

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

% *Judgment reserved on :06.05.2015*
Judgment delivered on :12.05.2015

+ CS(OS) 1003/2010

RAM SHARAN DAS BATRA Plaintiff

Through Plaintiff with his counsel Mr. L.S.
Solanki and Ms. Geeta Bhardwaj,
Adv.

versus

RELIANCE WEBSTORE LIMITED Defendant

Through Ms Manali Singhal and Ms.
Gursimran Dhillon, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The present suit has been filed by the plaintiff (Ram Sharan Das Batra) against defendant (Reliance Webstore Ltd.) seeking recovery of damages and losses totaling Rs.49,12,125/- besides interest and costs.

2 The case as set up by the plaintiff is that he is the absolute owner and in possession of the property bearing No.10, Block C-3, Janakpuri, New Delhi. It had a space of 1900 sq. feet. He had approached Jones Lang, LaSalle Meghraj, a property broker, to let out this vacant space.

He was assured that he would get a good deal. A letter dated 21.7.2008 had been issued by the broker informing the plaintiff on this count.

3 The defendant was introduced to the plaintiff by the aforementioned property broker. The officers of defendant no.1 agreed to take the property on lease but a prior condition was imposed that there must be a separate entry on the back side for the installation of a D.G. Set. This condition was agreed to by the plaintiff in terms of his communication dated 27.8.2008 (annexure P-2).

4 On 16.9.2008 the plaintiff and the defendant executed an agreement (annexure P-3) in terms of which the defendant had confirmed and agreed to take the commercial space of plaintiff on lease. It was also agreed that this lease would be extended by mutual consent of both the parties even after the initial period of nine years and eleven months. Submission being that the defendant had described this document (dated 16.9.2008) as a letter of comfort but the various clauses show that it was a concluded contract between the parties. In terms of this contract the plaintiff had carried out repairs and renovations in his property. The defendant had also agreed to pay one month security within one month and thereafter the balance two months

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security would be deposited by the defendant after the alternations/modifications have been completed in terms of the said agreement. The plaintiff had demanded the security but he was put off, not even a single penny had been paid by the defendant till date. The plaintiff had spent a sum of Rs.4,01,135/- on the renovation. He is entitled to the said amount. The defendant had also not taken the premises on lease in spite of their agreement dated 16.9.2008. Unfair means were adopted by the defendant to block the property which had caused a huge financial loss to the plaintiff; the reputation and goodwill of the property of the plaintiff had also suffered.

5 Plaintiff has accordingly filed the present suit claiming damages @ 2.5 lacs (agreed rent) w.e.f 17.9.2008 to 17.3.2010 along with the amount spent by the plaintiff on the alterations/modifications of the suit property i.e. Rs.4,01,125/-. The cumulative amount has been calculated at Rs.49,01,125/-. Rs.11,000/- has been claimed as notice charges.

6 Written statement was filed by the defendant refuting all these claims as contained in the plaint. Submission being that the document dated 16.9.2008 was only a letter of intent and parties were only negotiating the terms of agreement which was yet to be completed into a

binding contract. The defence being that the authorization clause of the aforementioned documents clearly show that it was only a comfort letter given during the course of negotiations between the parties. No document has been filed by the plaintiff to substantiate his submission that he had carried out any work/modification in the suit property. It was reiterated that the document dated 16.9.2008 was only a comfort letter and was not a complete contract. Submission being that it was only a letter expressing an interest in taking the property on lease but it did not amount to a contract within the meaning of the Indian Contract Act, which was enforceable in any manner.

7 Replication has been filed denying the averments made in the written statement and reaffirming the stand in the plaint.

8 On the pleadings of the parties, on 13.5.2011 the following issues were framed:-

1. Whether the defendant had agreed to take space measuring about 1900 sq.feet on the ground floor of property No.10, Block C-3, Janakpuri, New Delhi from the plaintiff for the period of 9 years and 11 months at the monthly rent of Rs.2,01,400/-, as alleged in the plaint? OPP

2. Whether the plaintiff incurred expenditure of Rs.4,01,125/- on carrying out modifications/alterations and installations as per the requirement of the defendant, as alleged in the plaint? OPP

3. If issue No.2, is proved, whether the plaintiff is entitled to recover the amount of Rs.4,01,125/- from the defendant? OPP

4. Whether the plaintiff is entitled to recover damages at the rate of 2.5 lakhs per month from the defendant for the period from 17.09.2008 to 17.03.2010, as alleged in the plaint? OPP

5. Relief.

9 Two witnesses had come into the witness box. There was one witness on behalf of the plaintiff and one witness on behalf of the defendant.

