

\$~1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 30.06.2015

+ **CS(OS) 2103/2006**

TWINKLE BUILDERS & PROMOTERS PVT. LTD.

..... Plaintiff

Through: Mr. Yashmeet Kaur, Adv.

versus

SKAI COMPANY

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Open Court)

1. This is a suit for recovery of agreed damages, electricity & water bills and costs for damage caused to the leased premises.

Background facts

2. That plaintiff claims to be the owner of Flat No.2 situated on the Ground and Lower Ground Floors, admeasuring 2758.60 sq.ft., comprised in the building commonly known and bearing Municipal No.10 A, Prithvi Raj Road, New Delhi together with the front lawn appurtenant thereto measuring 1400 sq.ft. (hereafter '*leased premises*'). It was leased out to the defendant by way of a '*lease deed*'

dated 1st May, 2003 for a fixed period of 33 months w.e.f. 1st May, 2003 to 31st January, 2006 at a monthly rent @ Rs.90,000/-. For various equipments, fittings and fixtures, hire charges @ Rs.35,000/- per month was payable to the plaintiff and a separate '**hire agreement**' was also executed (P-3). Hence, the total amount payable was Rs.1,25,000/- per month.

3. Alleging that the leased premises was not vacated by the defendant upon expiry of the lease deed, the plaintiff instituted this suit, *inter alia*, for recovery of possession. However, during the pendency of the suit, vacant and peaceful possession of the leased premises was handed over to the plaintiff on 9th May, 2007. Hence, the plaintiff sought to amend the plaint to incorporate the subsequent events and modify the reliefs accordingly which was allowed by an order dated 31.08.2007.
4. On 18.01.2008, issues were framed and thereafter, the parties led evidence. The plaintiff has led evidence through Sh. N. N. Pandey, authorized representative of the plaintiff-company. He was cross-examined by the defendant and has supported the averments in the plaint. The defendant led evidence through one Mrs. Shakun

Mollchandani, authorized representative of the defendant-company. However, due to consistent defaults, the defendant's evidence was closed on 20.11.2014. On the last date of hearing, none appeared for the defendant. Even today, none appears for the defendant and therefore, the matter is taken up for final disposal on the basis of the material on record.

Issue wise contentions and findings

Issue Nos.1 & 7

5. These issues are being dealt with together as they are related. To prove that the tenancy/lease stood terminated by the efflux of time, the plaintiff has produced a copy of the registered lease deed dated 1st May, 2003 (Ex. P-2). It stipulates that the lease would be for a period of 33 months commencing from 1st May, 2003 and ending on 31st January, 2006. It also makes it clear that the said period would be fixed and that the lessee/defendant would not be entitled to terminate the same. With respect to renewal, it provides that the lessee/defendant shall give three months' notice in writing by Registered Post to the lessor/plaintiff prior to the expiry of the agreement and that if the terms are not mutually agreed upon in

writing, the lessee/defendant shall hand over vacant physical possession of the leased premises. Insofar as the hire agreement is concerned, it stipulates that it would run concurrently and shall be co-terminus with the lease deed.

6. The learned counsel for the plaintiff draws the attention of the Court to various letters written by the plaintiff supported by postal receipts, whereby the defendant was asked to vacate the leased premises (Mark B; PW-1/16, 1/17 & 1/18; Mark C; PW-1/20, 1/21 & 1/22; P-10; PW-1/23, 1/24, 1/27 & 1/28). She also draws the attention of the Court to a letter (Ex. PW-12) written by Mrs. Shakun Mulchandani, authorised representative of the defendant, in particular to the following:

“.....never wanted to stay at 10A or else I would have signed a new lease when you were kind enough offer it.....I except to vacate by the end of January, 2007...”

7. Attention of the Court is also drawn to the cross-examination of Mrs. Mulchandani (DW-1). She has deposed that the parties had an oral agreement for renewal of the lease/tenancy. She admits, however, that no letter was written to the plaintiff as mandated under Clause (4) of Part III of the lease deed. Furthermore, she voluntarily deposes that

there was no need to write any letter since the parties had a very cordial relationship.

8. The Court would note that the case set up by the defendant is that there was an oral agreement for renewing the lease/tenancy for a further period of 33 months at an enhanced rate, i.e., Rs. 1,50,000. The terms and conditions of the same have been stated in the Written Statement (WS) and in the evidence of DW-1. However, perusal of the lease deed shows that it was incumbent upon the parties to enter into a formal written contract for renewal of lease as provided under Clause (4) of Part III thereof. Furthermore, the defendant has not been able to prove that there was an oral agreement for extension of the lease.

9. In the circumstances, the Court is of the view that the plaintiff has successfully discharged its burden to prove that the lease/tenancy in favour of the defendant stood terminated by the efflux of time i.e. 31st January, 2006. These issues are answered accordingly.

