

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

% *Judgment Reserved on: July 03, 2015*
Judgment Delivered on: July 09, 2015

+ **RFA(OS) 61/2015**

COTTAGE INDUSTRIES EXPOSITION LTD Appellant

Represented by: Mr.Rakesh Tiku, Sr.Advocate
instructed by Ms.Suruchi Mittal,
Advocate

versus

SUBHASH CHANDER Respondent

Represented by: Mr.Ravi Gupta, Sr.Advocate
instructed by Mr.Asheesh Jain,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Allowing IA No.19681/2014 filed under Order XII Rule 6 of the Code of Civil Procedure filed by the respondent suit filed by the respondent against the appellant for possession of property bearing Municipal No.C-2/9, Safdarjung Development Area, New Delhi has been decreed. It is apparent that the decree has been passed on an admission by the appellant found by the learned Single Judge.

2. Case pleaded by the respondent was that it was the perpetual lessee under a perpetual lease deed executed in its favour by the Delhi Development Authority of a plot of land bearing Municipal No.C-2/9, Safdarjung Development Area, New Delhi on which he had constructed a

building which was given on lease to the appellant under a lease deed dated May 29, 2004 for residential use permitting residents of the directors of the appellant and other personnel of the sister companies. After a few months the appellant requested to use the premises for commercial purposes which request was accepted by the respondent subject to the condition that if any authority raised an issue concerning misuse of the leased premises, the appellant shall deal with the same. It was further pleaded that on the ground of misuse a resumption notice dated June 06, 2006 was received by the respondent which was challenged by the respondent by filing W.P.(C) No.10449/2006 in which an interim order was passed that subject to the premises being used only for residential purpose as stipulated in the perpetual lease deed executed by the Delhi Development Authority in favour of the respondent the notice dated June 06, 2006 shall be stayed. It was pleaded that the respondent informed the appellant of the condition upon which the Court had stayed the operation of the resumption notice dated June 06, 2006, but the misuse continued, thereby threatening the title of the respondent to the suit property. It was further pleaded that on November 06, 2006 the respondent received a notice from the Delhi Development Authority together with a demand for misuse charges. Alleging misuse to be continuing and the clouds casting a shadow on the title of the respondent looming large on account of the misuse it was alleged that the lease was determined by a notice dated September 30, 2006 and since possession was not handed over, cause of action accrued for possession to be recovered as also damages.

3. In the written statement filed by the appellant it admitted having received possession of the suit property pursuant to the lease deed dated

May 29, 2004. In paragraph 3 of the preliminary submissions it was pleaded as under:-

“3. The lease was initially for a period of 9 years commencing from 1st June, 2004 to 31st May, 2013 on a monthly rental of Rs.2,50,000/- per month. The lease could be extended for a further period of six years at the sole option of the lessee. The monthly rental is to be increased by 10% after every three (3) years. As per clause 9 of the said lease the lessee is entitled to use the demised premises for its associates and sister concerns even if there are in the future new associates or subsidiary or firm in which the directors of lessee are interested It is pertinent to mention herein that one letter was also signed and accepted by the lessor stating that the premises be used for commercial purposes subject to the lessee company take care of dealing with the concerned department.”

4. Defence taken was that the purpose of the lease was commercial and thus the appellant was entitled to use the property for a commercial purpose. It was pleaded that the previous tenant had used the premises for commercial purposes. It was further pleaded that the municipal authorities had taken a policy decision to permit commercial use of residential properties which were abutting on a road having width of 80 feet. It was pleaded that the suit property abutted a road having width of 80 feet.

5. On the pleadings of the parties following issues were settled on November 17, 2009:-

“1. Whether the suit property is being used by the defendants in violation of the perpetual Lease Deed of 1967 or not? OPP;

2. Whether the notice dated 30.09.2006, if mandatory, was properly served? OPP;

3. Whether the lease dated 29.05.2004 has been duly

terminated? OPP;

4. *Whether the notices dated 08.08.2005 and 05.12.2005 were communicated to the plaintiff, by the defendants? OPD;*

5. *Whether the plaintiff is entitled to the relief of recovery of possession, as prayed for? OPP;*

6. *Whether the plaintiff is entitled to recover the damages, as prayed for? OPP;*

