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

+ **CS(OS) 1173/2013**

% *Date of decision : 18th September, 2014*

RAM KISHAN GUPTA Plaintiff

Through : Mr.Hemant Malhotra, Adv.

versus

SEED INFRASTRUCTURE
AND SOLUTIONS PVT LTD Defendant

Through : Mr.Sidharth Tewatia, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

ORDER

% **18.09.2014**

I.A.10239/2014

1. Plaintiff has filed the present suit for recovery of money in the sum of Rs.30,66,740/- towards arrears of rent and maintenance charges together with interest at the rate of 24%, per annum till realization, and mandatory injunction.
2. Summons were issued in the suit on 31.5.2013. As per the service report defendant was served on 22.1.2014 for 10.2.2014, on which date the defendant entered appearance through counsel and time was granted to file written statement, however, the same has not been filed till date.
3. Present application, being I.A.10239/2014, has been filed by plaintiff

under Order VIII Rule 10 read with Section 151 CPC for pronouncement of judgment in favour of the plaintiff and against the defendant as the defendant has failed to file the written statement. Notice in this application was issued on 26.5.2014. Reply to this application has been filed. In the reply, the defendant has explained that written statement could not be filed as the day-to-day affairs of the plaintiff company are being looked into by Mr.Anirban Roy, Director of the company, without whose knowledge or permission, no steps can be taken by the company. It is also stated that Director of the defendant company is a businessman and needs to travel to various remote areas throughout the country for his business and for this reason the counsel was not able to establish contact with the defendant for a long time, however, travel details along with tickets have been filed along with the application.

4. Another ground stated in the reply is that the mother-in-law of the Director of the defendant expired in the month of February (year not mentioned) due to which the defendant was caught up in urgent family affairs.
5. Before dealing with the rival contentions of the parties it would be necessary to notice the facts of this case.
6. As per the plaint, the plaintiff claims himself to be the absolute owner of the entire second floor of the property bearing no.RZ-153-C, Kishan Garh, Vasant Kunj, situated at Vasant Plaza, Aruna Asar Ali Marg, Khasra No.1236, Village Mehrauli (hereinafter referred to as the suit property). Defendant company is stated to be engaged in the business of undertaking Infrastructure Technology Solution Projects for the Government and other core sector industries.
7. In the month of July, 2011, the defendant company through its Associate Vice President, Mr.Manoj Kmar Chadha, approached the plaintiff for

taking on lease the aforesated property. A registered Lease deed was signed between the parties on 19.7.2011, which was duly registered with the Office of Sub-Registrar V at Serial No.1393 in Book No.1, Volume No.11326 on Page Nos.83 to 92. As per the lease deed, the lease was for a period of five years with a lock-in period of three years and two months. Besides, the agreed rate of rent for the first year of lease i.e. w.e.f. 15.7.2011 to 14.7.2012 was Rs.1.50 lakhs, per month, with an increase of 10% increase every year, which worked out to be as under:

- (i) From 15/07/2011 to 14/07/2012 @ Rs.1,50,000/- per month.
- (ii) From 15/07/2012 to 14/07/2013 @ Rs.1,65,000/- per month.
- (iii) From 15/07/2013 to 14/07/2014 @ Rs.1,81,500/- per month.
- (iv) From 15/07/2014 to 14/07/2015 @ Rs.1,99,650/- per month.
- (v) From 15/07/2015 to 14/07/2016 @ Rs.2,19,615/- per month.

8. In addition to the above rate of rent, the defendant was also liable to pay Rs.4,000/-, per month, as maintenance charges to the care taker of the building. The defendant was also required to pay Rs.4.50 lakhs to the plaintiff towards interest-free security deposit, which stands paid by the defendant to the plaintiff.
9. The case of the plaintiff is that the defendant paid rent only upto 15.2.2012 that too after deducting income tax at source and thereafter neither rent nor maintenance charges were paid despite repeated requests

and demands made through email dated 28.7.2012, 6.8.2012, 8.8.2012, 17.8.2012, 23.9.2012, 26.9.2012, 7.11.2012 and 17.12.2012. The defendant also failed to furnish required TDS Certificate although the TDS was deducted from the rent paid between 15.7.2011 to 14.2.2012. The plaintiff thereafter issued a legal notice dated 29.1.2013, thereby, *inter alia*, terminating the lease deed, calling upon the defendant to pay a sum of Rs.55,35,000/- and hand over peaceful and vacant possession of the suit premises by 14.4.2013. This legal notice was sent by Registered AD post and Speed Post. Postal receipts and AD cards evidencing acknowledgment of the notice have been filed on record. However, the defendant failed to pay the rent and hand over possession of the suit property. The plaintiff also issued another legal notice dated 13.3.2013 whereby the plaintiff reiterated termination of lease and allowed the defendant to retain the possession of the suit premises till the expiry of the lock-in period i.e. 14.9.2014.

