# IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO. 88 OF 2014**

M/s. Sai Investments,
A sole Proprietary concern of
Mrs. Shipra Bansal,
Through its Proprietor
Mrs. Shipra Bansal,
wife of Shri Kamal Piyush,
Aged 44 years, business lady,
R/o. 10, First Floor, Birbal Road,
Jangpura Extension,
New Delhi – 110 014. … Appellant

***Versus***

Bharti Shipyard Limited,
A ciompany constituted under the
Companies Act, 1956, with its
Registered Office at
302, Wakefield House,
3rd floor, Sprott Road,
Ballard Estate,
Mumbai 400 001. … Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Karpe, Advocate for the Appellant.

Mr. E. O. Mendes, Advocate for the Respondent.

**Coram :-** **F. M. REIS,**
**K. L. WADANE, JJ.**

**Date :** **17th March, 2016**

**ORAL JUDGMENT** *(Per F. M. REIS, J.)*

Heard Shri J. E. Coelho, Pereira, learned Senior Advocate appearing for the Appellant and Shri E. O. Mendes, learned Counsel appearing for the Respondent.

2. The above Appeal challenges the Judgment and Decree dated 28.07.2014 passed in Special Civil Suit no. 4/2013 by learned Senior Civil Judge, Vasco da Gama, whereby the suit filed by the Appellants was partly decreed and the Respondents were directed to pay to the Plaintiffs a sum of Rs.10,89,000/- as arrears of payment of rent for the period from May 2012 to July 2012 with interest at the rate of 10% per annum from 31.07.2012 to the date of the payment. The Respondents were also directed to pay to the Appellants a further sum of Rs,.93,678/- as arrears of rent from 01.08.20125 to 08.08.2012 together with interest at the rate of 10% per annum from 31.08.2012 till the date till the date of payment. The Respondents were also directed to pay the arrears of the electricity charges till the date of the suit together with costs.

3. Briefly, the facts of the case as stated by the Appellants are that the Appellants who are the original Plaintiffs filed the suit against the Respondents who are the original Defendants, inter alia, seeking the aforesaid reliefs granted by learned Trial Judge besides a further sum of Rs.7,50,000/- as mesne profits and also for a relief to direct the Respondents to vacate the suit shed, and also that the Respondents be directed to pay a sum of Rs.7,50,000/- as mesne profits for the period from 09.08.2012 to 08.09.2012 with interest at the rate of 18% per annum from 09.08.2012 till payment and realisation and a sum a Rs.30,000/- per day from 09.09.2012 till the Respondents vacate and surrender the suit shed with interest at the rate of of 18% per annum from 09.09.2012 till the same is paid and further to refund a sum of Rs.1,38,600/- towards TDS as well as electricity charges. It is the contention of the Appellants that in Sancoale Industrial Estate Development

Corporation, there are different plots which include plots bearing no. 105 admeasuring an area of 1000 square metres, plots bearing nos. 106, 107, 113 and 1158 taken together admeasuring 4000 square metres, plot bearing no. 113 admeasuring 1000 square metres which are collectively known as Leasehold plots wherein there is a shed admeasuring 840 square metres on the plot bearing nos. 106, 107, 114 and 115, D1-4 measuring 1000 square metres on plot no. 113 and D-1-5 admeasuring 436 square metres on plot no. 105 which sheds are referred to as the suit sheds. It is further their case that M/s. Varama Handling Agencies were Lessees of the said Leasehold plots and owners of the suit shed who had leased them to the Respondents. It is further their case that upon execution of the Lease Deed, the said M/s. Varama Handling Agencies and the Goa Industrial Development Corporation, transferred the said plots in the Leasehold plots along with the ownership rights in the suit sheds in favour of the Appellants herein. It is further their case that the Appellants having acquired the rights in respect of the said Leasehold plots and the ownership of the suit sheds, executed a Lease Deed dated 13.10.2011. extending the Lease of the Respondents in respect of the said Leasehold plots and the suit shed for a period from 01.09.2011 upto February 2012 on a monthly rent of Rs,.3,30,000/- with an obligation to deposit Rs.9,90,000/- by way of security deposit and one monthly advance rent of Rs.3,30,000/-. It is further their case that the Respondents committed a breach of the said Lease Deed in the first month itself and continued the breach to the date of the filing of the suit. It is also their case that the Respondents did not pay or deposit with the Appellants the compulsory security deposit of Rs.9,90,000/- as was required to in terms of the stipulation of the Lease Deed dated 13.10.2011. Thereafter, by a legal notice dated 18.07.2012, the Respondents were called upon to vacate and handover the possession of the suit shed along with fixtures and fittings within a period of eight days from the date of receipt of the said notice. The Respondents were also called upon to pay the unpaid monthly rent of Rs.3,63,000/- for the months of April, May and June, 2012 proportionate to the number of days the suit sheds were occupied by the Respondents. It was also stated in the notice that in case the Respondents default in paying the rent and continued the possession, such possession would be unauthorised and in which case the Respondents would be liable to pay Rs.25,000/- per day for unauthorised occupation of the suit shed. It is further their case that on being served with the summons issued by the learned Trial Court, the Respondents filed their written statements, inter alia, admitting the execution of the said Lease Deed. It is further their case that all the bills were settled in accordance with the bills raised by the Appellants from time to time and that in terms of the contract, the Appellants were not seeking for specific performance of the contract nor sought to make good the Contract. It is also their case that the Respondents could not process the payment of the rents due in the absence of the bills from the Appellants which was mandatory by law. It is further the contention of the Appellants that by an application dated 24.12.2012 filed under Order XV-A, Rule 1 of C.P.C., the Appellants, inter alia, prayed that during the pendency of the suit, the Respondents be directed to deposit a sum of Rs.22,95,678/- and continue to deposit a sum of Rs.9,00,000/- per month. It is further their case that the learned Judge by Order dated 04.05.2013,, directed the Respondents to deposit the arrears to the tune of Rs.41,10,678/- as on May, 2013 and the rent to the tun e of Rs.3,99,300/- per month for the succeeding period. As the Respondents defaulted in the payment of the said amount, the Appellants filed an application to strike off the defence of the Respondents and by Order dated 11.02.2014, the defence of the Respondents was struck off.

