

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

% Date of Decision : September 21, 2015

+ **RFA (OS) 86/2015**

DURGA SOFTELECOM PVT.LTD.Appellant
Represented by: Mr.Sandeep Sethi, Sr.Advocate instructed
by Mr.Samar Singh Kachwaha,
Mr.Raghavendra and Mr.Vipin, Advocates

versus

ARCENT TECHNOLOGIES (HOLDINGS)
LTD.(FORMERLY KNOWN AS FLEXTRONIC
SOFTWARE SYSTEMS LTD.Respondents
Represented by: Mr.Arvind Nigam, Sr.Advocate instructed
by Mr.Vatsal Kumar, Mr.Amit Choudhary,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. In the plaint filed by the appellant following reliefs were prayed for:-

“A. Pass a decree of declaration, that the plaintiff has an enforceable right against the defendant, to seek continuance of the lease in respect of the building for a period of 15 years, failing which, in terms of the Schedule to the lease-deed dated January 07, 2009, the plaintiff has a right as owner over all goods, machinery, equipment, or other material within its building premises and no such goods, machinery, equipment, or other material can be removed or de-bonded, prior to expiration of the 15 year lease period, without the permission of the plaintiff, and without prejudice to its right to seek recovery of the rental amounts for the remaining period.

B. Pass a decree of mandatory and permanent injunction restraining the defendant No.1 from vacating the premises of the plaintiff, or stopping payment of monthly rentals, till it satisfactorily discharge the liability of ₹43 crores, which plaintiff contracted on account of guarantees and assurances that the same would be financed from monthly rentals spanning 15 years, for which period of time at least the defendant No.1 would occupy the premises and pay the applicable monthly rentals.

C. Issue a decree of mandatory and permanent injunction restraining the defendant No.1 from transferring any material out of the building of the plaintiff, till such time that it has complied with the provisions of the Schedule to lease-deed dated January 07, 2009, i.e. by continuing the lease for a minimum period of 15 years,

D. Issue a decree of mandatory and permanent injunction restraining the defendant No.1 from transferring any material which belongs to the plaintiff, out of the building of the plaintiff,

E. Issue a decree of mandatory and permanent injunction restraining the defendant No.2 to 7 from granting any permission to the defendant No.1 to be allotted a unit in Noida Special Economic Zone till it does not demonstrate to the satisfaction of this Hon'ble Court, its compliance with the applicable criteria and till its dispute with the plaintiff as referred above is resolved,

F. Issue a decree of mandatory and permanent injunction restraining the defendant No.2 to 7 from granting any permission for de-bonding of any goods/machinery/equipment present inside the building.

G. Allow the costs of the present Suit in favour of the plaintiff; and

H. Pass any such other order(s)/decree(s)/direction(s) as this Hon'ble Court may deem fit and proper as the nature and circumstances of this case may required."

2. The suit came up for admission before the learned Single Judge on August 31, 2015 and, as recorded in para 6 of the impugned order dated August 31, 2015, the learned senior counsel for the plaintiff/appellant on instructions stated that the suit was pressed only qua reliefs 'C' and 'D' and as regards other reliefs liberty was prayed, and which was granted, to file a suit in the court of appropriate territorial jurisdiction noting that the suit property was situated at Gurgaon, Haryana. Thereafter, the learned Single Judge considered whether a cause of action was pleaded concerning prayers 'C' and 'D'. The learned Single Judge noted that as regards prayer 'C', the relief was predicated on the cause of action and averments made in the plaint that there is a lock-in period of three years in terms of the lease-deeds which were the foundation of the plaint. The learned Single Judge noted that the facts pleaded in the plaint were that the plaintiff gave on lease to the defendant different portions of the premises on the plot bearing Nos.418 and 419, Phase IV, Khasra Number 63/14/3/1, 16/3/1-17, Village Dundahera, Udyog Vihar Gurgaon, Haryana. A total carpet area of 1,75,000 sq. ft. was leased out to the defendant in terms of the three lease-deeds dated 8.7.2008, 7.1.2009 and 28.7.2009. The first lease-deed was for an area of 88,982 sq. ft., second lease-deed was for an area of 54,584 sq. ft. and the third lease-deed for an area of 26,792 sq. ft. The learned Single Judge noted that the plaintiff claims that the lock-in period in all the three lease-deeds, though mentioned as three years in the relevant clauses comprised in the main part of the lease-deeds, but was actually of a period of 15 years in view of the Schedule which was attached to the lease-deed dated January 7, 2009 i.e the second lease-deed.