7. *Relief.”*

6. The respondent filed IA No.13144/2006 praying for an ad-interim injunction to restrain the appellant from using the property and continuing to be in possession thereof. Though captioned as an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, pleadings in the application show that in effect the application was invoking the power of the Court under Order XII Rule 6 of the Code of Civil Procedure. In the application it was pleaded that since landlord-tenant relationship was admitted and it was also admitted that the rent payable was more than Rs.3,500/- per month since commercial use of the property which was contrary to the permissible user was accepted and receipt of the notice determining lease was also accepted the decree for possession ought to follow. We simply highlight that the prayer made in the application was of the kind contemplated by an application praying for a decree on admission. The prayer being : *‘restrain the defendants, their dealers, stockists, agents, representatives, assignees and all other persons acting on their behalf from continuing in possession of the suit property, more so in view of provisions of Order XII Rule 6 of the Code of Civil Procedure’*.

7. By an order dated November 16, 2010 noting that inter-alia the defence was of a consent by the respondent in favour of the appellant to use the property for a commercial purpose, in view of the pleading that the latest policy of land use envisaged mixed land use recognized by the Master Plan for Delhi – 2021, it was not a case where an admission would be found warranting a decree to be passed under Order XII Rule 6 of the Code of Civil Procedure.

8. For reasons which are not very healthy, we note with regret that inspite of issues being settled between the parties on November 17, 2009 the matter could not proceed for recording of evidence.

9. Appellant filed IA No.19681/2014 pleading therein that in view of the existing pleadings of the parties there was an admission that the landlord-tenant relationship was pursuant to the lease deed dated May 29, 2014 under which the duration of the lease was for a period of 9 years commencing from June 01, 2004 and ending on May 31, 2013, since the duration of the lease had expired there was no impediment for a decree for possession being passed after May 31, 2013.

10. In the reply to the said application it was pleaded that the lease deed dated May 29, 2004 was preceded by an agreement to enter into a lease dated April 20, 2004 and a lease deed dated April 20, 2004, in which it was agreed that on the expiry of the lease after 9 years it would be renewed for a further term of 6 years and that the appellant had filed a suit seeking specific performance of the said agreement between the parties i.e. to renew the lease for a further term of 6 years upon expiry of the initial term of lease which was for 9 years.

11. Though not pleaded in the reply, during arguments in IA

No.19681/2014, as would be evident from the impugned order/decreed dated May 18, 2015 it was pleaded that vide order dated November 16, 2010 this Court had already rejected the prayer for decree for possession to be passed under Order XII Rule 6 of the Code of Civil Procedure. It was also argued before the learned Single Judge that since issues had been settled no decree for possession on an admission could be passed.

12. With respect to the order dated November 16, 2010 the learned Single Judge has held that the cause and the admission on which decree was declined vide order dated November 16, 2010 was entirely different than the admission relied upon in IA No.19681/2014. That issues had been settled was held to be irrelevant because the language of Order XII Rule 6 of the Code of Civil Procedure permitted exercise of said power at any stage of the suit. On merits it was held that the right of the parties had to be adjudicated with reference to the registered lease deed dated May 29, 2004, which did not contain any covenant, recital or condition for lease to be renewed after 9 years lease period expired. Taking the view that no right could be predicated on the agreement to lease dated April 20, 2004 nor under the unregistered lease deed of even date in view of the fact that admittedly right of the parties was governed by the registered lease deed May 29, 2014, execution whereof was admitted by the appellant, decree for possession has been passed noting that the right of the appellant to continue to occupy the suit property came to an end upon expiry of 9 years commencing from June 01, 2004 and ending on May 31, 2013.

13. Conceding in the appeal that a decree on admission can be passed by a Court at any stage of the suit, in view of the language of Order XII Rule 6 of the Code of Civil Procedure as also that the order dated November 16,

2010 rejecting prayer for a decree to be passed on admission had no bearing on the legality of the impugned order/decreed, argument advanced by learned senior counsel for the appellant was that the suit filed was premised on the cause of action that on account of misuse of the property the lease was determined and not on the ground/cause accruing on account of the lease expiring by efflux of time, decree for admission on a cause not pleaded could not be passed and additionally for the reason the appellant had filed a suit for enforcement of the term in the agreement to lease and the lease deed dated April 20, 2004.

