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

+ CS(OS) 1291/2012

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Judgment dated 07.08.2014

RAJESH TANDON AND ORS Plaintiffs

Through : Mr.A.K. Singhla, Sr. Adv. with
Mr.Deepak R. Dahiya, Advs.

versus

M/S MAGIQ INTERSHOPPE PVT LTD & ORS Defendants

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiffs have filed the present suit for recovery of possession of the first floor and the second floor of the property bearing no.G-3, South Extension, Part I, New Delhi. A decree for mesne profits, interest and costs is also prayed by the plaintiffs against the defendants.
2. As per the plaint, plaintiffs no.1 to 4 are the owners of a two and a half storeyed built up commercial immovable property raised on Plot no.3, Block G, admeasuring 250 sq. yards, situated at South Extension, Part-1, New Delhi (hereinafter referred to as 'the suit property'). Further, as per the plaint, on 28.11.1979, plaintiff no.5 entered into a Franchise Agreement with defendant no.3 for sale of readymade garments at the first floor and second floor of the suit property initially for a period of five years. Since defendants were not paying any amount as per the Franchise Agreement, a suit, being CS(OS)445/2007, was instituted by plaintiff no.5

against defendant no.3 wherein defendant no.3 took a stand that the subject property was never in their possession and the same was in the possession of defendant no.1, which led to the filing of the present suit.

3. Learned senior counsel for the plaintiffs contends that a bare reading of the written statement would show that no plausible defence has been raised, neither any particulars have been given with regard to alleged tenancy having been created by plaintiff no.5 in favour of defendant no.1. It is next contended that the pleas raised by defendant no.1 is vague as in para C of the preliminary objections defendant no.1 has stated on instructions from the plaintiff that defendant no.1 made advance/security payment of rental amount towards tenancy of the suit premises in lump sum for Rs.2.00 lakhs to one of their employees, Mr.Nippun Chaudhary, and out of the amount of Rs.2.00 lakhs, an amount of Rs.45,000/- was towards rental amount payable till December, 2011. It is further contended that the written statement is not supported by any document to show as to who inducted defendant no.1 as a tenant since there are five plaintiffs, what was the rate of rent and what was the other terms and conditions. No rent receipt has also been filed on record. Senior counsel, thus, prays that a decree may be passed in terms of Order VII Rule 10 CPC read with Order XV Rules 1 and 2 CPC against the defendants as no issue arises which would require adjudication.
4. I have heard learned senior counsel for the plaintiffs and also perused the plaint and the documents filed along with it. Summons in the suit were issued vide order dated 14.5.2012.
5. Written statement has been filed by defendant no.1, however, thereafter defendant no.1 has chosen not to appear in the matter. In the written statement filed, defendant no.1 does not raise any issue except a bald

assertion has been made that defendant no.1 was a tenant of the plaintiffs, however, it may be noticed that in the written statement neither it has been specified as to which plaintiff nor the written statement discloses how defendant no.1 is a tenant of one of the plaintiffs.

6. In para 2 of the written statement filed by defendant no.1 it has been stated that Rs.2.00 lakhs was paid by defendant no.1 to one of the employees of the plaintiffs, however, not a single document has been placed on record by defendant no.1. On reading of the written statement there is no issue, which requires determination by this Court.
7. In the case of ***D.M. Deshpane and Others v. Janardhan Kashinath Kadam (Dead) By Lrs. and Others***, reported at (1998) 8 SCC 315, the Supreme Court of India has held that where vague pleas are raised by the defendant the Court should hesitate to frame an issue:

“9. Learned counsel for the appellants has relied upon three decisions in support of his contention that a vague plea does not justify an issue being framed. In this connection a reference was made to Ram Sarup Gupta Vs. Bishun Narain Inter College & Others (1987 (2) SCC 555, where the. Court has held that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the absence of pleading, evidence if any produced by the parties cannot be considered. The object and purpose of a pleading is to enable the adversary party to know the case of the opponent. In order to have a fair trial it is imperative that the parties should state the essential material facts so that the other party may not be taken by surprise. The Court has, however, cautioned against a pedantic approach to the problem and has directed that the Court must ascertain the substance of the pleading and not the form, in order to determine the case. The respondent have emphasised latter observations. In the present case, however, no material in support of the plea of tenancy has been set up anywhere in any form. In the case of M/s Nilesh Construction Company & Anr. Vs. M/s Gangubai & Others (AIR 1982 BOMBAY 491), the Court observed that before a reference to the

Mamlatdar for deciding the issue of tenancy under the Bombay Tenancy and Agricultural Lands Act, 1948 is made the alleged tenant must disclose in his pleadings, details about the tenancy and the exact nature of the right which is claimed by him. An issue of tenancy cannot be raised on a vague plea.

