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

Judgment Reserved on: August 06, 2015
% *Judgment Delivered on: August 17, 2015*

\+ **RFA(OS) 10/2015**

M/S SPREADHEAD DIGITAL STUDIO PVT LTD..... Appellant
Represented by: Mr.Samrat K.Nigam, Ms.Ayshwarya Chandar and Ms.Ankita M.Bahl, Advocates.

versus

H K MITROO ..... Respondent
Represented by: Mr.P.S.Bindra and Ms.Shweta Priyadarshini, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Suit for specific performance of the oral agreement pursuant to the lease agreement dated April 01, 2000 and injunction was filed by M/s. Spearhead Digital Studio Pvt. Ltd. (in short Spearhead) a private limited company against the respondent H.K.Mitroo. Spearhead pleaded that it was running its business from C-161, Okhla Industrial Phase I, which consisted of basement, ground floor, first floor and second floor (in short the suit property) pursuant to a lease agreement dated April 01, 2000 having been inducted by the defendant/respondent. The lease was for a period of 11 months only and it expired on March 31, 2001. However, by virtue of oral agreement to sell Spearhead continued to retain possession and paid a sum of ₹10,000/- per month as rent and ₹50,000/- per month as part consideration towards the oral agreement to sell. The said oral agreement to sell was

pursuant to the inclination of the respondent to sell off the premises for a sale consideration of ₹60 lakhs, however since Spearhead was not in a position to arrange the amount in one go, an arrangement was worked out wherein the respondent was to be paid ₹50,000/- towards part sale consideration in excess of ₹10,000/- per month being paid as tenancy charges per month. Since Spearhead proposed to pay the total sale consideration in instalments thus the consideration was agreed at ₹84 lakhs which was far more in excess than the market value of the premises at the relevant point of time. Since March 2008 on the request of the respondent Spearhead increased the monthly instalment from ₹50,000/- to ₹65,000/-. Thus, by the time the suit was filed i.e. November 2009 Spearhead paid ₹67,20,000/- which included rent of ₹11,60,000/-. Thus, ₹28,40,000/- only remained to be paid towards the agreement to sell when the respondent refused to accept any further payment of rent or otherwise and started pressurizing Spearhead to vacate the premises.

2. In the plaint Spearhead further stated that it had filed a suit for injunction on February 23, 2010 before the learned Senior Civil Judge wherein respondent in the written statement disputed the oral agreement and sought to usurp the sum of ₹50,60,000/- paid as part payment towards sale consideration of the premises. It is stated that Spearhead was ready and willing to pay the balance amount of ₹28,40,000/- for completion of the sale however the respondent on February 28, 2011 filed a suit for possession, arrears of rent, mesne profit and damages being Civil Suit No.311/2011 before the learned District Judge. According to the suit filed by the respondent a major portion of the premises was given under tenancy for ₹10,000/- per month and much smaller portion for a sum of ₹50,000/- per

month. Further though there was increase in the rate of rent from ₹50,000/- to ₹65,000/- for the smaller portion, however for the larger area the rent remained stagnant at ₹10,000/-. Since in the suit filed by the respondent being Civil Suit No.311/2011 the respondent though admitted the receipt of the amount but not as part payment of the sale consideration, Spearhead was constrained to file the present suit seeking specific performance of the oral agreement to sell and permanent injunction restraining the respondents from interfering in the peaceful possession of Spearhead.

3. In the written statement the respondent denied the claim of Spearhead and pointed out that on every monthly payment Spearhead deducted the TDS and thus it was apparent that the amount being paid to the respondent was on account of rent as no TDS was required to be deducted for sale consideration. The case of the respondent was that it had let out to Spearhead basement, ground floor except an office cabin and a mezzanine floor by virtue of the lease deed dated April 01, 2000 executed between the parties and the respondent retained the entire first floor and office cabin on the ground floor for his personal use and was in possession of the same till September 2006 when the respondent became visually impaired and was incapacitated in using the same for his personal use and keep the same under his lock and key. Though the rent of the premises let out was ₹10,000/-, however as per the understanding between the parties Spearhead was paying a sum of ₹60,000/- per month with effect from April 01, 2000 which was subsequently enhanced to ₹65,000/- with effect from April 2008. However on February 19, 2010 when the respondent went to visit his portion of the suit property and to ask for arrears of payment of rent which were not paid since July 2009, he was stopped by the security guard and thus a PCR had to

be called when the respondent found that the Spearhead had trespassed into the premises on first floor in possession of the respondent and had demolished the office cabin on the ground floor and taken away all his belongings. It is was stated that the plea raised by Spearhead was barred under Section 91 and 92 of the Evidence Act and the lease agreement having come to an end Spearhead was unauthorizedly occupying the said premises for which notice was sent on July 24, 2010. It was also prayed that the suit be dismissed under Order VII Rule 11 CPC for which a separate application was filed.

