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

+ RFA 812/2015

SIDDHARTHA KATHPAL

..... Appellant

Through: Mr. Onkar Prasad, Advocate

versus

SANDEEP GUPTA & ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **02.12.2015**

CM No.28992/2015 (Exemption)

1. Allowed subject to just exceptions.

RFA 812/2015 and CM No.28991/2015 (stay) and CM No.28993/2015 (condonation of delay of 37 days in re-filing)

2. This is an appeal against judgment dated 03.08.2015. By virtue of the impugned judgment, the suit filed by the respondents / plaintiffs for recovery of money was decreed. The appellant/ defendant sought recovery of rent, maintenance, water and electricity charges with interest qua property described as: Shop No. 7 & 8, G.D. ITL, North, Ex. Tower, A-09, District Centre, Wazirpur, Netaji Subhash Place, Delhi (hereafter referred to as the subject property).

2.1 Admittedly, the suit property was let out by the respondents / plaintiffs via their attorney, one, Mr. Ved Prakash Gupta.

2.2 The lease deed executed between the parties was dated 19.01.2011. This was a registered lease deed. As per the terms of the lease deed, rent at the rate of Rs.90,000/- p.m. was required to be paid with effect from

01.02.2011.

2.3 The appellant/ defendant stopped paying rent from July 2011, principally, on the ground that since the business was not good, he could not make use of the subject property, which was admittedly, a commercial premises.

2.4 It is in this context that the respondents / plaintiffs claimed rent at the rate of Rs.90,000/- p.m. from July 2011 till June, 2012 along with interest at the rate of 22% p.a. Furthermore, arrears of maintenance, electricity and water charges amounting to Rs.79,749/- were also claimed with interest at the rate of 24%.

3. The only defence which, the appellant / defendant set up before the court below was that he was entitled to vacate the subject property and hand over possession after giving a prior notice of 90 days. According to the appellant / defendant, notice was given in that behalf vide letter dated 14.09.2011 (Ex. DW1/1).

4. The trial court based on the pleadings filed by the parties, framed the following issues :-

“(i). Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD

(ii). Whether the suit has been properly filed by the plaintiff? OPP

(iii). Whether the plaintiff is entitled for a decree of recovery of Rs.12,68,649/- as prayed in prayer clause (a) of the plaint? OPP

(iv). Whether the plaintiff is entitled to interest on the amount of Rs.11,88,900/-, if so, then at what rate and for what period? OPP

(v). Whether the plaintiff is entitled to interest on the amount of Rs.79,749/-, if so, then at what rate and for what period? OPP

(vi). Relief.

5. The trial court, after perusing the evidence on record, came to the conclusion that the respondents / plaintiffs were entitled to a recovery of

monies towards rent in the sum of Rs.11,88,900/- with interest at the rate of 8% p.a. from the date of institution of the suit till realization.

5.1 Furthermore, the trial court awarded interest on the sum of Rs.79,749/- from the date when the bills were issued (Ex. PW1/13 and PW1/14).

5.2 In sum, the suit of the respondents/ plaintiffs was decreed for a sum of Rs.12,68,649/- alongwith interest.

5.3 The learned counsel for the appellant/ defendant relies upon letter dated 14.09.2011 (Ex. DW1/1) to contend that no rent was payable beyond that date i.e. 14.09.2011.

6. Before the trial court, a similar defence was taken, based on the aforesaid letter. The trial court, however, came to the conclusion that the keys to the subject property were handed over in court by the appellant / defendant only on 07.01.2013. The trial court has also returned finding of fact that there is no proof of service of the said letter and that the said letter was silent with regard to the intent to vacate the subject property.

6.1 The learned counsel for the appellant / defendant has not been able to draw my attention to any document which would persuade me to come to a conclusion that these findings were either not borne out from the material on record or, were perverse.

7. In these circumstances, I am not inclined to interfere with the impugned judgment. Accordingly, both, the appeal and interim application, are dismissed.

RAJIV SHAKDHER, J

DECEMBER 02, 2015

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