The Appellants, thereafter, examined their attorney and the learned Judge by the impugned Judgment, partly decreed the suit and refusing the relief of handing over possession of the Leasehold plots and the suit shed besides further mesne profits as claimed by the Appellants. Being aggrieved by the said Judgment and Decree, the Appellants have preferred the present Appeal.

4. Shri J. E. Coelho Pereira, learned Senior Advocate appearing for the Appellants, has pointed out that the Respondents have defaulted in payment of the rents of the suit shed and the Leasehold plots which the Respondents were liable to pay the arrears of rent and as such the Respondents were liable to be evicted from the disputed premises. Learned Senior Advocate further pointed out that the learned Judge has erroneously come to the conclusion that there was no clause in the Agreement which would entitled the Appellants to seek eviction of the Respondents from the suit premises. The learned Senior Advocate has thereafter taken us through the provisions of the Transfer and Property Act to substantiate his contention that in cases when there is a breach of the terms of the Agreement, the Appellants are entitled to terminate the Agreement and call for the delivery of possession. The learned Senior Advocate has thereafter taken us through the impugned Judgment passed by the learned Judge and pointed out that the learned Judge has misconstrued the Agreement as well as the Transfer of Property Act to come to the conclusion that the Appellants were not entitled for the eviction of the Respondents of the subject premises. The learned Senior Advocate further submits that as the occupation of the Respondents is unauthorised, the Appellants are entitled for mesne profits as well as the compensation as prayed for and

refused by the learned Trial Judge in the impugned Judgment. The learned Senior Advocate as such pointed out that the impugned Judgment passed by the learned Judge to the extent he refuses relief claimed by the Appellants be quashed and set aside and the suit filed by the Appellants be decreed in toto. The learned Senior Counsel appearing for the Appellants, has relied upon the Judgment of the Supreme Court reported in ***1989 (2) SCC 686*** in the case of ***Modern Hotel, Gudur, vs. K. Radhakrishnaiah, (1999) 4 SCC 545*** in the case of ***Delta International Ltd., vs. Shyam Sundar Ganeriwalla & anr.*** and ***AIR 1976 SCC 588*** in the case of ***Rattan Lal vs. Vardesh Chander & Ors.***

5. On the other hand, Shri E. O. Mendes, learned Counsel appearing for the Respondents, has submitted that even though the Respondents had sought time to deposit the rents in this Court, there was default committed by the Respondents in depositing such amounts. Learned Counsel further pointed out that the Respondents have not given instructions to the learned Counsel in the above Appeal. The learned Counsel further pointed out that there is no clause in the Lease Agreement which would entitle the Appellants to terminate the Lease Agreement and call for the delivery of possession of the subject premises. Learned Counsel further pointed out that the learned Trial Judge was justified to refuse reliefs as prayed for. Learned Counsel as such pointed out that the Appeal be rejected.

6. We have carefully considered the submissions of the learned Counsel and we have also gone through the records. On the basis thereof, the following points for determination arises in the present Appeal :

## POINT FOR DETERMINATION

(1) Whether the learned Judge was justified to refuse reliefs of restoration of the subject premises to the Appellants and the compensation as claimed for by the Appellants and based on the Lease Deed executed by the parties?