Issue No. 2 & 3:

10. These issues are being dealt with together. The plaintiff claims an amount of Rs. 92,60,000/- for the period 1st February, 2006 – 9th May

2007 as the agreed damages. The learned counsel for the plaintiff draws the attention of this Court to the damages clause in the lease deed which reads as under:

“PROVIDED ALWAYS should the LESSEE continue to occupy the DEMISED PREMISES after the expiry of the term hereunder granted of prior termination the LESSEE shall be liable to pay damages at the rate of Rs.20,000/- per day in addition to the LESSEE’s obligation to pay to the LESSOR the charges herein agreed to be paid. It is clearly agreed that receipt of payment by the LESSOR from the LESSEE shall be without prejudice to the LESSOR’s right to proceed against the LESSEE for vacation of the DEMISED PREMISES and such other actions as may be open to the LESSOR.”

11. Keeping in mind the express damages clause in the lease agreement, this Court finds that the plaintiff is entitled to an amount of Rs.92,60,000/- for the period 1st February, 2006 to 9th May, 2007, i.e., from the date of expiry of the lease deed till the date when possession of the leased premises was handed over to the defendant. This Court also finds that no evidence has been lead on behalf of the defendant rebutting the said claim of the plaintiff. This issue is answered in favour of the plaintiff and as above.

Issue No.4

12. The plaintiff claims that the defendant had not paid electricity and water bills to the tune of Rs.1,10,376/- and that it was forced to pay up to avoid disconnection. The said bills and the corresponding receipts have been marked as marked as Ex.PW-1/33 to 39. This Court finds that the defendant has led no evidence rebutting the aforesaid claim.

On the other hand, the plaintiff, by way of relevant documents as above has been successful in establishing that the defendant failed to pay the requisite electricity and water charges during which the suit property was in its possession. This issue is answered accordingly.

Issue No.5

13. It is noticed that the issue framed reads as “*whether the Defendant is entitled to claim a sum of Rs. 5,65,100/- towards damages caused to the premises*”. It is evident that it is an inadvertent error and the issue instead relates to the plaintiff’s entitlement. The issue stands modified accordingly.
14. The plaintiff submits that the suit property was inspected at the time of taking possession thereof; that the defendant had ripped the false ceiling, walls, wires, thereby causing extensive damage to the suit property; photographs were taken during inspection of the premises [Ex.PW-1/32 (colly)]; and possession of the suit property was taken without prejudice to its right to recover damages for the expenses to be incurred in renovating the same. It is further submitted that by a letter dated 26th May, 2007, the defendant was once again intimated of the damage caused by it to the leased premises.
15. The learned counsel for the plaintiff submits that as per clause 6 of the Hire Agreement, the defendant was obliged to deliver the equipments, fixtures and fittings back to the plaintiff in the same working condition as it was at the time of taking possession. The plaintiff has produced the relevant invoices/estimate by an architects firm by the name of ‘Aestheticism’ whereby the alleged damage caused by the plaintiff has been ascertained. Photographs showing damage done to

the leased premises are also on record. They are marked as Exs.PW1/40 & 1/41. From the evidence adduced, it is evident that the walls had been damaged at a number of places. The electricity cables and the ceilings have been damaged to the extent that the electricity cables which are supposed to be embedded inside the wall are not protruding outside. Damage is also seen in the fittings inside the toilet as well as in the drive way and the way of passage to the building. The learned counsel for the plaintiff submits that the damage caused to the leased premises may be quantified only to Rs. 3 lacs.

16. This Court finds that the defendant has led no evidence rebutting the aforesaid claim. In the circumstances, there is no reason to disbelieve the costs incurred by the plaintiff for renovating the leased premises on account of damage caused to it by the defendant. This issue too is answered in favour of the plaintiff for recovery of Rs.3.00 lacs.

Issue No. 6

17. The plaintiff has not been able to discharge its onus to prove this issue. There is nothing on the record by which this Court could infer that the plaintiff is entitled to claim interest @ 15 % per annum on the agreed damages. The lease deed only stipulates the quantum of agreed damages and nothing else. However, in the interest of justice, this Court is inclined to grant interest @ 9 % per annum which is the rate of interest, on the higher side, offered by nationalized banks on fixed/recurring deposits. This issue is answered accordingly.

18. In view of the above, the suit is decreed in favour of the plaintiff and against the defendant in the following terms:

a. The plaintiff shall be entitled to Rs.92,60,000/- as the agreed

damages for the period 1st February, 2006 – 9th May, 2007.

- b. The plaintiff shall be entitled to Rs.1,10,376/- towards electricity and water bills which was not paid by the defendant.
- c. The plaintiff shall be entitled to Rs. 3,00,000/- towards damage caused to the leased premises.
- d. The plaintiff shall also be entitled to interest @ 9% per annum on the above decretal amounts from the date of filing the suit till realisation of the same.

19.Let the decree sheet be drawn up accordingly.

20.The suit stands disposed off in the above terms.

JUNE 30, 2015/ak/vmk

NAJMI WAZIRI, J.