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

% *Date of Judgment : 10.05.2016*

\+ CM(M) 603/2015

KRISHNA RANI GROWER & ORS

..... Petitioners

Through Mr. Sanjay S. Chhabra and Ms.Aishvary Vikram, Advs.

versus

M/S BATA INDIA LIMITED & ORS

..... Respondents

Through Mr. Sanjeev Sindhwani, Sr. Adv. with Mr. T.K. Ganju, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 Order impugned before this Court is the order dated 10.04.2015. Vide this order the application filed by the petitioner/plaintiff under Order 12 Rule 6 of the CPC (hereinafter referred to as the 'Code') seeking a decree on admission had been dismissed.

2 The petitioner is aggrieved by this finding.

3 Record shows that the present suit is a suit for possession and recovery of mesne profits filed by the petitioner against the respondent (M/s Bata India Limited). The plaint discloses that the plaintiffs are the owners-landlords of shop bearing municipal No. 33, New Market, Tilak Nagar, New

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By:AMULYA

Delhi (hereinafter referred to as the 'suit property'). The defendant is a public limited company. Suit premises are owned by the plaintiffs. There is no dispute on this score. The fact that the defendant is an old tenant is also undisputed. Parties had an earlier litigation which was a petition seeking eviction of the tenant from the suit premises (i.e. E.P. No.336/1993).

4 In the course of trial of that eviction petition, a settlement was arrived at between the parties and a joint application under Order XXIII Rule 3 of the CPC had been filed. In terms of the aforenoted compromise, it was agreed that the defendant will pay a rent of Rs.17,000/- per month including house tax w.e.f 01.07.2001. There would be an enhancement of rent after every three years by 15%. The tenancy would be for a period of 12 years effective from 01.07.2001 with an option of further renewal of five years on such terms as were mutually acceptable to both the parties and the defendant shall convey this option one month prior to the expiry of the said terms.

5 This is contained in para 7 of the plaint. Para 8 of the plaint discloses that period of 12 years commencing from 01.07.2001 expired on 30.06.2013; this option given to the defendant to extend the tenancy was not exercised by him; there was nothing mutually acceptable to both parties; accordingly, the tenancy of the tenant came to an end by efflux of time on 30.06.2013; legal

notice dated 30.07.2013 had been served upon the tenant, he failed to vacate the suit property; he had also failed to enhance the rent. Suit was accordingly filed.

6 Written statement was filed. Attention has been drawn to the corresponding paras 7 & 8; they have been highlighted by the learned senior counsel for the respondent. In these paragraphs, it is stated that the defendant had exercised his option for renewal of the lease for another period of five years which had to now commence w.e.f. 01.07.2013 and this was duly communicated to the plaintiff. It was denied that the said tenancy had expired by efflux of time. Submission being that the extended period of lease had come into operation which was the extended period of five years w.e.f. 01.07.2013.

7 Learned counsel for the petitioners points out that there are clear and unambiguous admissions made by the defendant in his written statement. Submission being reiterated that admittedly the parties had agreed for a lease for a period of 12 years which lease period was w.e.f. 01.07.2001; this period of 12 years had expired on 30.06.2013. The option for renewal of lease was an option but the terms were to be mutually accepted to both the parties. Submission being that besides the fact that the defendant had not exercised

his option to renew the lease, even otherwise this lease could only be renewed on mutual terms, which not having been agreed upon, there was no renewal. The petitioners/plaintiffs are thus entitled to a decree straight away.

8 Per contra, learned senior counsel for the respondent has drawn the attention of the Court to certain documents which include the joint application filed by the parties under Order XXIII Rule 3 of the CPC (in the eviction petition).

9 Para 2 (a) of the application under Order XXIII Rule 3 of the CPC reads herein as under:-

> *"That the petitioners undertake to this Hon'ble Court that they shall execute a lease deed in favour of the respondent for a period of 12 years effective from 01.07.2001 with option for further renewal by five years on such terms <u>as per mutually acceptable to the parties</u>. The lessee/respondent shall convey the option in writing at least one month prior to the expiry of the term."*

10 Relevant would it be also to note para 2(b) as both the parties had relied upon it to canvass their respective arguments. In terms of this sub-para (b), it had been agreed that the defendant would pay enhanced rent of Rs.17,000/- per month.

