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

% **Date of decision: 27th January, 2014**

\+ **RFA 351/2013**

M/S ISRANI TELECOM PVT LTD ..... Appellant

Through: Mr. Chetan Sharma, Sr. Adv. with Mr. Praveen Mahajan, Adv.

Versus

SH AKHIL ROHTAGI & ORS ..... Respondents

Through: Mr. Shyam Dutt & Mr. Akhil Rohatgi, Advs. for R-1.

AND

\+ **RFA 406/2013**

M/S ISRANI TELECOM PVT LTD ..... Appellant

Through: Mr. Chetan Sharma, Sr. Adv. with Mr. Praveen Mahajan, Adv.

Versus

SH AKHIL ROHATGI & ORS ..... Respondents

Through: Mr. Shyam Dutt & Mr. Akhil Rohatgi, Advs. for R-1.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The two appeals impugn the common judgment dated 7th February, 2013 of the Additional District Judge (ADJ), Central-8, Delhi of dismissal of

CS No.01/10 (ID No.02401C1062582005) filed by the appellant / plaintiff and allowing the counter claim No.2/05/10 (ID No.02401C1051662005) filed by the respondents / defendants. The appeals were admitted for hearing and notice thereof accepted by the counsel for the respondents / defendants and the Trial Court record requisitioned. The counsels have been heard.

2. The appellant / plaintiff instituted the suit aforesaid for perpetual and mandatory injunction and for recovery of Rs.10,00,000/- as damages, pleading;

(i) that the appellant / plaintiff was engaged in the business of providing telecommunication equipment and trans-receiver tower and other telecom facilities to various companies;

(ii) that under an agreement between the appellant / plaintiff and the respondents / defendants, the respondents / defendants agreed to provide to the appellant / plaintiff land area of their property No.21, Spencers Lane, Alipur Road, New Delhi for the purpose of setting up radio trans-receiver telecommunication equipment and a radio

trans-receiver tower for a period of ten years commencing from 11th August, 1997;

(iii) that in consideration of the aforesaid, the appellant / plaintiff was to deposit an interest free refundable security deposit in the sum of Rs.11,00,000/- with the respondents / defendants;

(iv) that out of the said sum of Rs.11,00,000/-, Rs.1,00,000/- was paid vide cheque dated 1st January, 1997 and the balance Rs.10,00,000/- was payable by 15th August, 1997 and upon non payment of the balance amount, the appellant / plaintiff was liable to pay interest @ 30% per annum;

(v) that the appellant / plaintiff could determine the agreement by serving at least two months notice and whereupon the appellant / plaintiff was entitled to refund of the said Rs.11,00,000/-;

(vi) that the appellant / plaintiff till the date of institution of the suit on 4th May, 2000, out of the aforesaid sum of Rs.11,00,000/- paid a sum of Rs.5,85,000/- to the respondents

/ defendant and was ready and willing to perform its obligations under the agreement and had also installed its BTS system which included radio trans-receiver telecommunication equipment and trans-receiver tower for the purpose of creating a cellular base station on the said premises of the respondents / defendants;

(vii) that the respondents / defendants however without any notice or intimation and for *mala fides* reasons, on 30th April, 2000 locked the premises and prevented the ingress and egress of the appellant / plaintiff thereto and refused to allow access to the appellant / plaintiff inspite of repeated requests and reminders;

(viii) that the appellant / plaintiff ultimately with the intervention of the police was able to enter the premises on 1st May, 2000;

(ix) that the respondents / defendants thereafter also interfered with the ingress and egress of the appellant / plaintiff to the premises affecting the operation and maintenance of the

equipment installed in the premises and the operation of the cellular service therefrom;

the appellant / plaintiff accordingly sought injunction restraining the respondents / defendants from interfering with the peaceful ingress and egress of the appellant / plaintiff to the said premises, for mandatory injunction directing the respondents / defendants to remove their locks from the premises and for recovery of Rs.10,00,000/- as damages on account of loss of revenue and reputation.