10. Similarly in an earlier case of Pandu Dhondi Yerudkar Vs. Ananda Krishna Patil reported in 1947 (76) BLR 368. the High Court has observed that when inspite of particulars being asked for a Vague plea is made by the defendant contending that he is a tenant of the land the Court should hesitate to frame such an issue on such a vague plea. unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. However, in that case since an issue regarding tenancy had already been raised, it was obligatory for the Court to refer this issue to the authorities under the Tenancy Act. The Court, therefore, held that the issue had to be so determined.

11. In the present case, on particulars have been given by the 1st respondent or the second respondent relating to this tenancy-how it was created, when it was created and the terms thereof. Learned counsel for the respondents, however has relied upon an order of the Agricultural Lands Tribunal dated 27.2.71 which was passed in suo motu proceedings taken under Section 49A of the Bombay Tenancy and Agricultural Lands (Vidharbha Region) Act, under which proceedings for transfer of ownership to the alleged tenants of whom the 1st respondent was one, were dropped on the ground that properties belonging to the public trust were exempted under Section 129 of the said Act. We fail to see how this will help the 1st respondent because the question whether he was in fact a tenant over the said land or not, was not examined in those suo motu proceedings since, in any event the lands of the said trust were exempted from the operation of Section 37 of the said Tenancy Act.

8. Reliance is placed by learned senior counsel for the plaintiffs on a decision rendered by this Court in the case of ***Shashi Garg v. M/s Shitiz Metals Ltd & Anr.***, CS(OS)585/2012, filed by plaintiffs for possession,

which was decreed in favour of the plaintiffs under the provisions of Order XXV of CPC as the pleas raised by defendants were vague. Paras 17 to 19 read as under:

“17. I have in *Kawal Sachdeva Vs. Madhu Bala Rana* MANU/DE/1050/2013 dealt in detail on the aspect of framing of issues in such a situation and thus do not feel the need to reiterate the same here.

18. Mention may also be made of *T. Arivandandam Vs. T.V. Satyapal* AIR 1977 SC 2421, *Liverpool & London S.P. & I Association Vs. M.V. Sea Success* I (2004) 9 SCC 512 and *ITC Ltd. Vs. Debts Recovery Appellate Tribunal* (1998) 2 SCC 70 holding that pleadings have to be read meaningfully and if on such a reading, it is found that there is no lis to be tried and the claim or defence is ultimately one destined to doom, the Courts should not waste their time on trial of such cases, to the prejudice of deserving cases.

19. The procedure prescribed in the Code of Civil Procedure, 1908 for disposal of suits provides for issues to be framed only on material propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must be allege in order to constitute his defence. Else, Order XV provides that where the parties are not found at issue or any question of law or fact, the Court should at once pronounce judgment.”

9. Plaintiff no.5 is a partnership firm of which plaintiffs no.1 to 4 are partners. It is the case of the plaintiffs that they entered into a Franchise Agreement with defendant no.3 with respect to the shop, in question. Defendants have not filed a single document along with the written statement in support of this plea, neither there is any explanation nor any averment as to who inducted defendant no.1 as the tenant, what was the rate of rent and what were the terms and conditions of the tenancy.

Defendants have also chosen not to appear in the matter. A suit for injunction filed by defendants against the plaintiffs stand dismissed for non-prosecution on 11.12.2013. Order dated 11.12.2013 reads as under:

“CS No.632/13

11.12.2013
At 2.15 PM.

Present : None for the plaintiff, despite repeated calls since morning.
Ms.Ritu Paul, proxy counsel for the defendants.

The matter is at the stage of PE since 19.08.2013. Already three opportunities have been granted to the plaintiff for leading evidence. However, the plaintiff has failed to lead PE. No affidavit has been filed as yet. The plaintiff has not paid the previous costs.

It appears that the plaintiff is not interested in pursuing the matter. Hence, the suit is dismissed in default of non-appearance and non-prosecution. The plaintiff is also burdened with a cost of Rs.2,000/- to be deposited in DLSA South for wasting the judicial time.

File the (sic. be) consigned to record room.”

10. Applying the law to the facts of the present case, I find that the defendants have raised completely vague pleas unsubstantiated by any document. A plea has been raised that on instructions of the plaintiff defendant no.1 made advance/security payment of rental amount towards tenancy of the suit premises in lump sum of Rs.2.00 lakhs to one of their employees, Mr.Nippum Chaudhary, and out of the amount of Rs.2.00 lakhs, Rs.45,000/- was rental amount payable till December, 2011.

11. Mr.Singhla submits that at this stage he does not claim any relief against defendants no.2 and 3 and if for any reason the order passed today is recalled or set aside, he reserves his rights to claim all rights including reliefs for mesne profits and rent against all the defendants.
12. In my view, the plaintiffs have been able to make out a case for decree forthwith under Order XXV of CPC. Accordingly, suit stands decreed in favour of the plaintiff and against the defendants. Let a decree sheet be drawn up accordingly. Leave is granted to the plaintiffs to seek relief against all the defendants, as prayed, in case the order passed today is recalled.

G.S.SISTANI, J

AUGUST 07, 2014

msr