could not terminate the arrangement. The rent agreed was for three periods. From 17.12.2007 to 16.11.2008 the monthly rent was Rs.2,50,000/-; from 17.11.2008 to 16.10.2009 the rent was Rs.2,66,250/- and for the last block i.e. 17.10.2009 to 16.9.2010 the monthly rental was Rs.2,83,557/-.

2. The impugned judgment notices that for the month of April, May and June, 2009 the plaintiff had allowed relaxation/remission to the extent of Rs.2,16,250/- per month of the rent payable by the defendant. This was on account of the Memoranda of Understanding dated 14.4.2009, 13.5.2009 and 10.6.2009, marked before the learned Single Judge as Ex.P-2, P-3 and P-6. The plaintiff stated that despite termination of the lease by efflux of time, and inspite of issuing notice to the defendant/appellant, vacant possession had not been handed over. Furthermore, after adjustment of security deposit, the appellant claimed a sum of Rs.2,19,505/- towards unpaid rent and service tax. It also claimed mesne profits amounting to Rs.6,99,250/- at the rate of Rs.3,46,125/- per month for the period 17.10.2009 to 17.12.2009. Apparently, the appellant vacated the premises only on 1.6.2011 after the suit had been filed in court.

3. The learned Single Judge, after noticing that the vacant possession had been handed over and the relief sought in that regard had become infructuous, proceeded to consider the submissions of the parties and the materials on record and decreed the suit to the extent of Rs.54,05,810/- along with costs. This was after adjusting

the sum of Rs.10,00,000/- repayable by the plaintiff to the appellant towards security deposit in terms of the lease deed i.e. Ex. P-1.

4. Learned counsel for the Appellant urges that the learned single Judge did not consider the purport of Ex.P-2, P-3 and P-6, which are unequivocal as regards the remission of rent. Counsel emphasized that even though the lease deed Ex.P-1 existed, under which the lessee was bound to pay the agreed amount i.e. Rs.2,50,000/-, Rs.2,66,250/- and Rs.2,83,557/- for three separate block periods, the fact was that by virtue of the three Memoranda of Understanding (Ex.P-2, P-3 and P-6) remission in payment of lease was agreed upon by the parties to the said documents and the plaintiff could not insist upon the payment of amounts in terms of the Lease Deed. Learned counsel also stressed upon the fact that the Single Judge accepted the submission of the plaintiff with regard to the payment of damages and mesne profits even though no evidence had been led in that regard.

5. Counsel emphasized that the existence of Ex. P-2, P-3 and P-6 not having been denied, there was material on record to support the contention that the rates of rent had fallen. Consequently, the burden of justifying the plaintiff's claim for higher amounts as mesne profit lay upon it. Since no evidence was led, the learned Single Judge ought not to have proceeded to assess damages and mesne profits at the rate at which he ultimately did while decreeing the suit.

6. By a previous order dated 4.1.2013, this Court had directed the appellant to deposit the decretal amount. This was complied with on 24.1.2013. The Respondent deposited the sum of Rs.58,25,000/- and

a further amount of Rs.5,8,010/- in compliance of the Court's direction.

7. At the outset, this Court notices that both the parties had agreed before the learned Single Judge on 18.1.2011 that the suit should be heard and finally decided on the basis of admitted documents as no oral evidence was required in the matter.

8. It is evident from the impugned judgment that the single Judge carefully analyzed the effect of the three documents, Ex.P-2, P-3 and P-6, which is the mainstay of the appellant's case. These contain identical provisions with respect to remission of rent for the periods agreed according to which the appellant was to pay instead of Rs.2,66,250/- only a sum of Rs.50,000/- each for the months of April, May, and June, 2009. This was upon an overall analysis of Ex.P-2, P-3 and P-6. The Court finds nothing in the stipulations (Clauses 2 and 3 of P-2, P-3 and P-6) to support the appellant's contention that there was a blanket agreement to scale down the lease rental for the remaining period. Furthermore, this Court notices that the Ex.P-1 bound the parties and was a registered lease deed. Its terms were clear and unequivocal as regards the burden of lease rent to be paid for various block periods. The appellant's contention that there was a joint agreement to reduce the rent liability by modification of the rents in the registered lease deed, by way of the stipulation in the three Memoranda of Understanding, is without merit.

9. This Court, of course, does not see any necessity in exploring this aspect further because the terms of Ex.P-2, P-3 and P-6 are

confined to only three months. The learned Single Judge held that the effect of these was that the appellant's liability was not in any manner brought down in respect of any period other than April, May and June, 2009.

10. The further contention was that since there had been depression in the market vis-à-vis the rents in similar or identical properties, the plaintiff had to discharge the burden of proving its claim. It is an obvious proposition that the primary responsibility is upon the plaintiff to prove its case. The plaintiff claimed damages for use and occupation at Rs.3,46,125/- per month. However, this Court notices that the plaintiff did not chose to lead any evidence in support of its claim. In these circumstances, the plaintiff's entitlement was held to be limited to the agreed amounts, i.e. @Rs.2,66,250/- per month for the period from 17.7.2009 to 16.10.2009 and @ Rs.2,83,557/- for the period from 17.10.2009 to 31.5.2011. This conclusion is fair and unexceptionable. In view of the above discussion, this Court finds that there is no infirmity/ambiguity in the impugned judgment.

11. The appeal has to, therefore, fail. The appellant is further directed to pay to the respondent cost of Rs.1,25,000/- within four weeks from today. In view of the Court's conclusions, it is open to the Respondent to withdraw the amounts deposited by the Appellant as well as the amount of Rs.10,00,000/- deposited by it (the respondent) pursuant to this Court's previous directions. The respondent or its representative shall be present before the Registrar on 19.3.2013 for consequential action towards refund of these

amounts to the plaintiff/respondent. The interest accrued on this amount, pending disposal of the appeal, shall also be paid to respondent/plaintiff.

12. The Appeal and pending application are dismissed, subject to the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

MARCH 12, 2013

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