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

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Date of Decision: 28.07.2015

+ CS(OS) 3300/2014

SHRI NARINDER SINGH ARORA Plaintiff

Through: Ms. Manpreet Kaur, Adv.

versus

ESSENCE BAR & RESTAURANT & OTHERS Defendants

Through: Ms. Priya Khurana, proxy counsel
for D-1 & 2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Open Court)

1. Since a new counsel has recently been engaged by defendant Nos. 1 and 2, the vakalatnama of Mr. Akshay Verma, Advocate is discharged from this case.
2. This is a suit for possession, recovery of rent and *mesne* profits/damages. The relief of possession has already been decreed by this Court on 27th February, 2015. Accordingly, the case is listed today for determination of the remaining reliefs sought.
3. It is the plaintiff's case that vide lease deed dated 21.11.2011, the plaintiff agreed to lease out the suit premises bearing No.A-13, Vishal Enclave, Rajouri Garden, New Delhi excluding the area occupied by Gyani's Ice Cream Parlour, consisting of basement, ground, first and second floors, terrace area along with installed safe,

fixtures, furniture, fittings and equipments etc. on an as is where is basis, for use of a restaurant by the defendants for a period of eight years i.e. 3 years + 3 years + 2 years. However, one room admeasuring 15X5 = 70 sq. ft. has been retained by the plaintiff in the suit premises. The monthly rent was agreed to be Rs.10,00,000/- for the initial lock-in period w.e.f. 1.11.2011 to 31.10.2014 i.e. the initial three years period. The charges towards utilities such as electricity, water, sewage, maintenance, etc. were to be duly paid by the defendants/lessees to the various co-owners of the suit premises according to their proportionate share as defined in Para 2 of the plaint. An interest free security deposit of Rs.10,00,000/- was also paid by the defendants to the plaintiff. Although the suit premises was initially let out for a period of 60 days on a rent free basis, the same was further extended upon a request of the defendants till 31.3.2012. Hence, the monthly rent became payable from 1st October, 2012 and the defendants were to pay the same which till the date of filing the suit had amounted to Rs.2,15,79,303/- along with the corresponding utility and water bills. Additionally, electricity charges of Rs.22,25,310/- too were payable by the defendants.

4. It is the plaintiff's case that because of non-payment of the said charges, the electricity connection was disconnected on 20.2.2015. In addition to the above charges, TDS, conversion charges as well as other statutory and utility charges to the Municipal Corporation etc. are also payable. It is the plaintiff's case that the defendants have consistently defaulted, both in quantum and date of payment of the rentals. Consequently, as of 30.09.2014, the defendants were to pay

an outstanding of Rs.2,15,79,303/- with interest. Despite service of a legal notice dated 09.08.2014, the defendants have not paid the requisite monies and they continued to be in occupation of the suit premises till such time possession of the same was taken back by the plaintiff pursuant to a decree of possession passed by this Court.

5. The plaintiff states that as per Clause 26 of the lease deed, the security amount deposited by the defendants was to be forfeited on account of defaults enumerated under Clause 16 of the lease deed and the said amount is not to be adjusted in the decretal amounts. It is further submitted that there were consistent and deliberate breaches of the terms of the lease deed by the defendants. Indeed, the legal notice of the plaintiff dated 20.09.2014 (Ex.PW1/12) specifically states to this effect. The defendants were accorded an opportunity to show cause through the plaintiff's notice dated 09.09.2014 (Ex.PW1/4). The plaintiff also refers to the undertaking given by defendant No.2 by a letter dated 05.07.2014 (Ex.PW1/8) that if the defendants are not able to clear the dues against the premises by 30.09.2014, they would hand over possession of the suit premises to the plaintiff, however, yet again there was a default in doing so.

6. It is the plaintiff's case that the defendants have used the suit premises to their advantage but to the pecuniary detriment of the plaintiff. The plaintiff seeks damages for use of the suit premises at the market rate of Rs.12 lacs per month from 02.10.2014 till such time the suit premises was handed over to him. This is claimed in addition to the utility charges and such other charges levied on the suit premises during which period the defendants continued to be in

occupation till possession of the same was handed over to the plaintiff. Directions are also sought for issuance/deposit of TDS certificates in favour of each of the co-owners of the suit premises for deductions made against the monthly rent of Rs.10,00,000/- from 1.4.2012 till such time when the payment was made by the defendants. The defendants have been proceeded *ex parte*. The plaintiff has led *ex parte* evidence in terms of the averments in the plaint and has relied upon the aforesaid documents. The claim of the plaintiff is unrebutted. There is no reason why the reliefs sought in the suit should not be granted.

7. In the circumstances, this suit is decreed in terms of prayers (b), (c) and (d) of the plaint along with interest @ 18% per annum. Costs of Rs.2,00,000/- are also imposed upon the defendants.
8. Let the decree sheet be drawn up accordingly.
9. The suit stands disposed off in the above terms.

NAJMI WAZIRI, J

JULY 28, 2015/ak