14. Concededly the appellant and the respondent executed an agreement to enter into a lease on April 20, 2004 in which it was recorded that a lease deed would be executed leasing the suit property for a period of 9 years commencing from June 01, 2004 to May 31, 2013 and that on expiry of the lease period they would agree to extend the lease by another 6 years with effect from June 01, 2013 till May 31, 2019 on the same terms and conditions with increase of rent by 10% every 3 years. The parties also executed a lease agreement on the same day i.e. April 20, 2004 recording therein that the lease shall commence from June 01, 2004 and shall end on May 31, 2013. In this lease agreement there is no clause for the extension of the lease for any further period. This lease agreement dated April 20, 2004 categorically records that the lease deed shall be got duly registered on being drawn on a requisite stamp paper. The execution of the two documents was followed by the execution of the lease deed dated May 29, 2004 which has been drawn up on a stamp paper of adequate value; as against the lease deed dated April 20, 2004 which has been drawn up on a stamp paper of Rs.100/-.

15. It is apparent that the lease deed dated April 20, 2004 is a surplus

document executed by the parties because purporting to be a lease deed which has been scribed on a paper of inadequate stamp duty, and since the parties were ad-idem that the lease deed which they would execute and which would bind them would be drawn up on a stamp paper of adequate duty and duly registered, the parties executed the lease deed dated May 29, 2004.

16. We need to highlight that neither the unregistered lease deed dated April 20, 2004 nor the registered lease deed dated May 29, 2004 has a covenant or a term that upon expiry thereof the parties shall extend the lease by a period of 6 years.

17. We have already noted hereinabove that the case of the respondent was that the rights and liabilities of the parties were governed by the registered lease deed dated May 29, 2004. We have already highlighted hereinabove that the positive defence of the appellant also was that the rights and liabilities of the parties were governed by the registered lease dated May 29, 2004.

18. When the suit was filed in the year 2006 the cause pleaded was the continued misuse resulting in a shadow being cast on the title of the respondent. The defence taken was that the latest land use policy removed the shadow cast on the title of the respondent and that the respondent had permitted the appellant to use the suit property for a commercial purpose notwithstanding the title document of the respondent obliging the respondent and ensuring use of the suit property for residential purpose.

19. It is settled law that if parties enter into an agreement to enter into a lease and record terms in the agreement to enter into a lease unless those terms find a mention in the lease deed, no right can be claimed on any term

or terms recorded in the agreement to enter into a lease but omitted from the lease deed. It is trite that rights and liabilities of a lessor and a lessee are to be found in the lease deed. In the instant case the lease deed in question on which both parties predicate their claim is dated May 29, 2004

20. Thus, the view taken by the learned Single Judge that the appellant cannot raise any defence under the agreement to enter into a lease which was executed on April 20, 2004 is correct. The suit for specific performance filed by the appellant is founded on the agreement dated April 20, 2004 to enter into a lease and we have to hold that in view of the legal position discussed above the filing of the said suit would be no bar for the Court to pass a decree on admission.

21. Where the lessor-lessee relationship is admitted, that the suit property is not governed by any rent control legislation is admitted, that the lease stands validly determined or has expired by efflux of time is admitted, case would be made out to pass a decree on admission.

22. On the question that the suit being founded on the cause of misuse by the appellant entitling the landlord to determine the lease and not founded on the cause of action that lease has expired by efflux of time and thus no decree on admission could be passed on the cause of action. That the lease has expired by efflux of time we note the case law on the subject of power of the Court to decide a lis between the parties taking into consideration subsequent events.

23. We do not intend to make a catalogue of various decisions in which Courts have taken note of subsequent events while deciding a lis between the parties.

24. The decisions, pithily stated hold that though a lis between the parties

has to be decided with reference to the cause which existed when the suit was filed, but in order to shorten litigation subsequent events can be noted in order to do complete justice between the parties.

25. We note only one decision of the Supreme Court which has noted 14 earlier decisions on the point that subsequent events which have transpired during the pendency of a lis can be taken into consideration. The decision is reported as (2004) 8 SCC 76 Kedar Nath Aggarwal (Deceased) & Anr. Vs. Dhanraji Devi (deceased) by LRs & Anr. The Court recognized adjudication of a lis between the parties by taking into account events and developments subsequent to the institution of the proceedings.

26. Since the admitted case of both parties was that their rights and liabilities were governed by the registered lease deed dated May 29, 2004 and in view of the fact that in law the appellant cannot claim any defence under the agreement to enter into a lease dated April 20, 2004, we hold that a decree on admission was warranted in the instant case once the lease between the parties pursuant to the lease deed dated May 29, 2004 expired by efflux of time on May 31, 2013, when the 9 years period of lease came to an end.

27. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY09, 2015/mamta