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

+ CS(OS) 1303/2014 & I.A. 8450/2014

BIRENDER GOVIL Plaintiff
Through: Mr. L.K. Garg, Advocate.

versus

M/S MAHA GAURI BUILDERS & ORS Defendants
Through: None.

% Reserved on : 18th May, 2015
Date of Decision : 29th June, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. The present suit has been filed with the following prayers:
 - a) *Pass a decree of eviction in favour of the plaintiff and against the defendants whereby the defendants, their agents, servants, associates, attorneys may be evicted from the suit premises i.e. property built on plot no. A-5 measuring about 221 sq. mts. situated in Block A, Pocket-A, FIEE, Okhla Phase-II, New Delhi comprising of Basement, Ground Floor and Roof thereof and the plaintiff be put in actual, vacant and physical possession of the same.*
 - b) *Pass a decree in favour of the plaintiff and against the defendants whereby directing the defendants to pay to the*

plaintiff a sum of Rs. 8,25,065/- as arrears of rent from 16.12.2013 to 21.03.2014

- c) Pass a decree in favour of the plaintiff and against the defendants whereby directing the defendants to pay to the plaintiff a sum of Rs. 3,33,325/- as mesne profits for the period from 06.04.2014 to 30.04.2014.*
- d) Pass a decree in favour of the plaintiff and against the defendants towards pendent lite and future mesne profits till the delivery of actual, physical and vacant possession of the suit property @ Rs. 4,00,000/ per month.*
- e) Pass a decree in favour of the plaintiff and against the defendants whereby directing the defendants to pay to the plaintiff interest pendent lite and future on the entire decretal amount @ 24% per annum or at such rate as this Hon'ble Court deems fit and proper till the date of actual payment.*
- f) Direct the defendants to furnish the TDS Certificates as well as proof of payment of Service Tax to the plaintiff as the defendants may be liable for the same.*
- g) For the purpose of relief (b) to (f) this Hon'ble Court may order an enquiry as to the rent as well as mesne profits under Order 20 Rule 12 CPC and final decree in terms of the result of the enquiry may be passed in favour of the plaintiff and against the defendants. The Plaintiff undertakes to pay additional/deficit court fees in terms of the orders of this Hon'ble Court.*
- h) Pass any such other and further relief as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.*
- i) Cost as well as deterrent and exemplary costs may also be awarded to the plaintiff against the defendants.*

2. Summons issued by this court to the defendants at the address mentioned in the plaint were returned unserved as the premises were lying closed. Thereafter, the defendants were served by substituted service by effecting publication in the “Statesmen”, Delhi Edition. However, as there was still no appearance on behalf of the defendants, they were proceeded ex parte vide order dated 15th December, 2014.
3. The plaintiff had filed his ex parte evidence by way of affidavit dated 13th January, 2015 marked as Ex PW1/A.
4. The relevant facts of the present case are that the plaintiff vide lease deed dated 16th October, 2013 let out the premises no. A-5, Block A, Pocket A, FIEE Okhla, Phase II, New Delhi, measuring about 221 sq. mtr. to the defendants. The original notarized lease agreement between the plaintiff and the defendants dated 16th October, 2013 has been marked as Ex. PW 1/2. The lease of the suit premises commenced from 16th October, 2013 for a monthly rent of Rs. 2,21,000/-. The plaintiff was constrained to approach this court as the defendants defaulted in payment of rent from 16th December 2013.
5. Vide order dated 5th May, 2014 this Court had directed the defendants to pay to the plaintiff the undisputed rent within two weeks from the date of the receipt of the order. A copy of the order was sent to the defendants by the plaintiff vide speed post dated 24th May, 2014. However, the said communication was also returned back refused and undelivered. The aforementioned documents have been marked as Ex PW 1/22 to Ex PW 1/28.
6. The plaintiff has also placed on record various cheques issued by the defendants on account of arrears of rent, electricity, etc. which have all been dishonoured. The said cheques with returned memos have been marked as

Ex Pw 1/3 to Ex PW 1/12.

7. As the lease deed was unregistered the tenancy was on a month-to-month basis. The plaintiff, vide notice dated 15th March 2014 under Section 106 of the Transfer of Property Act, 1882 terminated the tenancy of the defendants. The same has been marked as Ex PW 1/13. The tenancy thus, stood terminated on the expiry of 15 days from the date of receipt of the notice.

8. Learned counsel for the plaintiff submitted that the present suit itself constitutes a notice to the defendants. In support of his submission, he relied upon ***Nopany Investments (P) LTD. v. Santokh Singh (HUF), 2008 2 SCC 728*** in which it has been held as under,

“22. ...In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this court in V. DhanapalChettiar v. YesodaiAmmal (1929) 4 SCC 214.”

9. Learned counsel for the plaintiff also relied upon the judgment of a division bench of this court in ***Bandhu Machinery P. Ltd. v. Om Prakash Sikka & Ors., AIR 2009 Delhi 33*** to submit that a notice is not invalidated if the suit is filed much after the stipulated period of fifteen days.

10. Learned counsel for the plaintiff pointed point that the defendants themselves had also filed a suit for injunction against the plaintiff in the Court of the Civil Judge (South East), Saket Court Complex, New Delhi in which the lease deed was an admitted document.

11. Learned counsel for the plaintiff also informed the court that the defendants have locked the premises and the same are lying unused which is causing a loss to the plaintiff. In view of the above stated submissions, learned counsel for the plaintiff asserted that the plaintiff is entitled to actual, vacant and physical possession of the suit property as well as arrears of rent, mesne profits, service tax as well as TDS and interest @ 24% per annum, and pendent lite and future mesne profits till possession @ Rs. 4,00,000 per month. In the alternative, learned counsel for the plaintiff prayed that an enquiry under Order 20 Rule 12 CPC may be ordered to be held and final decree in terms thereof may be passed.

12. It is pertinent to mention here that in a suit for possession, the Court has to only see as to whether the following three necessary ingredients are satisfied or not:

- (a) existence of landlord-tenant relationship;
- (b) rent in excess of Rs. 3,500 per month; and
- (c) determination of tenancy entitling the landlord to a decree for ejection.

13. Since the evidence of the plaintiff has neither been rebutted nor controverted, this court is of the view that the plaintiff has proved his case along with all the documents referred to hereinabove.

14. Consequently, a decree of eviction in favour of the plaintiff and against the defendants whereby the defendants, their agents, servants, associates, attorneys are directed to be evicted from the suit premises i.e. property built on Plot no. A-5 measuring about 221 sq. mtr situated in Block A, Pocket – A, FIEE, Okhla Phase – II, New Delhi comprising basement,

ground, first floor and roof thereof and the plaintiff be put in actual, vacant and physical possession of the same is passed.

15. Furthermore, the defendants are directed to pay to the plaintiff a sum of Rs. 8, 25, 065/- as arrears of rent from 16th December, 2013 to 21st March, 2014.

16. The defendants are further directed to pay the admitted rent of Rs. 2,21,000/- p.m. from 22nd March, 2014 till the date of delivery of actual, vacant and physical possession of the suit premises to the plaintiff.

17. The defendants are also directed to furnish the TDS certificates as well as proof of payment of Service Tax to the plaintiff.

18. The Registry is directed to draw up the decree sheet accordingly.

MANMOHAN, J

JUNE 29, 2015

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