3. The respondents / defendants contested the suit by filing a written statement and also made a counter claim for recovery of possession of the portion of the property aforesaid occupied by the appellant / plaintiff and for recovery of *mesne* profits on the grounds:

(a) that as per the agreement dated 1st January, 1997 between the parties, upon the failure of the appellant / plaintiff to pay the balance Rs.10,00,000/-, the appellant/plaintiff was required to pay Rs.25,000/- per month in lieu thereof;

(b) that the appellant / plaintiff failed to pay the balance Rs.10,00,000/- and upon the respondents / defendants threatening to terminate the agreement, persuaded the respondents / defendants to enter into a fresh agreement deed dated 11th August, 1997 on the same lines as the earlier agreement;

(c) that the appellant / plaintiff from time to time paid further amounts to the respondents / defendants in discharge of its obligation to pay Rs.25,000/- per month in lieu of the balance amount of Rs.10,00,000/-;

(d) that the appellant / plaintiff thereafter stopped paying the said amount of Rs.25,000/- per month also and owing whereto the respondents / defendants vide notice dated 9th October, 1999 determined the lease of the appellant / plaintiff;

(e) that the appellant / plaintiff being in breach of the agreement, was not entitled to the reliefs of injunction or the relief of recovery of damages;

Accordingly, while praying for dismissal of the suit filed by the appellant / plaintiff, counter claim for recovery of possession of the premises and for recovery of the amounts due as per the agreement till the date of institution of the counter claim and for future *mesne* profits was filed.

4. Needless to state that the appellant / plaintiff filed a written statement to the counter claim and both parties filed replications to the written statements of each other.

5. On 4th January, 2008, the following issues were framed in the suit:

> "(*i*) *Whether the suit is signed and instituted by a duly authorized person?(OPP)*
>
> (*ii*) *Whether the plaintiff is entitled for the relief of permanent injunction? (OPP)*
>
> (*iii*) *Whether the plaintiff is entitled for the relief of mandatory injunction? (OPP)*
>
> (*iv*) *Whether the plaintiff is entitled for the relief of damages as claimed? (PP)*
>
> (*v*) *Whether the agreement dated 11.8.1997 was executed between the plaintiff and late Sh.Brij Behari (karta of HUF) in supersession of agreement dated 1.1.1997 executed between them? (OPD)*

(vi) Whether the amount of Rs.1,25,000/- paid by the plaintiff to late Sh. Brij Behari at the time of execution of agreement dated 11.8.1997 was for the monthly payment of Rs.25,000/- per month w.e.f. 1.1.1997 to 31.7.1997? (OPD)

(vii) Whether the plaintiff has complied to perform their part of contract as per agreement dated 11.8.1997? (OPP)

(viii) Whether the lease of the suit property was terminated by the defendant no.1 to 5 vide legal notice dated 9.10.1999?(OPD)

(ix) Relief."

and the following issues were framed in the counter claim:

"(i) Whether the counter claimant/ defendants no.1 to 5 have paid appropriate court fees?(OPD)

(ii) Whether the counter claimant/defendants no.1 to 5 have terminated the lease agreement vide notice dated 9.10.1999. If so, its effect?(OPD)

(iii) Whether the lease agreement executed between the parties has expired by efflux of time?(OPD)

(iv) Whether the counter claimant/defendants no.1 to 5 are entitled for decree of possession of the suit property?(OPD)

(v) Whether the counter claimant/defendant no.1 to 5 are entitled to relief of damages as claimed?(OPD)

(vi) Relief."

6. However the Issues No.(v) to (viii) supra in the suit were deleted vide order dated 16th March, 2010.

7. The learned ADJ on the basis of the evidence led before him has dismissed the suit of the appellant / plaintiff and decreed the counter claim of the respondents / defendants, finding / observing / holding:

(I) that the suit of the appellant / plaintiff was instituted and signed by a duly authorized person;

(II) the respondents / defendants had paid proper court fees on the counter claim;

(III) that the counsels for the parties had not disputed that the agreement dated 1st January, 1997 between the parties could be read in evidence;

(IV) that the appellant / plaintiff had admittedly not paid the balance amount of Rs.10,00,000/- to the respondents / defendants

though had in the subsequent agreement dated 11th August, 1997 proved as Ex.PW1/1 also had agreed to pay the balance amount of Rs.10,00,000/- by 15th August, 1997;

(V) that though it was the plea of the appellant / plaintiff that there was a delay on the part of the respondents / defendants in delivering possession of the premises but there was no merit therein since the appellant / plaintiff had entered into a further lease of the equipment installed in the property of the respondents / defendants with M/s Bharti Cellular Ltd. and there was nothing to show that there was any disturbance therein and the appellant / plaintiff had never written to the respondents / defendants that it had not been delivered possession;

(VI) that the appellant / plaintiff, in addition to Rs.1,00,000/- paid Rs.4,85,000/- to the respondents / defendants towards rent / interest in lieu of the security deposit;

(VII) that however the appellant / plaintiff defaulted in payment of said rent / interest also, compelling the respondents /

defendants to terminate the agreement with effect from 10th November, 1999;

