

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 22.11.2013

+

RFA (OS) 145/2013, Cav.1041/2013, 18422-18424/2013

INDIAN OIL CORPORATION LTD.

..... Appellant

Through: Mr. Rajat Navet with Mr. P.V. Sharma, Advocates

versus

KAILASH CHAND BANSAL (HUF)

..... Respondent

Through: Mr. Siddharth Bambha with Mr. Shyam Nandan,
Mr. Sidharth Aggarwal, Advocates for Caveator/respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The present appeal is against the judgment and decree of a learned Single Judge dated 09.10.2013 in IA No. 9155/2013 in CS(OS) No. 1360/2012, whereby an application under Order XII, Rule 6, Code of Civil Procedure (“CPC”) was allowed and a partial decree of ejectment/possession was made against the Indian Oil Corporation (“IOC”), the tenant.
2. Briefly, the IOC entered into a lease deed dated 01.02.1997 with the landlord, Kailash Chand Bansal, as a representative of Hindu Undivided Family, for leasing the property, No. 4, Factory Road (Ring Road), near Safdarjung Hospital, New Delhi (hereafter “*the suit property*.”) for a period of ten years. The lease deed was valid for a period of 10 years and further renewable for another period of ten years, i.e. till 2017.

3. The learned Single Judge decreed for ejectment/possession in favour of the landlord based on the following admissions by IOC: the fact of tenancy was admitted, it was also admitted that the lease was unregistered, the lease amount was Rs. 20,449.73 per month, and that a notice of termination was served upon IOC on 18.5.2007, which reads as follows, in its relevant part:

“13. That without prejudice to rights, contentions and remedies of my client, if you treat that tenancy has not been determined on the expiration of the lease term of 10 years, then you may treat this as a notice of termination under Section 111(h) of the Transfer of Property Act (TPA) and/or under Clause (i) of the Lease Deed. You are therefore hereby notified that your lease (sic) stand determined and termination on the expiry of 15 days from the receipt of this notice and you are hereby called upon to vacate my client’s property and hand over vacant and peaceful possession of the leased property bearing No. 4, Factory Road (Ring Road), near Safdarjung Hospital, New Delhi, immediately on the expiry of the said period of 15 days, failing which my client would be constrained to approach the court of law solely at your risk, costs and consequences.”

4. Accordingly, the learned Single Judge held that since the lease deed was unregistered, it was only a month-to-month tenancy, in line with the decision of the Supreme Court in *Payal Vision Limited v. Radhika Choudhary*, (2012) 11 SCC 405, *“in the absence of any secured term of tenancy under a registered lease deed, the tenancy was only on month to month basis.”* Further, as the rent was in excess of Rs. 3,500/- the provisions of the Delhi Rent Control Act, 1958, did not apply, rather, the lease was governed by the provisions of the Transfer of Property Act, 1882 (hereafter “TPA”). Finally, as the notice of termination had been

admitted by the IOC in its written statement, under the terms of Section 106 of the TPA, the lease deed stood terminated.

5. Learned counsel for the IOC impugns this order on the basis that although a notice of termination was served upon the IOC, and the lease deed was admittedly unregistered, subsequent meetings and discussions between IOC and Mr. Bansal led to negotiations on the extension of the lease deed, which negated any legal effect of the notice of termination. Here, reliance was placed upon a letter from Mr. Bansal to the IOC on 01.09.2011, which reads as follows: *“Today during the negotiations it was agreed that in order to enter into lease agreement with IOC for the Land measuring 1605 Sq. meter on which retail outlet M/s. Bhatia S/s is constructed. I agree to the following rentals which are based on L&DO rates: 1. From Feb 2007 till August 2011 Rs.81,000/- per month. 2. From Sept, 2011 for a period of 19 years 11 months the rental shall be Rs. 11000/- per month with an increase of 5% after every three years.”* It was argued that despite this fresh offer, which was under consideration by the IOC, the present suit was filed. Thus, argued counsel, as the notice of termination was succeeded by this fresh offer, no valid termination existed so as to justify a decree on admissions under Order XII, Rule 6.
6. This argument, however, is not convincing. IOC itself admits that no final offer was accepted, so as to constitute a binding contract, or a lease, that would supersede the terms of the lease agreement of 01.02.1997. Neither was any subsequent agreement signed between the parties. In such a case, a mere offer, in the middle of ongoing negotiations, does not vest either party with any legal rights to the property. Rather, the property and the

relations between the two parties in this case continue to be governed by the earlier lease deed.

7. On the question of that lease deed, the findings of the learned Single Judge cannot be faulted. Since the property is leased for an amount greater than Rs. 3,500/- the property is governed by the TPA. Sections 106 and 107 of the Act are clear:

“106. Duration of certain leases in absence of written contract or local usage: *In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy. Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.*

107. Leases how made: *A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Where a lease of immovable property is made by a registered*

instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee: PROVIDED that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.”

8. The IOC admitted in its written submissions, and does not contest in these appeal proceedings, that the lease was unregistered. Hence, only a month-to-month lease existed which was terminable by Mr. Bansal with a notice of 15 days under Sections 106 and 107 quoted above. The factum of the tenancy has also been admitted by the IOC, also as the notice under section 111(h) of the TPA.
9. Thus, in view of such clear and unambiguous admissions, the dictum of the Supreme Court in *Payal* (supra) controls this case:

“5. On behalf of the Respondent, it was argued that the High Court was justified in holding that the written statement did not contain a clear and unequivocal admission of the relevant aspects, namely the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy by service of a notice Under Section 106 of the Transfer of Property Act, 1882. According to him, the High Court was also justified in relying upon the decision of this Court in Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha, (2010) 6 SCC 601 while reversing the judgment and decree passed by the Court below. 7. The above sufficiently empowers the Court trying the suit to deliver

judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the Plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the Code of Civil Procedure and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case.”

10.The IOC's submissions, based on a reading of Jeevan Diesel's conclusions, in this Court's opinion are unmerited. The IOC no doubt stated that it could and was entitled to occupy the premises. That bare averment alone does not better the IOC's case for a trial on merits. A party may assert something; yet that has to be backed, *prima facie* by some material. Concededly, the proposal for extension of lease till 2017 did not mature into a binding agreement, much less into an enforceable right (which could have arisen if such agreement had been registered). In the circumstances, the IOC's admission cannot be termed as conditional or ambiguous.

11.For the above reasons, the Court holds that the appeal is unmerited. It is accordingly dismissed without any order on costs. All pending applications are also dismissed. Caveat also stand discharged.

S. RAVINDRA BHAT

(JUDGE)

NAJMI WAZIRI

(JUDGE)

NOVEMBER 22, 2013