

IN THE HIGH COURT OF TRIPURA
AGARTALA

RFA No.05 of 2010

- 1. GAIL India Limited,**
a Government of India
undertaking, having its registered
office at 16, Bhikaiji Cama Place,
R.K. Puram, New Delhi-110006
being represented by its
Chairman-cum-Managing Director
having his office at 16, Bhikaiji
Cama Place, R.K. Puram, New
Delhi
- 2. Sri P.K. Mati, Chief Manager (HR)**
GAIL India Limited, LPG Recovery
Plant, Lakwa, Shibsagar, Assam,
PIN -785586
- 3. The Deputy General Manager,**
Gail India Limited, Abhoynagar,
Agartala, PIN – 799001, West
Tripura
- 4. The Senior Manager(HR),**
Gail India Limited, Abhoynagar,
Agartala, PIN – 799001, West
Tripura

..... Appellants

- V e r s u s -

- 1. Sri Goutam Saha,**
- 2. Sri Uttam Saha**

-both sons of late Raj Mohan Saha,
resident of Durga Bari, L.N. Bari Road,
P.O. Agartala, PIN – 799001, P.S. West
Agartala, District – West Tripura

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellants : Mr. S. Deb, Sr. Advocate,
Mr. S.C. Das, Advocate

For the respondents : Mr. S.M. Chakraborty, Sr. Advocate
Ms. B. Chakraborty, Advocate

Date of hearing : 11.08.2015 & 09.10.2015

Date of delivery of Judgment & Order : **23.11.2015**

Whether fit for reporting :

YES	NO
√	

JUDGMENT & ORDER

By means of this appeal under Section 96 read with Order XLI, Rule 1 of the C.P.C. the judgment and decree dated 16.01.2010 delivered in Money Suit No.05 of 2008 by the Civil Judge, Sr. Division, No.1, West Tripura, Agartala has been called in question.

[2] The respondents, hereinafter referred to as the plaintiffs, filed the suit against the appellants for realisation of a sum of Rs.7,94,315/- on the premises that the plaintiffs, the joint owners of the four storied building situated at Durga Bari Road, Agartala and the appellant No.1, Gas Authority of India Limited (GAIL), a Government of India undertaking entered in the lease for occupation of the two floors of the said building initially for three years. However, the lease was renewed and continued till 31.06.2006. The plaintiffs claimed further that the appellant No.1 was in actual possession of the said premises till 15.09.2006. When the plaintiffs took possession of the said premises, they

found that the lease property was substantially damaged. They requested the appellants to cause necessary repairs and hand over the premises after causing such repair. The appellants made attempts to hand over the possession of the premises through the Officer-in-Charge of West Agartala Police Station. But they did not succeed. The plaintiffs approached the appellants on umpteen numbers of occasions to hand over the possessions after the reparation as asked for. Finally, the appellants informed the plaintiffs that a senior officer would hold discussion with them on 19.07.2007. Accordingly, the discussion was held with the plaintiffs on 21.07.2007 in the office of the GAIL at Agartala. In the said discussions, the appellants were represented by Mr. P.K. Maiti, the defendant No.2 in the suit and the other officers. At that time, Mr. Maiti was holding the post of Chief Manager (HR) of the GAIL. The agreement in the form of minutes laid down the following terms and conditions which were acceded to by the plaintiffs and the appellants on attesting the said minutes with their signatures:

(i) The GAIL (India) Limited will pay monthly difference rental @ 10% over the contracted rate of Rs.37,392/- i.e. Rs.3,793/- for the period from 01.04.2006 to 15.09.2006.

(ii) A joint property survey with regard to the repair of the said demised property will be carried out by the representatives of the GAIL (India) Limited and the plaintiffs within that month and the estimate will be submitted to the GAIL (India) Limited for purpose repairing of the said property. The said amount will accordingly be released to the plaintiffs within 15 days from the day receipt of the joint estimate.

(iii) The GAIL (India) Limited will handover the keys of the said property to the plaintiffs who will accept on the day of the discussion.

[3] In terms of the said agreement, a joint survey was carried out and the detailed report was filed on 14.09.2007 laying the detailed estimate to the extent of Rs.3,34,148/- towards the repair including the civil work and the electrical works.