11 Para 2(d) has been relied upon by the respondent to support his argument that the right of termination of the lease was available to the tenant

alone and not to the landlord. This sub-para reads herein as under:-

"That it is expressly agreed that the petitioners as the lessors shall not terminate the lease during the term granted and the extended term provided however the respondent as the lessee shall have the right to terminate the lease by giving to the petitioners as the lease at least two months prior notice."

12 Learned senior counsel for the respondent on this count submits that he alone had a right to terminate the lease.

13 He had, however, exercised his option to renew the lease. Attention has also been drawn to a letter dated 10.05.2013 as also another letter dated 07.08.2013 addressed by the tenant to the landlord wherein he had sought a renewal of the lease.

14 A perusal of this joint application filed by the parties clearly evidences that the option for a further renewal of five years w.e.f. 01.07.2013 would be on such terms as per mutually acceptable to the parties. This line continued in para 2(a) is definitely not redundant. For a renewal, the terms should have been accepted by both the parties; it could not be a unilateral act. It is thus clear that after the period of 12 years (which admittedly stood expired on 30.06.2013), it was only on mutually acceptable terms agreed to by each parties that the lease could be renewed for another period of five years. The letter dated 07.08.2013 addressed by the tenant to the landlords is also

explicit. It clearly states that the tenant was making an offer of payment of enhanced rent of Rs.88,000/- per month. This letter is reproduced as under:

"Smt. Krishna Rani Grover,
Flat No.19, New Market,
(Above Bata Store)
Tilak Nagar,
New Delhi

Dear Madam,

Sub: Renewal of Rent and other Lease terms & conditions for our Bata Store located at your premises bearing address as Shop No.33, (with area of 520 sq. ft.), New Delhi, Tilak Nagar, New Delhi-110018

This is with reference to the renewal of rent and other lease terms & conditions for out Bata Store located in your premises, address as mentioned above.

We are offering the below mentioned rent alongwith other lease terms & conditions:

1. Renewed Rent	*:- Rs.88,000/- per month w.e.f. 1st July,2013*
2. Escalation of Rent	*:- 15% after every three years.*
3. Municipal Tax(es) Property Tax etc.	*:- All taxes etc. related to property will be to you.*
4. Service Tax	*:- We all reimburse service tax (if applicable) to you.*
5. Tenure of lease	*:- 12 years (3+3+3+3) w.e.f. 1st July 2013 to 30th June 2025 and the same shall be renewed as per mutually agreed terms and conditions.*
6. Security Deposit	*:- We shall be paying Rs.3,00,000/- (fully*

	refundable) security deposit which will be refunded back by you at the time of our vacating the premises & giving back peaceful possession to you.
7. Arrears of rent	*:- 3,32,545/- (we shall pay arrears of rent w.e.f. 1st June 2007 to 30th June 2013).*
8. Execution of fresh Lease Agreement	*:- A fresh lease agreement as per company's standard guidelines shall be executed between you as lessor and we as Lessee and the same shall be registered in due course of time (if required).*
9. Stamp Duty & Registration Cost	*:-Will be shared equally between both lessor and Lessee.*

We are issuing 2(two) copies of this letter, one copy is to be sent back to us with our acceptance & confirmation and the other copy is for your records.

For Bata India Ltd. *Agree & Accepted by*

Deepak Diwan

Area Project Manager
(north & West India)
M-9811627390"

Krishna Rani Gorver

15 This was an offer which had been made by the tenant to the landlords. It was only an offer and this is clear from the explicit language of this communication.

16 The legal notice sent by the plaintiffs/petitioners (dated 30.07.2013) to the tenant is also relevant. It states that the tenant was paying rent of Rs.17,000/- per month but he had agreed to enhance it every three years by 15% but this enhanced rent had not been paid in terms of that lease deed which had now come to an end by efflux of time on 30.06.2013. Shortfall of rent on this escalated figure has been detailed in para 4 of the legal notice for which a claim had been made.

17 Under Section 111(a) of the Transfer of Property Act, 1882, a lease of an immoveable property can be determined by efflux of time. There is also no gain saying to the settled legal proposition that a renewal of a lease deed can only be effected in writing. It has to be by a registered document. Section 49 of the Registration Act clearly pre-supposes a situation that an un-registered document of an immoveable property is inadmissible in evidence.