10 Arguments have been heard and documents perused .

11 Issues nos.1 to 4 are interrelated and shall be disposed of by a common discussion.

ISSUES NOS.1 to 4

12 PW-1 had tendered his evidence by way of affidavit Ex.PW-1/A wherein he had reiterated the averments made in the plaint. The document dated 16.9.2008 was proved as Ex.PW-1/3. This document is

not denied. It has been admitted by the defendant. All other documents, relied upon by the plaintiff which are Ex.PW-1/1 to Ex. PW-1/10 have been denied. In his cross-examination PW-1 admitted that he had contacted the property broker Jones Lang, LaSalle Meghraj and he had an agreement with them which has been proved as Ex.PW-1/1. This was a letter addressed to the plaintiff wherein they had informed the plaintiff that they would look for a potential client for him; professional fee which they would charge is detailed in that letter. In another part of his cross-examination PW-1 admitted that he had not paid any professional fee to his agent/broker nor did he received any notice of demand from them.

13 Submission of the plaintiff that he had carried out repairs/modifications in the suit property in terms of the agreement dated 16.9.2008 was sought to be substantiated through letter dated 27.8.2008 which the plaintiff had written to the defendant. This document is marked as Ex.PW-1/2. In this document, the plaintiff had stated that he had no objection to the defendant opening the back door and having a separate entry for the installation of D.G.Set. In his cross-examination PW-1 admitted that he did not send this letter by post

which was collected by the defendant. He does not remember the person who had collected it on behalf of the defendant; it would have been one person by the name of C.P.Singh who was probably the architect. He admitted that Ex.PW-1/2 does not bear endorsement of receipt by the defendant. He denied the suggestion that it was a fabricated document. The plaintiff had also placed on record certain photographs to substantiate his averment that he had carried out repairs/medications in the suit property. These photographs have been proved as Ex.PW-1/6. They are two photographs and even as per the plaintiff they depict a part of the bath room and the view from the service lane. These photographs also depict large holes created in the roof and the structural wall. In his cross-examination PW1 stated that he does not remember the name of the architect who had advised him to carry out modifications. PW-1 further deposed that he probably was a Sikh gentleman who was an employee of the defendant and a part of his name was "Raja". Relevant would it be to note that in another part of his cross-examination PW-1 had referred to the architect C.P.Singh as PW1 admitted that he did not get any drawing prepared for the said alteration work which was required. He denied the suggestion

that this stand adopted by him that he had spent money for alterations/modifications is incorrect. He denied the suggestion that no such modification was in fact carried out. PW-1, however, admitted that he filed no bills to substantiate his submission that he has spent more than Rs.4 lacs in these alterations and modifications.

14 Reliance by the learned counsel for the plaintiff on the document dated 27.8.2008 (Ex.PW-1/2) to support his argument that this letter also shows that he was agreeable to the modification and repair being carried out in the building does not support his case. Besides the fact that this letter states that the plaintiff has no objection if the defendant wishes to open a door at the back for the installation of the D.G.Set, the import of the letter places the obligation upon the defendant to do the needful. Thus the submission of the plaintiff that in terms of Ex.PW-1/2 he had carried out modifications/repairs is wholly contradictory. In terms of Ex. PW-1/2 he had given authority to the defendant to do the needful and had not created any obligation upon himself. That apart, PW-1 has admitted that he has no bills for the works having been carried out by him. He had employed no architect to get the drawings prepared. In fact there is not a single document to support this averment of the

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plaintiff that he had carried out any repairs pursuant to the agreement dated 16.9.2008.

15 DW-1 was the witness who had appeared on behalf of the defendant. He reiterated the averments in his written statement. His deposition was to the effect that the document dated 16.9.2008 was only a letter wherein the defendant had agreed to take that property on lease. It was only at the stage of negotiations.

