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

Date of Decision: 18.05.2015

+ CS(OS) 791/2010

PANKAJ VERMA

..... Plaintiff

Through

Mr. T.K. Tiwari, Advocate for
Mr. Abhay Kumar Verma, Advocate
along with plaintiff in person

VERSUS

BRANDHOUSE RETAILS LTD.

..... Defendant

Through

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This is a suit for recovery of Rs.28,21,629/-. Issues were framed on 17.04.2012. The defendant was proceeded *ex parte* on 18.02.2015 and its counter claim bearing No.96/2010 was dismissed for non-prosecution. Accordingly, issue Nos. 3, 4, 5 & 6, where the onus of proof is on the defendant, are irrelevant and can be disregarded. Since Issue No. 2 is with respect to the jurisdiction of this Court, it is being dealt with first.

Issue No.2: Whether this Court has the territorial jurisdiction to entertain and try the suit? OPP

1. The learned counsel for the plaintiff relies upon Section 20(c) of the CPC to contend that since a part of the cause of action arose in Delhi,

this Court would have the territorial jurisdiction to entertain the present suit. He further submits that the plaintiff is a resident of Delhi and the Memorandum of Understanding (hereinafter referred to as 'MoU'), admitted and proved as Ex. P/2, entered into between the parties was also executed in Delhi. He relies upon a judgment of the Supreme Court in **A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem**, (1989) 2 SCC 163 which reads as under:-

“In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of, its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made.....”

2. He further draws the attention of this Court to clause (38) of the MoU which reads as under:-

“That the Courts at New Delhi alone shall have jurisdiction in respect of all matters or disputes or differences arising under or in connection with or in relation to this MOU and the Lease Deed to be executed pursuant hereto.”

3. Clearly, a part of the cause of action arose in Delhi. Furthermore, there is a jurisdiction clause in the MoU. Insofar as the said clause confers exclusive jurisdiction upon the Courts in Delhi, it is evident that the parties intended to oust the jurisdiction of Courts situated elsewhere. Reliance in this regard can be placed on the decision in

*Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.*¹ The jurisdiction clause is explicit and presents no difficulty in holding that this Court, indeed has the territorial jurisdiction to entertain the present suit. This issue is accordingly, decided in favour of the plaintiff.

Issue No.1: Whether the plaintiff is entitled to the suit amount with interest? OPP

4. The plaintiff is the owner of a retail store bearing No. UG-62, Upper Ground Floor, Ansal Plaza, Plot No. IC, Knowledge Park I, District Gautam Buddha Nagar, UP-201306 having a super built up area of 1231 sq. ft. (hereinafter referred to the '*suit property*').
5. Pursuant to a letter of intent (admitted by the defendant and marked as P/1), an MoU dated 05.12.2007 was entered into between the parties for leasing out the suit property and the defendant deposited a sum of Rs.6,27,810/- with the plaintiff towards interest free security deposit. In terms of the MOU, on 11.12.2007, the plaintiff handed over possession of the suit property to the defendant for carrying out interior work on a rent free basis for a period of two months therefrom. Thereafter, as per clause 17 of the MOU, the defendant is obliged to pay Rs.1,04,635/- per month as license fee for use of the suit property.
6. It is the plaintiff's case that despite taking physical possession of the suit property, the defendant showed resistance in executing a lease deed; a letter dated 21.01.2008 was sent but the defendant never came

¹ (2013) 7 SCR 581

forward to execute the same. It is further the plaintiff's case that the defendant never paid any license fee for use of the suit property, as agreed in the MoU; on 08.01.2009, he made a demand for payment of nine months' license fee, however, the defendant replied vide letter dated 07.04.2009 (admitted by the defendant and proved as Ex. P/2) intimating that the MoU had been terminated, thereby offering possession of the suit property and claiming refund of the security deposit of Rs. 6,27,810/-, Rs. 8,50,000 towards amounts spent on interior work and Rs.4,00,000 towards loss of business. A legal notice sent on 24.06.2009 (admitted by the defendant and proved as Ex. P/4), was of no avail to the plaintiff.

7. The learned counsel for the plaintiff submits that the defendant is still in possession of the suit property and has defaulted in paying the license fee since April, 2008 and hence, in terms of clause (3) of the MOU, admitted and proved as Ex. P/2, the defendant is liable to pay license fee along with 18% interest thereon. Clause (3) of the MOU reads as under:-

“3. That the Intending Lessee shall pay a monthly rent of Rs.1,04,635/- (Rupees One Lac Four Thousand Six Hundred Thirty Five only) calculated at the rate of Rs.85/- per sq. ft. (Rs. 914.94 per sq. mt. approx.) per month of the super area of the Demised Premises of approx. 1231 Sq. Ft. (114.36 Sq.Mtrs. approx) to the Intending Lessor with effect from the date as mentioned in clause-7 of this MOU. The monthly lease rent shall be payable by the Intending Lessee in advance by the 10th day of each English Calendar month through cheque/draft payable at New Delhi in favour of “Pankaj Verma”. In case of delay in making payment as aforesaid, the Intending Lessee shall be liable to pay to the Intending Lessor interest at the rate of 18% p.a. on the outstanding amount from the 1st day of

that Calendar month. In addition to the monthly rent, Service Tax, as applicable if any, levied by any government authority(ies) shall be paid by the Intending Lessee to the Intending Lessor.”

8. On 13.12.2012, the plaintiff led evidence in support of the averments made in the plaint.
9. As per the letter of intent and the MoU, it is evident that the defendant agreed to pay Rs.1,04,635/- (Rupees One lakh four thousand six hundred thirty five only) per month for use of the suit property. There was a lock in period for 18 months and an escalation of 15% after every three years on the last rent paid was also agreed upon between the parties.
10. In view of the aforesaid discussion and the evidence led on behalf of the plaintiff, this Court finds no reason to disbelieve the case of the plaintiff. Issue No.1 is also decided in favour of the plaintiff.
11. The defendant has already been proceeded *ex parte*. In the circumstances, the suit must succeed. Accordingly, the suit is decreed in favour of the plaintiff in terms of prayer (i) of the plaint.
12. Let the decree sheet be drawn up accordingly.
13. The suit stands disposed off.

NAJMI WAZIRI, J

MAY 18, 2015
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