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

+ **FAO(OS) 716/2015**

COSMOS INFRA ENGINEERING (INDIA) LTD Appellant

Represented by: Dr.Sarabjit Sharma, Advocate with
Ms.Vanshikha Seth, Advocate

versus

ANIL SARIN & ORS

.....Respondents

Represented by: Mr.Rohit K.Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **01.02.2016**

1. The admitted facts are that pursuant to a lease-deed dated July 26, 2011, a portion of a property at Connaught Place was leased by the respondents to the appellant at a monthly rent of ₹5,00,000/- (Rupees Five Lacs only) plus service tax; duration of the lease being 9 years, with rent to be increased by 15% every three years. Thus, with effect from July 26, 2014, as per the lease-deed, the rent stood enhanced to ₹5,75,000/- (Rupees Five Lacs and Seventy Five Thousand only) per month.

2. The appellant, as claimed by the respondents, stopped paying rent from the month of May, 2015 and the lease was determined with effect from September 30, 2015. The lease-deed had an arbitration clause. A petition under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by the respondents. Pleading the facts as aforementioned, prayer made was to direct

the appellant to deposit in Court the arrears of rent till September 30, 2015 together with interest on the accumulated amount calculated at 15% per annum as also damages with effect from October 01, 2015, for which the pleading was that due to default in payment of rent the lease had been determined.

3. As per the appellant it had stopped paying rent because the representation to it that the leased area was 4400 square feet was a misrepresentation. The area being actually less by about 1000 square feet.

4. Vide impugned order dated December 16, 2015, the learned Single Judge has directed that the appellant shall directly pay to the respondents ₹5,00,000/- (Rupees Five Lacs only) per month and as regards ₹75,000/- (Rupees Seventy Five Thousand only) the same shall be deposited each month in the name of the Registrar General of this Court.

5. The order directs arrears of rent from May, 2015 onwards to be paid.

6. In our opinion the impugned order has to be upheld for the simple reason if the case of the appellant is that there was a misrepresentation of a fact, concerning the area of the property leased, Section 18 and 19 of the Indian Contract Act, 1872 would come into play. Assuming there was a misrepresentation, as per the Exception to Section 19, since an area of a leased premises is capable of being measured by a tenant, it would be doubtful whether the appellant would be entitled to plead said fact because the appellant had the means to discover the truth had appellant exercised ordinary diligence.

7. That apart, assuming there was a misrepresentation of a fact, truth relating where to was not capable of being discovered by ordinary diligence, the appellant has to avoid the contract and for which had to return the

benefit taken by the appellant under the contract to the respondent.

8. Learned counsel for the appellant has not been able to show any pleading that the appellant intimated to the respondent that due to misrepresentation of fact it had exercised the option to avoid the contract and return the benefit under the contract i.e. the leased premises.

9. The appeal is accordingly dismissed *limine*.

10. No costs.

CM No.32788/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 01, 2016

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