3. The learned Single Judge has noted that the Schedule is in fact a site plan with certain notation in the same. The learned Single Judge has noted that there is no Schedule which is found in the other two lease-deeds.

4. In order to appreciate whether the lock-in period was only for three years or for fifteen years on account of the Schedule attached to the lease-deed dated January 07, 2009, the learned Single Judge has reproduced Clauses 3.1 and 3.2 of the lease-deed along with the relevant part of the Schedule to the lease-deed dated January 7, 2009. These relevant Clauses of the lease-deed and the Schedule read as under:-

Clauses 3.1 and 3.2

“3.1 In consideration of the rent and other covenants and conditions on the part of the Lessee hereinafter contained, the Lessor gives on lease and Demised Premises for industrial/commercial or IT/ITES related business as stated herein on a monthly rental as specified in clause 2.1 above, for a period of 58 (fifty eight) months commencing with effect from December 1,2008 (the “Effective Date”), with a minimum lock-in period of 32 months including 3 months notice period. This 58 months lease shall not be terminated by the Lessee before the expiry of lock-in period, inclusive of three month notice unless termination is occasioned on account of a breach of the terms of this lease by the Lessor, which breach is not rectified within 7 days.

3.2 After the expiry of 58 months from the Effective Date, the lease may be extended at the sole option of the Lessee for a further two terms of 5 years each. However after the expiry of initial 31(thirty one) months, the rent for the Demised Premises shall increase by 15% on the last paid rent and after 67 (sixty seven) months rent will be increased on last warm shell rent and no rent escalation will be made on security deposit and furniture fixture. For further renewed period (after 68 months) rent shall be renegotiated. The Lessee shall

express its intention of renewal by giving the Lessor written notice, three months before the expiry of the respective period lease whereupon the lease-deed shall be renewed on the same terms and conditions herein contained, except for the escalation in rent referred to above. At the time of renewal/extension of the lease as provided in this lease, a fresh lease-deed on the same terms and conditions as contained herein will be executed between the Lessor and the Lessee. The payment of stamp duty and registration charges in respect of this lease-deed as well as at the time of renewal/extension will be borne solely by the Lessor.”

Schedule to lease-deed dated January 07, 2009

The lessor is incurring heavy expenditure in order to install machinery and equipment in and otherwise also, to alter the premises for the specific needs of the Lessee. All equipments and/or machinery installed/placed/brought into this area shaded in colour orange shall belong t the Lessor and may not under any circumstances be removed from the premises prior to Lessee continuing the lease for a minimum period of 15 years. No such machinery or equipment shall be removed even if it belongs to the lessee. In case the Lessee fails to continue the lease for 15 years that all such equipments and machinery shall belong to the Lessor alone and the Lessee shall cease to have any right over the same. The rights of the Lessor as per the schedule are without prejudice to its other right and contentions as available in Law, including taking action to recover amount invested pursuant to agreement dated 07th Jan 2009, in the event that the lease are not continue for a period of 15 years by the Lessee.”

(underlining added)

5. The learned Single Judge noted that the contention of the plaintiff was that once in the Schedule to the lease-deed, it is specified that the lease is for a minimum period of 15 years, the lock-in period as mentioned in Clauses

3.1 and 3.2 becomes immaterial and that the period of 15 years specified in the Schedule to the lease-deed will prevail.