16 It had been vehemently argued by learned counsel for the defendant that thus it was only a letter of intent and was not a concluded contract. In this context DW-1 in his cross-examination has not shifted his stand. He denied the suggestion that the plaintiff had suffered any losses pursuant to the execution of the document dated 16.9.2008. The possession of the suit property had never been taken over by the defendant. No alteration or modification was required to be carried out by the plaintiff.

17 A preliminary objection taken by the learned counsel for the plaintiff was that DW-1 had no authority to depose on behalf of defendant company. This was answered by the defendant in terms of the power of attorney which has been executed by the Secretarial CS(OS) No.1003/2010

department of the defendant company (mark X-1) giving him authority to depose on behalf of the company in court cases. This document has been perused. It is a general authority given by the company to its various employees including DW-1 which authorized them to depose in Court and pursue litigation in courts on behalf of the defendant company. This document (mark X-1) suffers from no infirmity. DW-1 did have the authority to depose on behalf of the defendant.

18 The whole crux of the case of the defendant is that the document dated 16.9.2008 was only a letter of intent. The submission of the plaintiff on this count being that this was a concluded contract.

19 The case of the parties thus borders upon this document. It would be relevant to extract this document. It reads as under:-

*“Dear Mr R S Batra
New Delhi*

Dated -16/06/08

Sub: Property at Plot No.10 Block C 3, Janakpuri, New Delhi to be taken on lease.

We refer to our recent discussions with you on the afore-mentioned subject and hereby confirm our interest in taking the afore-mentioned property on lease for a period of 9 years 11 months.

Our final decision will, however, depend upon the advice of our Solicitors after they have examined ownership and other relevant papers

and on our obtaining a clear “Search Report” of the property in question.

Further, we confirm and agree to the Commercial Terms as attached. Also, we agree that the lease can be extended by mutual consent of both parties.

*You will carry out necessary improvements to the property as agreed upon, once we are in a position to execute the Agreement. As agreed upon, you have to provide an Electricity load of **71 KW** to carry out our operation smoothly within 45 days from the LOI date and 20 KW required to initiate the project with in 15 days from LOI date.*

This letter is a “Letter of Comfort” from our side and is being issued on “Best Interest” basis but cannot be construed as binding on us to take the property on lease if there is a contravention of the terms and conditions mentioned above or in case of events which are beyond our control.

In case you decide to lease this property to any other party, it is explicitly understood and agreed that we shall have the first right of refusal. You are requested to sign a copy of this letter along with the Commercial Terms as a token of acceptance.

Regards.

For RWSL

Authorised Signatory”

20 As is evident from the document, there are six paragraphs in the document. The first paragraph evidences the “interest” of the company in taking the said property on lease for a period of 9 years and 11

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months. The second paragraph clearly enunciates that the final decision will depend upon the advice of the solicitor of the defendant company and after the ownership papers of the plaintiff have been examined and a search report in this context has been submitted. This paragraph itself shows that the final decision was not taken in this document, dated 16.9.2008. The commercial terms attached along with this document which were certain activities to be executed and the targeted date of completion as also understanding of the commercial terms, were also appended. The fourth paragraph of this document further clarifies that necessary improvements agreed upon in the property would be carried out only after the parties are in position to execute the agreement. It is thus clear that the agreement was yet to be executed. The next paragraph states that this document is a “Letter of Comfort” being issued on “best Interest” basis and cannot be binding upon the defendant to take the property on lease if there is a contravention of the terms and conditions aforementioned. The last paragraph of the document states that in case the plaintiff decides to lease out this property to any other person the defendant would have the first right of refusal. This paragraph also clarifies that it is not as if the rights of plaintiff stand foreclosed and he is

not in a position to invite any other person to take the property on lease. In fact he could lease out the property to a third party but subject to the condition that the defendant would have the first right of refusal.