4. Vide the impugned judgment dated April 17, 2014 the learned Single Judge allowed application of the respondent under Order VII Rule 11 CPC and rejected the plaint. The learned Single Judge held that if the parties could execute a lease agreement on April 01, 2000 there was no reason why they could not execute an agreement to sell. Further the plaint is copiously silent about the events of July 2009. Even as per the suit for permanent injunction filed by Spearhead the respondent refused to perform the agreement in July 2009 and as such the cause of action would accrue then and the time would start running on refusal. The plaint in the present case was presented on April 30, 2013 and refiled on July 03, 2013. Even taking the first date of filing as the relevant date, the plaint was barred by limitation being filed after a lapse of period of three years from the date of alleged refusal in July 2009. Learned Single Judge also held that no cause of action was made out and a meaningful reading of the plaint clearly depose that a clever drafting methodology has been used to make semblance of a cause of action which ought to be nipped in the bud. Further the terms of oral agreement were not clear when they were made and the period of payment is

also not prescribed.

5. According to learned counsel for Spearhead since Spearhead was not in a position to make an out-right purchase, an oral agreement to sell was entered into for which consideration was being paid. Merely because TDS was deducted cannot be a ground to non-suit Spearhead. The intention of the parties could be gathered from the fact that though the lease agreement dated April 01, 2000 mentioned the rent of ₹10,000/- per month which was continued to be paid, however in addition thereof initially a sum of ₹50,000/- and thereafter ₹65,000/- per month was being paid. The present was not a case for exercising jurisdiction under Order VII Rule 11 CPC and Spearhead ought to have been granted an opportunity to lead its evidence to prove the case.

6. Thus two issues for arose for consideration before this Court i.e. whether the Spearhead was entitled to prove by way of evidence that an oral agreement was entered into between the parties in respect of sale of the premises and secondly whether the suit was barred by limitation.

7. Section 92 of the Indian Evidence Act is a rule of substantive law based on the intention of parties to place themselves above the uncertainties of oral evidence. Thus as a general rule no evidence de-hors terms of agreement whether documentary or oral can be led by parties to get out of the expressed terms thereof. However, proviso 2 to Section 92 of the Evidence Act permits the oral agreement to be proved as to a matter on which a document is silent and which is not inconsistent with its terms. Thus where a document is reduced into writing which does not contain the entire agreement between the parties but embodies only some of the conditions oral evidence to prove certain other terms or a parallel agreement

which had been agreed upon and which is not inconsistent with the written instrument is clearly admissible in evidence. In the present case Spearhead pleads in the plaint the existence of a separate collateral agreement to sell the premises on which the lease deed is totally silent. The terms of the lease deed do not contradict the existence of the oral agreement and except for the conduct of Spearhead in deducting the TDS the existence of an oral agreement is substantiated by the fact that every month defendant was paid a sum of ₹50,000/- later on increased to ₹65,000/- over and above the rent. Thus to this extent we are not in agreement with the finding of the learned Single Judge.

8. However, admittedly in the earlier suit filed by Spearhead in relation to cause of action it was stated that Spearhead had been receiving threats of forceful and illegal dispossession from the respondent and continued after July 2009 and on February 19, 2010 the defendant along with his muscle man and with the help of local Police tried to dispossess Spearhead/ the plaintiff company from the premises in question when its managing director was not available in Delhi. It is further stated that cause of action arose in July 2009 when Spearhead offered to make the balance payment but the respondent refused to accept the same and started extending threats for forceful dispossession. As per Article 54 of the Limitation Act a suit for specific performance is required to be filed within a period of three years from the date the cause of action to sue arises. The present plaint was instituted on April 30, 2013 thus well beyond the period of limitation of three years when the right to sue accrued to Spearhead.

9. As held by this Court in the decision reported as 211 (2014) DLT 149 DB *Keshav Chander Thakur & Anr. Vs. Krishan Chander and Ors*. though

the scope of exercise of powers under Order VII Rule 11 CPC are limited by the contours of the provision and by exercising these powers the Court can only look into the plaint and the documents filed along with the plaint, however given the nature of pleadings and the admitted documents placed on record the Court is empowered to exercise its power under Order XII Rule VI suo-moto and pass a judgment. No formal application under Order XII Rule VI CPC would be required in this regard.

10. In view of the aforesaid discussion, the appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 17, 2015
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