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

% *Date of Decision: October 14, 2015*

+ **RFA(OS) 96/2015**

AMIT BHALLA & ORS

..... Appellants

Represented by: Mr.Rajat Navet, Advocate with
Ms.Prachi V.Sharma, Advocate

versus

BHARAT RAO

..... Respondent

Represented by: Ms.Nidhi Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

RFA(OS) 96/2015

1. By a registered lease-deed dated January 21, 2013, flats bearing No.1216 to 1220 situated on the 12th floor of a building known as Naurang House, 21 Kasturba Gandhi Marg, New Delhi were let-out by the appellants to the respondent with effect from January 15, 2013. An interest free security deposit in sum of ₹27,60,000/- (Rupees Twenty Seven Lac Sixty Thousand only) was received by the appellants from the respondent. Though the lease was for a period five years, lock-in period was of one year i.e. after one year the respondent could terminate the lease.
2. On January 15, 2014 the respondent gave notice that the lease would be determined with effect from April 15, 2014 and prayed that security

deposit be refunded when possession would be handed over. The appellants raised an issue of the property let-out as also fittings and fixtures provided. As per the appellants the damage caused was beyond the normal wear and tear. The appellants claimed a right to adjust such sum as would be required to restore the tenanted premises as also the fixtures to their original condition and required the respondent to join in the estimation of the amount required. The respondent took the stand that except for the usual wear and tear there was no damage to the tenanted premises and/or fixtures. Stalemate ensued. The respondent proceeded to file a suit under Order 37 of the Code of Civil Procedure and pleaded that the foundation of the suit was the written lease agreement between the parties.

3. Learning of the suit being filed and listed for admission before the learned Single Judge on May 02, 2014, counsel for the appellants appeared and agreed that as prayed by the respondent a local commissioner be appointed to inspect the tenanted premises. The order passed by consent of the parties concerning appointment of a local commissioner and his mandate reads as under:-

“Both the counsel submit that the dispute can be narrowed down if a local commissioner is appointed to visit the subject premises and take photographs of the premises in the presence of both the parties with a view to assess the condition of the premises. Counsel also submits that simultaneously in the presence of the local commissioner, the possession will be handed over to defendants, which shall be accepted by the defendants.”

4. Local Commissioner inspected the tenanted premises and has given a report which is favourable to the respondent. On the day when the local commissioner visited the tenanted premises i.e. May 03, 2014, possession

of the tenanted premises was handed over by the respondent to the appellants. The appellants have paid ₹16,37,211/- (Rupees Sixteen Lacs Thirty Seven Thousand Two Hundred Eleven only) by return of security deposit and claimed to have adjusted ₹11,22,789/- (Rupees Eleven Lacs Twenty Two Thousand Seven Hundred Eighty Nine only) on account of expenses which appellants claim would be incurred to restore the tenanted premises to their original condition after taking into account the normal wear and tear as also rent and maintenance for the month of May 2014, for which reason given by the appellants is that it took the appellants 20 days to restore the premises which became available to be let-out on June 01, 2014. We note that out of ₹11,22,789/- (Rupees Eleven Lacs Twenty Two Thousand Seven Hundred Eighty Nine only) retained by the appellants from the security deposit, a sum of ₹5,16,855/- (Rupees Five Lacs Sixteen Thousand Eight Hundred Fifty Five only) is for rent for the month of May 2014 and ₹14,027/- (Rupees Fourteen Thousand Twenty Seven only) towards maintenance charges for the same period.

5. In the application seeking leave to defend the appellants have raised objections to the report of the learned local commissioner. The defence taken in the leave to defence is as already aforenoted.

6. Vide impugned order dated July 22, 2015, IA No.18393/2014 filed by the appellants seeking leave to defend has been dismissed and the reason given by the learned Single Judge is that the order dated May 02, 2014 was binding on the parties with respect to the report of the learned local commissioner and since the report was in favour of the respondent, the suit had to be decreed.

7. Two issues arise in the appeal. The first is whether the suit was

maintainable under Order 37 of the Code of Civil Procedure. Second whether the impugned decree could be passed with reference to the report of the local commissioner.