[4] The grievance of the plaintiffs is that the appellants did not release the outstanding rent despite a categorical demand raised for payment within 15 days. The plaintiffs have further claimed that the premise was under lock and key till 21.07.2007. Even though the defendant No.1 shifted from the said premises on 15.09.2006, an amount of Rs.13,731.80 was left unpaid by the appellants towards electrical bills for the period from 15.09.2006 to 21.07.2007. On the following heads, the claim against the appellants has been raised in the suit:

- | | | | |
|------------|--|----------|-----------------------|
| (a) | Repairing cost of the premises | : | Rs.3,34,148.00 |
| (b) | Electric Bills | : | Rs.13,731.00 |
| (c) | 10% of the rent as enhanced from 01.04.2006 to 15.09.2006 | : | Rs.20,861.50 |
| (d) | Arrear Rent from 16.09.2006 to 21.07.2007 | : | Rs.4,25,575.30 |

Total Rs.7,94,315.30

The plaintiffs have also claimed interest at 12% per annum from 21.07.2007 till the day of payment

[5] The appellants filed the joint written statement and have stated that the lease was entered on 27.09.2003 between the appellants and the plaintiffs for a period of three years w.e.f. 01.04.2003 with a renewal clause that the lease might be extended for a period mutually agreed upon. By a letter dated 29.04.2006, the Manager (HR) informed the plaintiffs that only in case of further renewal the requirements as projected by the letter dated 26.04.2006 would be taken into consideration. By the letter dated 16.08.2006, the appellants clearly communicated that they would vacate the premises and the said letter would be considered as the notice for termination of the lease. By a letter dated 27.10.2007, the appellants informed the plaintiffs that the premises was vacated on 07.09.2006, well before the expiry of the notice period. On the very same day, the plaintiffs were requested to collect the keys of the premises and take possession. But the plaintiffs refused to collect/receive the keys. On 08.09.2006, the appellants, the defendants in the suit sent a written intimation regarding vacation of the premises by the registered post and by hand. But the plaintiffs refused to accept the said letter. The appellants paid the rent till 15.09.2006. Efforts were made to settle the discord amicably but that did not succeed. The appellants have admitted that by a letter dated 18.07.2007 they requested the plaintiffs to settle the matter and accordingly,

a meeting was held on 21.07.2007. The plaintiffs accepted the keys, even though the premises was vacated on 15.09.2006. The appellants denied that there was any joint report from the inspection in terms of the said minuted resolution. On the contrary, a unilateral report dated 14.09.2007, prepared by Er. Bijan Chakraborty was submitted to the appellants with the letter dated 19.09.2007. The appellants did not accept that report. The appellants have also denied that the premises in question was severely damaged. They have asserted that even though the appellant informed the plaintiffs to receive the keys of the premises but they did not receive. As such, for the delay as caused in handing over the premises, the plaintiffs are responsible. However, the plaintiffs admitted the terms and conditions arrived in the discussion held on 21.07.2007. They have categorically denied that the estimate for reparation at Rs.3,34,148/- was unilateral and having no basis and that was entirely unacceptable to the appellants.

[6] Based on the pleadings, the trial court framed the following issues for determining the suit:

(i) Whether the suit is maintainable in its present form and nature?

(ii) Whether the defendant No.1 was in physical possession of the premises of the plaintiffs upto 15.09.2006 and if he handed over the vacant possession of the same on 21.07.2007?

(iii) Whether plaintiffs refused to receive the keys of the premises from the defendants?

(iv) Whether the plaintiffs are entitled to receive rent after expiry of the stipulated period of lease agreement till the date of handing over the keys to the plaintiffs?

(v) Whether the plaintiffs are entitled to get the damages amounting to Rs.3,34,148/-?

(vi) Whether the plaintiffs are entitled to any other relief/reliefs including payment of the electric bills as claimed?

[7] From the records, it transpires that the plaintiffs adduced two witnesses including the plaintiff No.1, Sri Goutam Saha (PW-1). Another witness, namely Sri Barun Biswas, a Sr. Manager (HR) of GAIL was examined as PW-2 following the process of the court. For the plaintiffs, 9(nine) documents were admitted as Exbts.1 to 9 series. For the appellants, the defendants in the suit, one witness, namely Dipak Kr. Mukhopadhyaya, Deputy General Manager (DW-1) was examined and cross-examined. The appellants admitted 15 (fifteen) documents, Exbts. A to O.