7. On going through the plaint filed by the Appellants, we find that there are specific averments therein to point out that the Respondents have defaulted in the payment of rent. It is further pleaded that a legal notice was issued to the Respondents terminating the Lease Agreement on account of the default in the payment of rent and that such notice was received by the Respondents on 31.08.2012 and that the Respondents had not sent any reply to such notice. On perusal of the written statements filed by the Respondents, the contents of para 15 of the plaint which disclose that the notice was not replied by the Respondents, has not been disputed. The only contention of the Respondents is that as the bills were not raised, the payment of rent were not made. Looking into the defence of the Respondents which has otherwise been struck off, the factual aspects in the plaint have not been specifically disputed. In any event, as the defence has been struck off, the facts in the plaint would have to be accepted on its face value. An affidavit in evidence was also filed by the Appellants along with the requisite documents. In the cross examination, it was clearly mentioned that the notice has terminated the lease as on the date of the notice. It is further stated that after raising the rent bills, Pw.1 had to chase the Respondents for the rents and that after the date of termination of the lease, no rent bills have been raised. It is also pointed out that

the Appellants have filed tax returns wherein the TDS has been included.

8. On perusal of the Lease Agreement dated 13.10.2011, we find that it is clearly stipulated therein that the monthly rent during the leas period is Rs.3,30,000/- for the first year up to February 2012 and 10% increase for each year thereafter beginning from February every year besides paying all applicable taxes, service tax, etc. The Lease Agreement also provides that the deposit of Agreement would be Rs.9,90,000/- would be paid byu the Respondents with the Appellants. Clause 2(f) of the said Lease Agreement provides that without the prior permission in writing of the Appellants, the Respondents will not vacate or depart from the said premises without having made adequate provisions for the payment of rent reserved and observing and performing the terms of the Lease Agreement. Clause 4 of the said Agreement further provides that the Lease can be terminated by three months advance written notice. On perusal of the said terms of the Agreement, it clearly provides that there is a right of termination reserved to the parties. The Agreement further specifies that the Respondent-tenant would have to pay the rents specified therein on the dates mentioned therein. The Agreement also states that in case of non-payment of rent, the Appellants would be entitled to refuse to allow the Respondents to vacate the premises. The fact that the Respondents had defaulted in the payment of rent is not disputed by the Appellants. In terms of Section 111(g) of the Transfer of Property Act, the lease of immoveable property determines by forfeiture when an expressed condition is breached and the Lessor is entitled to re-enter such premises. As pointed out herein above, when the rent reserves is not paid by the Lessee, the Appellants are entitled to re-enter the premiss. Apart from that, Section 108 (A)(c) of the Transfer

of Property Act provides that Lessor shall be deemed to contract with the Lessee that if the latter pays the rent reserved by the Lease and performs the Contract binding on the Lessee, he may hold the property during the time limited by the Lease without interruption. As pointed out herein above, the fact that there was a default in the payment of rent has not been disputed by the Respondents. Despite of giving opportunities to deposit the rent, the Respondents failed to avail of such opportunities even before this Court. The specific directions to the Respondents to pay the rents were defaulted by the Respondents in payment of such rent. Apart from that, the Lease Agreement clearly provides that a party can terminate the Agreement of Lease. In the present case, even assuming the notice period as stipulated in the legal notice is not complied with, the receipt of summons in the suit can itself be treated as a notice for the purpose of such determination of the Lease in the facts of this case.

9. The learned Trial Judge whilst passing the impugned Judgment has found that there was no forfeiture clause in the Agreement which would entitle the Appellants to terminate the Lease. Reading the Lease Agreement as a whole, we find that the learned Trial Judge has misconstrued the terms of the Agreement specially the clause 2(f) and the remaining clauses specified above, wherein the right of forfeiture has been clearly curled out. In any event, the lease period is itself over and, as such, the Respondents are not entitled to remain in possession of the disputed premises. The learned Judge as such was not justified to refuse the relief to the Appellants to direct the Respondents to vacate the subject premises. As far as the payment of compensation is concerned, the learned Judge has directed the payment of rents up to 08.08.2012 and refuse thereafter. We find no justification on

that count to refuse the payment of such amounts as the occupation of the Respondents after the termination of the Lease is unauthorised. The question of mesne profits as claimed by the Appellants when there is no material on that count is not justified but, however, the Respondents would be liable to pay the compensation in the account of the monthly rents as payable on the date of the termination of the Lease. In terms of the Leas Agreement, the rent was Rs.3,30,000/- for the first year and increased by 10% for the next year. Hence, as on the date of the termination of the Lease, the Appellants were entitled to claim a sum of Rs.3,63,000/- per month from the Respondents. Hence, we quantify the amount at a sum of Rs.3,63,000/- from the date of termination upto the actual delivery of the possession of the subject premises. The point for determination is answered accordingly.

8. In view of the above, we pass the following :

**ORDER**

(I) The Appeal is partly allowed.

(ii) The impugned Judgment and Decree dated 28.07.2014, stands modified.

(iii) Besides the reliefs granted by the learned Trial Judge therein, the Respondents are directed to handover the possession of the disputed premises to the Appellants.

(iv) The Respondents are further directed to pay a sum of Rs.3,63,000/- per month from July 2012 upto actual delivery of possession to the Appellants.

(v) The Appeal stands disposed of accordingly with costs.

(vi) Decree be drawn accordingly.

**K. L. WADANE, J.** **F. M. REIS, J.**

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