8. The lease agreement dated January 21, 2013 is an admitted document and that monthly rent payable is ₹4,60,000/- (Rupees Four Lacs Sixty Thousand only) plus maintenance charges. As per clause 7 of the lease-deed, refundable security deposit in sum of ₹27,60,000/- (Rupees Twenty Seven Lacs Sixty Thousand only) has been received by the appellants from the respondent, but upon the term that the refund would be subject to the possession being returned sans any damage caused to the tenanted premises save and except which would be occasioned due to normal wear and tear.

9. As per the respondent the suit was maintainable because a liquidated demand arising out of a written document was the foundation of the suit and that under Order 37 Rule 2(b)(i) of the Code of Civil Procedure a suit raising a liquidated demand on a written contract was maintainable as a summary suit.

10. The learned Single Judge has not dealt with this issue because the suit has been decreed with reference to the report of the local commissioner and thus we do not have the benefit of the reasoning of the learned Single Judge on this aspect of the matter.

11. It is trite that a liquidated demand has to be concerning an amount which can be made certain by mathematical calculations from factors which are or ought to be in possession or knowledge of the party to be charged. It must thus exclude demands which need to be quantified after determining disputed facts.

12. In the instant case the written agreement between the parties does not

create any liquidated demand claim concerning the security deposit because its refund is upon a condition of the tenanted premises being returned in good condition and without any damage caused other than occasioned due to normal wear and tear i.e after determining disputed facts..

13. But law permits a suit to be decreed on an admission and a suit filed as a summary suit, even if not maintainable as a summary suit and hence liable to be converted into an ordinary suit may result in a decree being passed, if an admission surfaces. We take guidance from the decision of the Supreme Court reported as (2009) 2 SCC 426 Malwa Strips Pvt.Ltd. vs. Jyoti Ltd. in which a suit, maintainability whereof as a summary suit was in doubt, but it was held that it was possible to sustain the decree on an admission. Though on facts the Supreme Court deemed it to be a fit case where the decree passed was set aside upon a condition of the defendant depositing ₹35,00,000/- (Rupees Thirty Five Lacs only).

14. Learned counsel for the respondent cites a decision pronounced by a learned Single Judge of this Court reported as 1999 (49) DRJ 342 Ms.Veena Mehra vs.International Amusement Ltd.& Anr. in which a decree was passed without a trial on the report of a local commissioner.

15. Said decision would evince that the mandate of the local commissioner was to submit a report with reference to fair market rental of a property and no objections were filed to the report.

16. The decision would not apply because in said case the local commissioner was to hold an inquiry and then submit a report. The report of the local commissioner was based upon rent agreements in the colony where the subject property was situated i.e. after gathering evidence and holding an inquiry. No objection was filed to the report.

17. In the instant case objections have been filed by the appellants to the report of the local commissioner in the application seeking leave to defend.

18. The consent on which local commissioner was appointed interweaves within the mandate of the local commissioner an agreement of the parties concerning the mandate. Its contents have been noted by us in paragraph 3 above. We do not find any consent that the parties bound themselves to the report of the local commissioner. The consent was that, to narrow down the disputes, the local commissioner may visit the tenanted premises and submit a report. The parties clearly envisaged that the report of the local commissioner would be useful to narrow down the dispute and not to resolve the dispute itself. The value of the report was thus merely evidentiary.

19. It is settled law that the value of the report of the local commissioner whose mandate is to inspect a site and give a report is equivalent to that of an evidence and no more.

20. Under the circumstances the impugned order is set aside. IA No. 18393/2014 filed by the appellants seeking leave to defend is allowed without any condition. The consequential decree passed is also set aside.

21. The suit is restored. The appellants shall file a written statement without four weeks from today. Documents on which appellants would rely for their defence shall be filed along with the written statement. Replication thereto if any intended to be filed shall be filed within four weeks thereafter. Documents on which respondent would rely for their case shall be filed along with the replication.

22. The suit shall be listed before the learned Joint Registrar on December 22, 2015 for parties to admit/deny the documents filed. Thereafter, the suit

shall be listed for settlement of the issues before the learned Joint Registrar.

23. Parties shall bear their own costs in the appeal.

CM No.23297/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 14, 2015

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