10. I have heard learned counsel for the parties, considered their rival submissions and also perused the documents placed on record. In this case, the defendant was served with the summons in the suit on 22.1.2014. Order VIII Rule 1 CPC reads as under:

“Order VIII Rule 1

Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty day, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing,

but which shall not be later than ninety days from the date of service of summons.”

11. Order VIII Rule 1 CPC provides that a defendant shall file written statement within thirty days from the date of service of summons on him. It is further provided that in case the defendant fails to file written statement within the period of thirty days prescribed the Court may allow written statement to be filed within ninety days for the reasons to be recorded in writing.
12. The defendant has failed to file the written statement within the time allowed. Till date no application has been filed by the defendant seeking extension of time. Even the application filed by the plaintiff under Order VIII Rule 10 CPC for passing a decree was not treated by the defendant as a wake up call. Even today, learned counsel for the defendant has only laboured hard to show that the Director of the company is a very busy person, who has to travel extensively.
13. Although the Court has the power to grant time to file written statement beyond the period of ninety days but time is to be extended only in exceptionally hard cases and the discretion is to be exercised by the Court not frequently and in a routine manner. (See AIR 2005 Supreme Court 3353).
14. In this case, the defendant has not even bothered to seek any extension of time. Despite various opportunities having been granted, defendant has chosen not to file written statement nor any application, seeking extension of time to file written statement, has been filed. In the absence of the written statement, the averments made in the plaint are deemed to be admitted. Even otherwise, documents placed on record establish the case of the plaintiff.

15. Copies of emails placed on record would show that repeated requests were made on 28.7.2012, 6.8.2012, 8.8.2012, 17.8.2012, 23.9.2012, 26.9.2012, 7.11.2012 and 17.12.2012 to make the payments. By legal notices dated 29.1.2013 and 13.3.2013 defendant was again called upon to clear the outstanding amounts, however, neither the emails nor legal notices were replied to by the defendant nor the outstanding amounts were paid.
16. Order VIII Rule 1 CPC gives a discretion to the Court either to pronounce judgment or pass such other orders in relation to the suit as the Court may deem fit. In my view, the Court would have following three options available:
 - (i) Allow defendant to file written statement,
 - (ii) Direct plaintiff to file affidavit by way of evidence, and
 - (iii) Pronounce judgment.
17. In a matter where the defendant prays for extension of time in filing written statement, the Court may consider the first option, subject to the condition that the defendant is able to make out a case of acute hardship or give reasons, which prevented him for filing written statement either within thirty days, ninety days or thereafter.
18. In the present case, the first option is not available to the defendant as no such request for extension of time in filing written statement has been made. In the absence of hardship expressed and further in reply to the application filed under Order VIII Rule 10 CPC the only reason given was that the Director of the company has been extensively travelling.
19. The second option is to call upon the plaintiff to file affidavit by way of evidence, where independent witnesses are necessary to prove the case of

the plaintiff or for such other reasons, which the Court may consider necessary.

20. The third option is to pronounce judgment. In the present case, the suit is based on a registered lease deed where rent was paid for the months of 15.7.2011 to 14.2.2012; TDS was deducted; emails were sent by the plaintiff to the defendant from 28.7.2012 to 17.12.2012, copies of which have been placed on record; two legal notices having been issued and proof of having sent the legal notices and receipt thereof have been placed on record. In such a matter, in my view, the Court must pronounce the judgment without any delay in the matter.
21. In my view, this is a fit case for passing a decree under Order VIII Rule 10 CPC.
22. Accordingly, the present suit stands decreed in favour of the plaintiff and against the defendant in the sum of Rs.30,66,740/- together with *pendente lite* interest and future interest at the rate of 12%, per annum. Mandatory injunction is also granted in favour of the plaintiff directing defendant to furnish requisite TDS Certificates for income tax deductions to the plaintiff and Mandatory injunction is also granted to pay arrears of electricity charges, if any, and maintenance charges to the care taker of the building. Let a decree sheet be drawn up accordingly.

G.S.SISTANI, J

SEPTEMBER 18, 2014

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