18 Admittedly in this case after the lease of 12 years (executed on 01.07.2001) expired by efflux of time on 30.06.2013; there has been no renewal in writing. The documents referred to supra and particularly the contents of para 2 (a) of the application under Order XXIII Rule 3 of the CPC coupled with the letter dated 07.08.2013 (sent by the tenant to the

landlords) persuades this Court to hold that it was only an offer which the tenant was making to the landlord requesting him to renew the lease after 30.06.2013. It was an offer alone and this is clear from the language of para 2 (a) of the application (under Order XXIII Rule 3 of the CPC) which unambiguously states that it was on mutually agreed terms that the renewal of the lease would take place after 30.06.2013. The letter dated 07.08.2013 makes it still more explicit. This offer by itself could by no stretch of imagination become a contract. Until and unless that offer was accepted either explicitly or impliedly, it remained an offer alone. It would become a binding contract only after its acceptance. There was no such acceptance given by the landlords to the unilateral offer of the tenant.

19 The lease having stood determined by efflux of time under Section 111 (a) of the TPA, the tenant had become a tenant by sufferance. No notice to quit was required. However, going a step further and even presuming that a notice to quit was required, the legal notice under Section 106 of the Transfer of Property Act (dated 30.07.2013) directing the tenant to handover the vacant and peaceful possession of the suit property was admittedly received by the tenant. At best, the case of the defendant would be that he had become a tenant on a month to month basis. Notice under Section 106

had been duly served upon him.

20 Thus this Court is constrained to hold that after the lease of 01.07.2001 had expired by efflux of time on 30.06.2013, there was no renewal of the lease deed.

21 Reliance by the learned senior counsel for the respondent upon AIR 2015 SC 3678 *S. M. Asif Vs. Virender Kumar Bajaj* as also another judgment of the Apex Court reported as (2010) 6 SCC 601 *Jeevan Diesels & Electriclas Ltd. Vs. Jasbir Singh Chadha (HUF)* is misplaced. These judgments only lay down the proposition of law qua the manner in which an admission has to be dealt with under Order 12 Rule 6 of the CPC to which there is no dispute.

22 This Court also notes that until and unless, there are clear, unequivocal, unambiguous and transparent admissions, a decree under Order 12 Rule 6 of the CPC may not follow. This Court also reiterates that it is a discretionary power exercised by a Court while dealing with an application under Order 12 Rule 6 of the CPC. This discretion has to be exercised fairly and not arbitrarily. If it prejudices the right of another party and adversely affects him, this Court has ample powers to interfere in this discretion.

23 Having noted the aforenoted factual narration which is borne out from

the pleadings of the parties as also the documents discussed supra, this Court is of the view that the Trial Court has committed an illegality in holding that issues have arisen qua the relief of possession. There appears to be no issue as admissions made by the defendant are clear and unequivocal. The defendant has admitted that there was a lease agreement between the parties in terms of a compromise which lease was for a period of 12 years w.e.f. 01.07.2001 up to 30.06.2013. That lease had come to an end. There was an option of further renewal of five years on such terms as were mutually acceptable to both the parties. The defendant had made an offer but this offer had never been accepted by the petitioners. Since renewal could take place only on mutually agreed terms, the offer remained an offer alone. It had not become a binding contract.

24 There is also no gainsaying in reiterating the legal position that a renewal of a lease of an immoveable property can only be effected in writing. Admittedly, there is no such document in writing.

25 Issues No. 1 to 5 framed by the Trial Court on 21.07.2014 have thus become redundant. This Court is of the view that the plaintiffs are entitled to a decree straight away qua the relief of possession. Issues No.1 to 5 are accordingly deleted. The only issue which remains alive is the issue of

mesne profit which reads herein as under:-

"Whether the plaintiff is entitled for a decree of Rs.5,00,000/- towards mesne profits/damages for unauthorized use and occupation of the suit premises w.e.f. 01.07.2013 till the institution of suit and @ Rs.1,50,000/- per month from the date of filing of the suit? OPD."

26 The petition is allowed and a decree of possession qua shop bearing municipal No. 33, New Market, Tilak Nagar, New Delhi is passed in terms of the application filed by the plaintiffs under Order 12 Rule 6 of the CPC.

27 Petition disposed of.

INDERMEET KAUR, J

MAY 10, 2016
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