

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

% *Judgment reserved on :19.02.2015*
Judgment delivered on :24.02.2014

+ CS(OS) 874/2013

SATISH KUMAR SOOD

..... Plaintiff

Through Ms. Vidhi Goel and Ms. Bhumika
Menon, Advs.

versus

M/S SIZZLER RESTAURANT PVT LTD

..... Defendant

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The present suit is a suit for possession, mesne profit and damages.

2 The plaintiff is the sole proprietor of Eros Cinema-cum-Commercial Complex. Defendant had approached the plaintiff to take on lease a space for an ice-cream parlour in the aforementioned complex.

Lease deed dated 20.4.2012 had been entered into by the parties. It was

for a space of 434 sq. feet super area on the ground floor of Eros Cinema Building, Jangpura Extension, New Delhi. Lease commenced on 28.3.2012, it was a monthly lease for an initial period of three years renewable at the option of defendant for further period of three years for a maximum of 9 years. Rent payable was Rs.56,420/- per month for the super area of 434 sq. ft. This monthly rent was payable in advance by the 7th day of each calendar month. Lease deed also provided that the defendant would pay an interest free refundable security deposit of Rs.2,25,680/- equivalent to 4 months rent. This security amount was deposited by the defendant. The lease deed was not registered. Present suit as noted supra was filed with a prayer for recovery of possession of the suit property as arrears of rent had not been paid by the defendant.

3 Written statement was not filed.

4 On the application of the plaintiff under Order 8 Rule 10 of the CPC the Court held that the plaintiff is entitled to a decree for possession. A decree of ejectment was accordingly passed in favour of the plaintiff and against the defendant qua the suit property. Decree sheet was prepared on 25.4.2014. The suit property was finally handed back to the plaintiff on 07.6.2014.

5 The other reliefs claimed by the plaintiff related to the rights of
the plaintiff to claim mesne profits and damages.

6 Matter was listed for ex parte final arguments.

7 Ex parte evidence by way of affidavit (Ex.PW-1/A) has been filed
by Vikas Saxena on behalf of the plaintiff, reiterating the averments
made in the plaint. The deponent also averred that the parties had
entered into a maintenance agreement which was co-existent and co-
terminus with the lease agreement. The plaintiff was to provide the
maintenance and operation of various common services, facilities and
equipment in the common areas in the said complex and in
consideration of which the defendant was to pay the maintenance
charges which were initially fixed at Rs.20/- per sq. ft. per month on an
aggregate super area of 434 sq. ft. w.e.f. Rs.8680/- per month. The
maintenance charges were subject to increase and were payable from
14.5.2012. Claim for mesne profits and damages has been made.
Admittedly, the suit property had been handed back to the plaintiff on
07.6.2014. This was after the decree of ejectment was passed on
25.4.2014. It is stated that arrears of rent w.e.f. November, 2012 up to
January, 2013 i.e. for three months have not been paid. The admitted
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rent is Rs.56,420/- per month. Damages/mesne profits w.e.f. 01.2.2013 up to 07.6.2014 (i.e. for 16 months) have also been claimed.

8 Admittedly, the document i.e. the lease deed dated 20.4.2012 between the parties is not a registered document. A document such as a lease deed which is required to be compulsorily registered and if not registered is inadmissible in evidence but is admissible in evidence only for a collateral purpose. Under Section 49 of the Registration Act, 1908 if the document is not registered, it can be looked into only for a collateral purpose and not beyond that.

9 Section 49 of the Registration Act reads as under:

“49. Effect of non-registration of documents required to be registered - No document required by Section [17](#) [or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall -

(a) affect any Immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting Immovable property and required by this Act or the Transfer of Property

Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

10 A collateral purpose has been defined in several judicial pronouncements. The Supreme Court , in the case of (2008) 8 SCC 564 K.B.Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd. looked into the question of “collateral purpose” qua unregistered documents. The principles culled out are extracted below:

“21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

- 1. A document required to be registered, if unregistered is not admissible into evidence under Section [49](#) of the Registration Act.*
- 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section [49](#) of the Registration Act.*
- 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

11 K.B.Saha referred to Rana Vidya Bhushan Singh Vs. Ratiram MANU/SC/0562/1969 which defined “collateral purpose” as any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

12 This Court is of the view that the plaintiff is not entitled to maintenance charges. Maintenance charges would not amount to a collateral purpose. Lock in period also not being a collateral purpose has not been pressed.

13 However, the purpose of letting which was admittedly for a commercial purpose, the nature of the premises i.e. the premises owned by the plaintiff and having been handed over to the defendant for the CS(OS) 874/2013

said purpose and the admitted rate of rent being Rs.56,420/-, this Court is of the view that the plaintiff is entitled to this admitted rent as claimed by him. Accordingly, this Court passes a decree in the sum of Rs.56,420/- x 3 =Rs.1,69,260/- (which is the admitted rent for the period between November, 2012 to January, 2013) along with interest @ 9% per annum from the date of decree till realization.

14 In the ex parte affidavit by way of evidence, the plaintiff has claimed Rs.65,100/- per month as the future charges also. There is no evidence to show that the properties in the adjoining vicinity would be earning more rent than the admitted rent of Rs.56,420/-. Accordingly, this Court is of the view that the future damages/mesne profits for the period i.e. w.e.f. February, 2013 to 07.6.2014 (for 16 months) also be calculated at the rate of Rs.56,420/- which works out to Rs.9,02,720/-.

15 Accordingly a decree in the sum of Rs.9,02,720/- + Rs.1,69,260/- = Rs.10,71,980/- is passed in favour of the plaintiff and against the defendant along with interest @ 9% per annum from the date of the decree till realization. Cost of the suit is also awarded in favour of the plaintiff.

16 Decree sheet be prepared accordingly subject to payment of the

additional Court fee.

17 File be consigned to record room.

INDERMEET KAUR, J

FEBRUARY 24, 2015

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