6. The learned Single Judge has observed that the lock-in period in terms of all the three lease-deeds including the lease-deed dated January 07, 2009 as per its relevant clauses contained in the main lease-deed, have admittedly already expired and there is no fresh lease-deed of five years which has been executed in terms of Clause 3.2.

7. The learned Single Judge has thereafter given reasons declining to issue summons in the suit qua prayer 'C'. Summons have been issued limited to prayer 'D' and the suit has been dismissed in so far relief 'C' is concerned. The reasoning of the learned Single Judge in paragraph 12 to 16 dismissing the suit in so far relief 'C' was concerned are as under:-

“12. In my opinion, the cause of action pleaded in the plaint and predicated on the basis of the Schedule to the lease-deed dated 7.1.2009 and whereby plaintiff claims that there is a lock-in period of 15 years is a totally misconceived cause of action which is pleaded and the suit on this cause of action is liable to be dismissed on the admitted facts. The admitted facts are that the clauses in the main lease agreement as reproduced above specified that the lock-in period is not of 15 years but the lock-in period is only of 32 months. The lock-in period under the lease-deed dated 7.1.2009 has already expired by 7.1.2012 taking the lock-in period as 36 months, though in Clause 3.1, the minimum lock-in period is stated to be 32 months including three months' notice period.

13. Once the lease-deed including the lease-deed dated 1.7.2009 is for a larger period of approximately 5 years with the lock-in period of a lesser period of three years and admittedly no lease-deed has been executed for the next period of five years in terms of Clause 3.2, there does not exist any fresh contract of a lease-deed for the fresh five years so that a lock-in period within that fresh/additional five years has come into operation. As of date therefore there is no lock-in period

applicable to the defendant/tenant after the expiry of the first lock-in period of three years w.e.f 7.1.2009.

*14. It is settled law with respect to interpretation of documents that an earlier clause will prevail over a later clause in case of conflict. In this regard, reference can be made to a judgment of a learned Single Judge of this Court in the case of **Smt. Kanan Bakshi Vs. Sh. Atul Bali and Ors. 161 (2009) DLT 321** and a judgment of a Division Bench of this Court in the case of **Sharda Nath Vs. Delhi Administration & Ors, 149 (2008) DLT 1**. Since the later part of the lease-deed being the Schedule of the lease-deed containing a clause/notation for a minimum period of 15 years is in direct conflict with the earlier Clauses 3.1 and 3.2 which specify that the lease-deed is only for a period of 5 years initially with only an entitlement of further renewals of five years each to the lessee at its option, and for which fresh renewals of five years fresh lease-deed has to be executed but has not yet been executed, the lease-deed in question therefore will only be of 5 years in view of the earlier Clauses 3.1 and 3.2 of the lease-deed and cannot be for 15 years as per the notation made in the later part of the lease-deed being the Schedule attached to the lease-deed. In fact, I may note that the Schedule is not a typical schedule to a document but the Schedule in question is a part of a site plan which is attached to the lease-deed.*

15. In my opinion, therefore, plaintiff cannot lay a claim before this Court in the form of prayer (C), and on the admitted facts the suit is to be dismissed on the predicated cause of action that there still continues a lock-in period and the defendant/lessee has to continue for the lock-in period inasmuch as there is at present no lock-in period and the lock-in period under the existing lease-deed has already expired.

16. The suit is therefore dismissed so far as relief (C) is concerned.”

8. The instant appeal lays a challenge to the impugned order dated August 31, 2015 in so far the suit filed by the appellant concerning prayer ‘C’ has been dismissed. The appeal came up for admission on September