(VIII) that the appellant / plaintiff after 10th November, 1999 was not left with any right in the property;

(IX) accordingly Issues No.(ii), (iii) & (iv) in the counter claim were decided in favour of the respondents/defendants and against the appellant / plaintiff;

(X) that the appellant / plaintiff being in breach of the agreement was not entitled to the relief of injunction claimed;

(XI) even otherwise the lease having been terminated, the appellant / plaintiff could not be granted the injunction;

(XII) accordingly Issue No.(ii) in the suit was decided against the appellant / plaintiff;

(XIII) that the appellant / plaintiff was liable to pay the agreed rate of Rs.25,000/- per month to the respondents / defendants from 11th August, 1997 to 10th November, 1999 and at the rate of

Rs.30,000/- per month with 10% increase after every three years till delivery of possession.

8. The only argument urged by the senior counsel for the appellant/plaintiff is that the learned ADJ erred in reading the contents of the Agreement dated 11th August, 1997 between the parties proved as Ex.PW-1/4 inspite of the same being unstamped and unregistered. Reliance in this regard is placed on ***K.B. Saha and Sons Private Limited Vs. Development Consultant Limited*** (2008) 8 SCC 564. It is argued that the clause in an unregistered lease deed for payment of rent cannot be held to be collateral purpose. It is contended that the appeals should be allowed and the suit and counter claim be remanded to the Trial Court for confiscation of the document and adjudication afresh.

9. The counsel for the respondents, to meet the aforesaid argument, has relied on ***Ahmedsaheb Vs. Sayed Ismail*** (2012) 8 SCC 516.

10. The Supreme Court in ***K.B. Saha and Sons Private Limited*** supra has held that a document required to be registered, if unregistered, is not admissible in evidence under Section 49 of the Registration Act, 1908; though it can be used as an evidence for collateral transaction/purpose as

provided in the proviso to Section 49 of the said Act but such collateral transaction must be independent or divisible from the transaction which required registration and must not itself be registrable. It was yet further held that use of an unregistered document to prove an important clause thereof would not be a use for collateral purpose.

11. In ***Ahmedsaheb*** supra relied upon by the counsel for the respondents, the Supreme Court was concerned with a suit for recovery of arrears of rent; though the plaintiff therein relied upon a rent deed but finding the same to be unregistered, it was held that it cannot form the basis to support the claim of the plaintiff for recovery of rent due; however, further finding other uncontroverted evidence available on record to support the claim of the plaintiff, the decree for recovery of rent was upheld. It was observed that the relationship of landlord and tenant was not in controversy and the defendant had himself pleaded the rate of rent. In this view of the matter, it was held that the suit could not have been dismissed only on the ground of rent deed being unregistered, as admission of a party in the proceedings either in pleadings or oral is the best evidence and does not need any further corroboration.

12. The senior counsel for the appellant/plaintiff appears to have raised the argument aforesaid only for the sake of it. There was no controversy in the present case also of the relationship between the parties or of the consideration agreed to be paid and the terms thereof. Rather, the appellant/plaintiff itself had set out all the said facts in the plaint. Thus, from a mere factum of the Agreement dated 11th August, 1997 being unregistered, it cannot be said that the judgment and decree of the learned ADJ is erroneous. The facts of the present case are akin to those in the judgment cited by the counsel for the respondents.

13. In fact, I had during the hearing enquired from the senior counsel for the appellant/plaintiff as to what the appellant/plaintiff really wanted, as the appellant/plaintiff has not shown any inclination to abide by the Agreement. The senior counsel for the appellant/plaintiff fairly stated that all that the appellant/plaintiff is interested in is refund of the monies paid to the respondents.

14. However, neither has the appellant/plaintiff claimed the said relief nor am I able to find the appellant/plaintiff entitled to such refund. The appellant/plaintiff as aforesaid was itself in breach of the terms of the

Agreement with the respondents. The appellant/plaintiff has neither paid the entire interest fee security deposit which it had agreed to pay nor paid the interest at the rate agreed on the balance security deposit which it had agreed to pay and which amount in the impugned judgment has been interchangeably referred to as the rent. The appellant/plaintiff has admittedly occupied and used the premises of the respondents. It is also in evidence that the appellant/plaintiff has itself earned from the said premises by further subletting to the same to Bharti Cellular Limited. The appellant/plaintiff cannot be allowed refund of whatever it has paid to the respondents in terms of its Agreement with the respondents.

15. There is thus no merit in the appeals which are misconceived and frivolous and are dismissed with costs. Counsels fee assessed at Rs.20,000/-

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 27, 2014
'gsr/bs'