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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 2520/2013
GANESH DUBEY Plaintiff
Through: Mr. J.C. Kaushik, Adv.
versus

M/S ANB PROMOTERS & DEVELOPERS (P) LTD &
ANR. Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

% **ORDER**
23.09.2015

1. Plaintiff has filed this suit for possession, recovery of arrears of rent, electricity charges and mesne profits against the defendants. Defendant no.1 is a company; whereas defendant no. 2 is its director. Plaintiff has alleged in the plaint that he is a senior citizen and co-owner of the suit property, that is, ground floor and basement constructed on a plot bearing no. B-30, Soami Nagar, New Delhi, more particularly shown in red colour in the site plan.
2. Plaintiff had purchased the suit property along with his two sons, vide a registered sale deed. Defendant no.1 approached the plaintiff through defendant no.2 for taking the suit premises on rent for a period of 24 months @ ₹55,000/- per month. Plaintiff agreed to let out the suit property in the name of defendant no.1, consequently, a registered Lease Deed dated 3rd

October, 2007 was executed. It was stipulated in the agreement that if the lease deed is extended the rent would be ₹1.50 lacs per month. Lease expired on 30th September, 2009 by efflux of time. Thereafter, defendants were permitted to occupy the suit property and tenancy became on month to month basis on a monthly rent of ₹1.50 lacs. Defendants cleared the rent till September, 2012 @ ₹55,000/- per month, however, thereafter avoided to pay rent.

3. In the first week of November, 2012, defendants issued two cheques totalling ₹2 lacs towards partial discharge of their liability of rent vide cheque no. 402022 issued by the defendant no.1 and cheque no. 828823 issued by the defendant no.2 from his personal account. However, on presentation these cheques the same were dishonoured. Subsequently, defendant no. 2 again issued a cheque bearing no. 412440 in January, 2013 for ₹3.50 lacs but the same was also dishonoured. Defendants again issued three cheques totalling ₹7.50 lacs in partial discharge of rent @ ₹1.50 lacs from October, 2012 till February, 2013 but these cheques were also dishonoured. Thereafter, defendant no.2, on behalf of defendant no.1, issued a hand written note dated 18th December, 2012 whereby undertook to make payment of ₹7.50 lacs towards rent on or before 15th January, 2013, on

failure to make payment to vacate the suit property on or before 16th January, 2013. However, neither any amount was paid nor the suit premises was vacated. Thereafter, defendant no.2 sworn an affidavit and undertook to vacate the suit premises on 30th August, 2013. Defendant no.2 further undertook, in the affidavit, that in case the premises was not vacated he would pay ₹25,000/- per day towards damages. However, neither the premises was vacated nor any amount was paid. Consequently, legal notice dated 31st October, 2013 was issued to the defendants but to no effect. Hence the suit.

4. After service of summons defendants appeared in Court on 13th March, 2014 through their counsel. On the said date, it was stated that defendants had already paid ₹3 lacs towards arrears of rent. They also expressed their desire to settle the matter, accordingly, parties were referred to Mediation Centre. However, mediation failed. Thereafter, defendants did not appear in Court on 2nd May, 2014 when the matter was taken up. They even did not appear thereafter on 29th September, 2014, accordingly, they were proceeded against ex-parte.

5. Plaintiff has led ex-parte evidence. He has stepped in the witness box on 29th January, 2015 as PW1 and has tendered his affidavit as Ex. PW1/A

in his examination-in-chief. Plaintiff has corroborated the averments made in the plaint, which have been detailed hereinabove. He has proved the site plan as Ex. PW1/A. Copy of the sale deed has been proved as Ex. PW1/B. Copy of the lease deed dated 3rd October, 2007 has been proved as Ex. PW1/C. Copies of the two dishonoured cheques of ₹3.50 lacs and ₹2 lacs along with returning memo have been proved as Ex. PW1/D (collectively). Statement regarding third cheque has been proved as PW1/E. Hand written note dated 18th December, 2012 has been proved as PW1/F. Copy of affidavit dated 16th July, 2013, whereby defendants undertook to vacate the suit premises on 30th August, 2013 and in case of failure to vacate the suit premises to pay damages @ ₹25,000/- per day, has been proved as Ex. PW1/G. Legal notice dated 3rd September, 2013 has been proved as Ex. PW1/H (collectively). PW1 has further deposed that he is entitled to ₹80,75,000/- towards misuse charges and ₹16,50,000/- towards unpaid rent. Misuse charges have been calculated @ ₹25,000/- per day.

6. During the course of hearing, learned counsel for the plaintiff submits that defendants have vacated the suit premises on 19th July, 2014. He further submits that claim of misuse charges and arrears of rent is restricted to ₹1.50 lacs per month only, as was agreed by and between the parties earlier, in

terms of the lease agreement. Calculation chart has been submitted, according to which the amount comes to ₹25.70 lacs as on the date of vacating the suit property after giving adjustment of ₹3 lacs paid during the pendency of suit and ₹3.75 lacs towards security deposit.

7. Testimony of PW1 has remained unchallenged, inasmuch as, the same is supported by the documents placed on record. Accordingly, I am of the view that plaintiff has succeeded in proving the claim of damages @ ₹1.50 lacs per month. Defendant no. 2 is personally liable to pay the damages since earlier also he had assured to clear the rent and had issued cheque from his personal account, inasmuch as, by his affidavit had undertaken to pay the damages. Accordingly, a decree is passed in favour of the plaintiff and against the defendants for ₹25.20 lacs together with interest @ 12 % per annum with effect from 20th July, 2014 till decretal amount is paid. Plaintiff shall also be entitled to costs. Decree sheet be drawn accordingly.

A.K. PATHAK, J.

SEPTEMBER 23, 2015

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