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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 3402/2015, IA No.24556/2015 (u/O 39 R-1&2 CPC) & IA No.24558/2015 (u/O 2 R-2 CPC)

ASHOK ARORA & ANOTHER Plaintiffs

Through: Mr. Kunal Kher, Adv.

Versus

VASAN HEALTH CARE PVT LIMITED Defendant

Through: Mr. Manish Kumar, Adv. with Mr. Vijay Kumaran Dwarkanathan, Director of the defendant.

AND

+ EX.P. 105/2016

ASHOK ARORA & ANR Decree Holders

Through: Mr. Kunal Kher, Adv.

Versus

VASAN HEALTH CARE PVT LTD Judgement Debtor

Through: Mr. Manish Kumar, Adv. with Mr. Vijay Kumaran Dwarkanathan, Director of the defendant.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.11.2016

1. This order is in continuation of the earlier order dated 25th October, 2016.
2. Though Dr. M. Arun, Chairman of the defendant / judgment-debtor is not present but Mr. Vijay Kumaran Dwarkanathan, Director of the defendant / judgment-debtor is present and states that the defendant / judgment-debtor is in financial crisis and is holding meetings with its bankers. On enquiry, it is stated that the defendant / judgment-debtor does not own any immovable

assets and most of the moveable assets of the defendant / judgment-debtor are either on lease or have already been attached by the lender banks. On specific query as to the moveable assets attached vide order in this suit and of which the Court Commissioner appointed has filed an inventory, it is stated that the same are also either leased or hypothecated to the lender banks.

3. I have enquired from the counsel for the defendant / judgment-debtor that if the defendant / judgment-debtor is not in a position to pay the rent, why it should not be ordered to vacate the property.

4. The counsel for the defendant / judgment-debtor states that the defendant / judgment-debtor has already vacated the basement and ground floor and is now in possession of only the first and second floors and seeks three months time for vacating the said first and second floors.

5. Once the defendant / judgment-debtor is neither paying arrears of rent nor current rent, it cannot be granted time of three months.

6. A decree for ejectment is accordingly passed in favour of the plaintiffs / decree-holders and against the defendant / judgment-debtor for recovery of possession of the entire portion of property built on plot No.20, Block A1, Janakpuri, New Delhi still in possession of the defendant / judgment-debtor.

7. The defendant / judgment-debtor is granted time till 30th November, 2016 to itself vacate the property.

8. However if the defendant / judgment-debtor does not so vacate the property, warrants of possession be issued for recovery of possession of the property on 1st December, 2016.

9. The O.S.D. to ensure that a Bailiff is allotted to the plaintiffs / decree-holders for 1st December, 2016 for execution of the warrants of possession.
10. In the circumstances aforesaid, no need to keep the suit pending for recovery of the monetary claim also is felt.
11. It is not in dispute i) that the rent last paid by the defendant / judgment-debtor to the plaintiffs / decree-holders was at the rate of Rs.19,55,000/- per month for the entire property for recovery of possession whereof this suit was filed; ii) that the rent has not been paid from 1st April, 2015, and; iii) that the defendant / judgment-debtor vacated the basement and ground floor of the property on 1st July, 2016.
12. I have enquired from the counsels as to how much rent for the first and second floors which remain in possession of the defendant / judgment-debtor with effect from 2nd July, 2016 was payable.
13. While the plaintiff no.2 present in person states that a sum of Rs.12,00,000/- per month was agreed to be paid, Mr. Vijay Kumaran Dwarkanathan, Director of the defendant / judgment-debtor states that no agreement was reached.
14. In my view, it would be just and appropriate if for the period with effect from 2nd July, 2016 till the date of vacation, the rent / damages for use and occupation of the said first and second floors is fixed at 50% of the last agreed rent of Rs.19,55,000/- per month i.e. @ Rs.9,77,500/- per month.
15. Accordingly, a decree is passed in favour of the plaintiffs / decree-holders and against the defendant / judgment-debtor for recovery of the rent / damages calculated at the rate of Rs.19,55,000/- per month w.e.f. 1st April,

2015 to 1st July, 2016 and at the rate of Rs.9,77,500/- per month with effect from 2nd July, 2016 till the date of vacation.

16. A decree is also passed in favour of the plaintiffs / decree-holders and against the defendant / judgment-debtor for mandatory injunction directing the defendant / judgment-debtor to on or before 31st March, 2017 hand over the certificates of the amounts deducted from the rent paid from 2013 onwards towards Tax Deducted at Source (TDS). If the said certificates are not handed over by the defendant / judgment-debtor, a decree is passed in favour of the plaintiffs/decrees-holders and against the defendant/judgment-debtor for recovery of further amount of Rs.44,46,869/- towards TDS.

17. The plaintiffs / decree-holder shall also be entitled to interest on the aforesaid decreed amounts with effect from today and till the date of payment at the rate of 10% per annum.

18. The plaintiffs / decree-holders shall also be entitled to cost of the suit.

19. The suit as well as execution petition are disposed of with liberty to the plaintiffs / decree-holders to apply for execution of the decree if remains unsatisfied.

20. All pending applications are also disposed of.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

NOVEMBER 16, 2016

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