[8] On appreciation of the evidence led by the parties, the trial court by the impugned judgment held that the suit is maintainable and thus, answered the issue No.(i) in favour of the plaintiffs. While determining the issue Nos.(ii) & (iii), the trial court has returned the finding that there is a clear admission that the premises which was taken on lease from the plaintiffs was vacated by the defendant No.1 on 15.09.2006. Therefore, there cannot be any hesitation to hold that the defendants, the appellants herein, were in physical possession of the premises till 15.09.2006. On the basis of the minutes of the meeting held on

21.07.2007, the trial court has returned the finding that the plaintiffs accepted the keys of the premises on 21.07.2007. Since the keys were handed over on 21.07.2007 in terms of the minuted resolution dated 21.07.2007 (Exbt.2) according to the trial court that even though the lease expired on 31.03.2006, the appellants continued in the physical possession of the premises till 15.09.2006. Even thereafter, for the dispute over repairing there was admitted delay in handing over and taking over of the premises. PW-2, Sri Barun Biswas, an officer of the appellants has admitted that the keys were handed over to the plaintiffs on 21.07.2007 and on that day only the possession of the premises had been taken by the plaintiffs in the damaged condition. While deciding the issue No.(iv) as extracted above, the trial court has observed that the appellants caused the 'intentional delay' and hence, the plaintiffs are entitled to have the arrear rents from 16.09.2006 to 21.07.2007 i.e. Rs.4,25,574/-. PW-2 has further stated that a joint inspection was done in his presence and the Surveyor assessed the damages and submitted the report to the plaintiffs. He identified the said report as Exbt.4 and according to the assessment a sum of Rs.3,34,148/- was the estimated cost for the repairing of the damages. The trial court has declared that the plaintiffs are entitled to the said sum. While deciding the issue No.(vi) based on the three electric bills in original for the period from 15.09.2006 till 21.07.2007, the trial court declared that the plaintiffs are entitled to get the charge of electricity consumption

to the extent of Rs.13,731/-. Further the plaintiffs were entitled to get a sum of Rs.20,861/- on the basis of enhancement as agreed by the minuted resolution dated 21.07.2007, Exbt.2. Thus, the plaintiffs are declared to be entitled to get (1) Rs.3,34,148/- towards the repairing costs for the damages in the lease-hold premises, (2) electricity bills Rs.13,731/-, (3) 10% of the enhanced rate of rent from 01.04.2006 to 15.09.2006 amounting to Rs.20,861/- and (4) arrear of rent w.e.f. 16.09.2006 to 21.07.2007 amounting to Rs.4,25,574/-. The plaintiffs are, therefore, held entitled to get Rs.7,94,315/ (Rupees Seven lacs Ninety Four thousands Three hundred Fifteen) only in total. They are also entitled to get interest @ 6% on the said amount from the date of institution of the suit till the date of payment. They are further to be given the cost of this suit.

The said judgment is under challenge in this appeal.

[9] Mr. S. Deb, learned senior counsel appearing for the appellants has submitted that the trial court has misread the minuted resolution dated 21.07.2007(Exbt.2) inasmuch as it has clearly stipulated that the defendant-appellants would pay monthly difference of rent at 10% of the enhanced rate of Rs.37,927/- i.e. Rs.3,793/- for the period from 01.04.2006 to 15.09.2006. The plaintiffs could in no way claim any rent beyond 15.09.2006. He has further contended that what the trial court has attributed to the appellants for the intentional delay is entirely

an outcome of the misreading of evidence on record inasmuch as the plaintiffs have admitted that the appellants even tried to hand over the possession through the Officer-in-Charge of the West Agartala Police Station in addition to several approaches from their end to cause the delivery of possession. Mr. Deb, learned senior counsel has raised objection as to the validity of admission of the assessment report dated 14.09.2007 (Exbt.N) and the assessment report dated 14.08.2007 (Exbt.E) in absence of the author of the report. According to Mr. Deb, learned senior counsel that the survey was supposed to be carried jointly, not unilaterally, in terms of the minuted resolution dated 21.07.2007. In addition to those objections, Mr. Deb, learned senior counsel has referred to the Clause-10 of the lease which provides that the day to day minor repairs such as fuses, water tapes etc. shall be done by the lessee at his own cost but all other replacements/repairs/filling/painting of the wall on both sides, leakage of electricity, pipes, sewerage, cracks, fittings etc. shall be done by the lessor at his own cost. Mr. Deb, learned senior counsel has also referred to the Clause-8 of the lease agreement which reads as under:

"8. All the major repairs which in turn may become the permanent assets of the Lessor will have to be carried out by the Lessor. The minor repairs will however be carried out by the Lessee."