10, 2015. Learned counsel appeared for the respondent on said date. Hearing was deferred for September 16, 2015 calling upon the appellant to produce in Court the registered lease-deed dated January 07, 2009 because learned counsel for the respondent stated that the certified copy of the registered lease-deed dated July 07, 2009 with the respondent is sans the schedule on which the appellant was relying. On September 16, 2015 the learned counsel for the appellant conceded that the registered copy of the lease-deed dated January 07, 2009 is sans the schedule on which the appellant relies, but stated that as a matter of fact the schedule is an integral part of the lease-deed. Original was produced before us which shows that the schedule on which the appellant places reliance upon has been signed by the Director of the respondent as also the Director of the appellant. The writing in the schedule is as noted by us hereinabove in paragraph 4. At the same time, learned counsel for the respondent produced the second copy of the lease-deed in question with his client, which also contains the schedule but sans the writing on which the appellant relies. This schedule attached with the second copy of the lease-deed with the respondent also bears the signatures of the Director of the appellant and the respondent. Learned senior counsel for the respondent urged that the appellant has used the blank space on the schedule to type out the contents noted in paragraph 4 above with the even design to try and build up a case.

9. We need not decide whether the schedule to the lease-deed in question relied upon by the appellant is the one which was signed by the parties or the schedule to the lease-deed in question relied upon by the respondent is the one which was signed by the parties for the reason this is a disputed question of fact and can be resolved only after the evidence is led. We also need not decide what is the effect of the lease-deed being registered without the schedule being registered. We also need not decide the issue raised by

learned counsel for the respondent that the lease in question being required to be compulsorily registered, what would be the effect of the schedule to the lease-deed not being registered.

10. In our opinion we need not also decide whether the view taken by the learned Single Judge concerning the interpretation of the lease-deed by looking at clause 3.1 and 3.2 thereof as also the language of the schedule in the lease-deed relied upon by the appellant is legally sound, because in our opinion once appellant withdrew the suit with liberty to institute a suit in the Court of appropriate jurisdiction in Gurgaon concerning prayer 'A', the suit could not proceed in Delhi qua prayer 'C' and had to be dismissed either as withdrawn and if the appellant, after withdrawing prayer 'A' insisted on the suit proceeding qua prayer 'C', the suit had to be dismissed qua prayer 'C'.

11. The reason for our view is that decree sought in prayer 'A' was to declare that the plaintiff has an enforceable right against the defendant, to seek continuance of the lease in respect of the building for a period of 15 years, failing which, in terms of the Schedule to the lease-deed dated January 07, 2009, the plaintiff has a right as owner over all goods, machinery, equipment, or other material within its building premises and no such goods, machinery, equipment, or other material can be removed or de-bonded, prior to expiration of the 15 year lease period, without the permission of the plaintiff, and without prejudice to its right to seek recovery of the rental amounts for the remaining period. Once the declaratory part concerning the lease-deed dated January 07, 2009 was withdrawn, the question of the injunctive part thereof as prayed for in prayer 'C' could not continue.

12. Since the appellant withdrew the suit qua prayer 'A' with liberty to approach the Court of appropriate territorial jurisdiction in Gurgaon, the appellant should have been advised to withdraw the suit qua prayer 'C' as

well for the reason there would be a hiatus if the appellant is permitted to litigate before a Court of competent territorial jurisdiction qua prayer 'A' and instant suit is dismissed qua prayer 'C'. We would be failing not to highlight that the substratum of both prayers is the same. The substratum is the plaintiff's interpretation to the lease-deed with reference to the language of the recital in the schedule relied upon by the appellant and the language of clause 3.1 and 3.2 thereof.

13. Therefore, we dispose of the appeal maintaining the summons issued in the suit by the learned Single Judge limited to prayer 'D'. Since the learned Single Judge granted permission to the appellant to withdraw the suit concerning prayer 'A' with liberty to institute a suit for same prayer in the Court at Gurgaon, we dismiss the suit qua prayer 'C' but by granting liberty to the appellant to seek said relief if a suit is filed at Gurgaon concerning prayer 'A'. Needless to state the reasoning given by the learned Single Judge qua prayer 'C' would not be treated as binding opinion by a Court and the Court at Gurgaon would be at liberty to decide the issue concerning the interpretation to the lease-deed as also other issues which arise concerning the authenticity of the schedule to the lease-deed.

14. No costs.

CM No.19007/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 21, 2015

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