21 This document thus construed as a whole, clearly shows that it was only a letter of intent / letter of comfort which has been sent by the defendant to the plaintiff wherein they had spelt out the terms of the lease which were yet to be entered into between the parties. It clearly stipulated that this document by itself would not bind the defendant; the agreement was yet to be entered into. The ownership status of the plaintiff was also yet to be verified; this would in terms of a search report to be submitted by the solicitors of the defendant. The defendant also had a right to lease out the property to a third party but the defendant would retain the right of first refusal. The necessary improvements to be carried out in the suit property would also be done after the parties had executed the agreement thereby finally setting to rest all submissions and counter submissions and making it clear that this document was not a final agreement between the parties.

22 This document can thus only be termed only as a letter of intent or a letter of comfort. Reliance by learned counsel for the plaintiff on the CS(OS) No.1003/2010

provision of Section 8 of the Contract Act to support his submission that performance of the terms of the contract by itself amounts to its acceptance and was a binding contract is inapplicable in the factual matrix of this case. The submission of the plaintiff that he had carried out the repairs after 16.9.2008 is not substantiated. The document dated 27.8.2008 relied upon by the learned counsel for the plaintiff is ante dated i.e. prior to the letter dated 16.9.2008 and would not in any manner advance the submission of the plaintiff that this document shows that he had carried out repairs in the suit property pursuant to any consensus with the defendant. Moreover, at the cost of repetition, the document dated 27.8.2008 had cast an obligation upon the defendant to carry out repairs after the parties had executed the final agreement, and not upon the plaintiff. The plaintiff in these circumstances was not obliged to carry out any repairs.

23 There was also no documentary evidence to show that any repair/ renovation had been carried out in the suit property pursuant to the letter dated 16.9.2008. At the cost of repetition, PW-1 has candidly stated that he had not asked any architect to prepare drawing of repairs. He had filed no bills to show that he has incurred any expenses for repairs/

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modifications to the suit property. Annexures appended to document dated 16.9.2008 was the understanding of the commercial terms on the basis of which the lease was yet to be executed between the parties.

24 Reliance by the learned counsel for the plaintiff on the judgment of (2008) 13 SCC 597 Bharat Sanchar Nigam Ltd. and Anr. Vs. BPL Mobile Cellular Limited is misplaced. Section 8 of the Contract Act has no application to the facts of the instant case.

25 In (2009) 1 SCC 475 Speech and Software Technologies (India) Private Limited Vs. Neos Interactive Limited the Supreme Court while considering a letter of intent and the language used in that document had noted herein as under:

“23. It is not the case of the respondent that any agreement was executed between the parties on or before 15-9-2006. The respondent has not stated in its counter-reply that the agreement, which was to be executed by 15.9.2006, was in fact executed. During the course of hearing of the instant application it was fairly conceded by the learned counsel for the respondent that no such agreement was executed between the parties at all. Hence, as the agreement contemplated by the letter of intent was never executed, it cannot be said that the agreement contemplated by the said letter of intent had novated, rescinded or superseded the Tripartite Share Purchase Agreement.”

26 Similarly in (2013) 12 SCC 776 Hansa V Gandhi Vs. Deep Shankar Roy and Ors. the Supreme Court had reiterated that a letter of CS(OS) No.1003/2010

intent cannot be said to be an agreement for simple reason that according to Section 8 of the Contract Act, only after certain obligations were performed by one party, could they be said to have accepted the proposal.

27 The Apex Court in (2006) 1 SCC 751 Dresser Rand S.A. Vs. Bindal Agro Chem Ltd. had reiterated that whether a letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the order is a matter which has to be decided with reference to the terms of the letter. In this context the observations of the Supreme Court are useful and would in fact clinch the issue in the present case. As noted supra, the letter in question which is under scrutiny before this Court (dated 16.9.2008) was a letter written by the defendant to the plaintiff, and as discussed supra, only stipulated the conditions which may be fulfilled and work charges, before entering into a final agreement. This letter also clearly specified this document by itself is not binding upon the defendant to take the property on lease; final agreement was yet to be entered into between the parties. Thus this letter was clearly only a letter of intent letter of comfort and not enforceable as a contract.

28 All these issues are accordingly decided in against the plaintiff and in favour of the defendant.

Relief:

29 Plaintiff is not entitled to any relief. Suit is dismissed.

INDERMEET KAUR, J

May 12, 2015
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