[10] In sequence, Mr. Deb, learned senior counsel on referring to the report (Exbt.4) has submitted that all the

materials shown as damaged were supposed to be maintained by the plaintiffs and as such, the plaintiffs are not entitled to get anything on account of the damage.

[11] From the other side, Mr. S.M. Chakraborty, learned senior counsel appearing for the respondents, the plaintiffs in the suit, has submitted that the Clauses 8 & 10 of the lease agreement cannot have any bearing in the suit inasmuch as the lease agreement has admittedly expired on 31.03.2006. There had been no renewal as such. By the minuted resolution dated 21.07.2007, the rent for the period from 01.04.2006 to 15.09.2006 was settled but there is no extension of the lease agreement and hence, the damages as claimed are clearly to be recovered from the appellants. Mr. Chakraborty, learned senior counsel has emphatically submitted that the reports at Exbt.N & Exbt.O (the compiled report is Exbt.4) cannot be eclipsed either by the Clauses 8 & 10 of the lease agreement or for the plea that the report was not from the joint survey, as proposed to be carried out in terms of the discussion held on 21.07.2007. The preamble of the report clearly shows that in presence of the representative of the appellant (PW-2), the said survey was carried out. PW-2 has categorically stated in the trial as under:

"Accordingly, a joint inspection was done in my presence. After assessment of the damages the surveyor assessed and submitted his report to the plaintiffs which was sent to us by the plaintiffs along with their letter dated 19.09.2007. We did not make payment to the plaintiffs towards the assessed amount of damage."

On the aspects of Clauses 8 & 10, there were no cross-examinations.

[12] Mr. Chakraborty, learned senior counsel has finally submitted that at the time of admission of the reports (Exbts. N & O) no objection was raised by the appellants. Mr. Chakraborty, learned senior counsel has underlined that Exbts. N & O were admitted at the instance of the defendant, the appellants herein. As such, objection as to the admissibility cannot be sustained. He has also referred a decision in **R.V.E Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and another**, reported in **AIR 2003 SC 4548** where the apex court has laid down the law as under:

"An objection to the admissibility of the documents should be raised before such endorsement is made and the court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the later case, the document may be returned by the court to the person from whose custody it was produced."

[13] The pertinent questions that emerged for consideration from the grounds of objection and the response thereto in this appeal are as follows:

(i) Whether the plaintiffs can claim further rent going beyond the minuted resolution dated 21.07.2007 and

(ii) Whether any damage can be recovered from the appellants going beyond the stipulation as laid down in Clauses 8 & 10 of the lease agreement?

[14] From the letter dated 18.07.2007 (Exbt.B) issued by PW-2 it evinces that there was a discussion on the entire spectrum of the dispute and to the satisfaction of the plaintiffs and the appellants, the resolution was adopted on 21.07.2007. The said resolution (Exbt.2 and part of Exbt.A) was attested by the plaintiffs. That independently constituted an enforceable agreement. From the three resolutions, forming the part of the said agreement, it would be apparent that no settlement was arrived as to the arrear rent from 15.09.2006 to 21.07.2007 when admittedly the plaintiffs received the keys of the rented premises. The resolution no doubt has settled the entire dispute. The plaintiffs neither in the plaint or anywhere else made any statement that they were not satisfied with the said resolution or that resolution was a part resolution of the dispute. Thus, the plaintiffs are estopped to raise any further claim of arrear rents in view of the said settlement dated 21.07.2007 and as such, the finding that the plaintiffs are entitled to have the arrear rents from 16.09.2006 to 21.07.2007 to the extent of Rs.4,25,574/- cannot be sustained and as such, the issue No.(iv) is decided against the plaintiffs.

[15] So far the impart and impact of Clauses 8 & 10 are concerned, the contention of the appellants cannot be accepted as a whole inasmuch as in the minuted resolution dated 21.07.2007 they had admitted that there had been damages which required to be surveyed jointly for purpose of determining the cost of repair

and hence, now the appellants cannot raise that no damage can be claimed going beyond the Clauses 8 & 10 of the lease agreement. The minuted resolution dated 21.07.2007 has superseded any effect of the lease agreement inasmuch as the said lease agreement, Exbt.L had expired on 31.03.2006. Having juxtaposed, the latter agreement would govern the field for purpose of the dispute as raised in the suit. As ancillary to the issue of determining the damage, Mr. Deb, learned senior counsel appearing for the appellants has emphatically submitted that the survey was not jointly carried out and as such, the said survey cannot be treated as the outcome of the minuted resolution dated 21.07.2007. Hence, that survey cannot be held binding on the appellants.

[16] While appreciating this aspect of the matter, it appears that the said report (Exbts. N & O and Exbt.4) clearly mentions that in presence of PW-2, the said survey was carried out. PW-2 has categorically admitted that position by the version as reproduced hereinabove. Therefore, the contention of the appellants in this regard cannot be accepted.

[17] Beyond those questions, there is another ancillary question which requires consideration of this court and is that whether the appellants caused 'the intentional delay' in handing over the possession to the appellants and if it is found that there was no intentional delay or on the contrary the plaintiffs were

responsible for not receiving the keys when the appellants left the premises vacant on 15.09.2006 then what effect would follow. From the letter dated 12.05.2006, Exbt.J, it clearly transpires that the plaintiffs allowed the appellants to continue upto July, 2006 in old terms and conditions and the rate of rent. By the letter dated 16.08.2006, Exbt.I, the notice for vacation was given by the appellants. By the letter dated 11.09.2006, Exbt.H, the officer-in-Charge of West Agartala P.S. was approached to hand over the keys of the rented premises to the plaintiffs inasmuch as the security personnel from the rented premises would be withdrawn from 11.09.2006. Thereafter, on 14.09.2006 a notice by an Advocate was given by the appellants to the plaintiffs asking them to collect the keys of the premises in question from the new office of the appellants situated near Hindi Higher Secondary School within seven days from the day of receipt of the notice failing which action at law may be adopted. In response to that, the plaintiffs replied through an Advocate stating that first the outstanding dues are to be cleared and the necessary repairing works be performed, only thereafter, the keys would be received. The said notice dated 26.09.2006 is Exbt.F. Again there was a notice from the appellants on 27.10.2006, Exbt.E, to receive the possession of the keys without any further delay. The trial court did not read these documentary evidence in the perspective and arrived at a finding that the appellants caused 'the intentional delay'. That finding cannot be sustained. As a result, the finding

that the plaintiffs are entitled to electric bills from 15.09.2006 to 21.07.2007 is interfered with and set aside. Thus, the issue No.(vi) is partly decided in favour of the plaintiffs as the plaintiffs are admittedly entitled to the enhanced rate at Rs.10% to the extent of Rs.20,861/-.

[18] DW-1, Sri Dipak Kumar Mukhopadhyay has only admitted the documents for the defendants, the appellants herein and he has categorically admitted that he was not present during the transactions from the period from 12.05.2006 till 14.08.2007 when the inspection of the premises had taken place. As such, he had no personal knowledge. He has admitted that PW-2 was the Sr. Manager of GAIL at the relevant point of time. He had made a statement that PW-2 had written about the joint inspection by Exbt.3. However, he has asserted that there was no such decision to cause delay in handing over the possession. Thus, this Court does not have any difficulty to hold that the inspection as to the damages of the rental premises was carried out jointly and in absence of any objection raised at the time of admission of that report by the appellants, the said report cannot be brushed aside. In view of the minuted resolution dated 21.07.2007, it cannot also be held that the said report has been eclipsed by the lease agreement dated 27.09.2003 or the letter dated 12.05.2006 and hence, the plaintiffs, the respondents in this appeal are entitled to get the amount reflected in the report dated 14.09.2007, Exbt.4. Accordingly, the issues No.(i) (ii) & (iii) and Issues No.(vi) are

decided in part, in favour of the plaintiffs in terms of the discussion made above.

[19] Having held so, the suit is decreed to the extent that the plaintiffs are entitled get a sum of Rs.3,34,148/- for the damages of the premises and 10% of the enhanced rate of rent from 01.04.2006 to 15.09.2006 amounting to Rs.20,861/-. On considering the circumstances, this Court is not inclined to grant any interest if the appellants make the payment within three months from today. In the event of default, the interest @9% shall be paid by the appellants on expiry of three months till the payment is made. The plaintiffs are entitled to cost of the suit. Hence, the appeal is allowed partly.

Prepare the decree accordingly and thereafter, send down the LCRs.

JUDGE

Sujay