

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : October 31, 2017

+ RFA 583/2007

ADMA SOLUTIONS PRIVATE LIMITED Appellant

Through Mr.Paritosh Budhiraja,
Mr.Ashwani Ahuja, and
Ms.Surabhi Maheshwari, Advs.

versus

SHOBHA JAIN Respondent

Through Mr.J.K.Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant against the modified decree dated 12.01.2007 and judgment and decree dated 03.03.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/respondent has been decreed in favour of the plaintiff/respondent and against the defendant/appellant.

2. The facts enumerating from the plaint filed before the Court below are that the plaintiff/respondent filed a suit for possession and recovery of Rs.2,80,000/- against the defendant alleging in the plaint that she was the owner of the first floor and

second floor of front portion of part of 13, Palam Marg, Vasant Vihar, New Delhi. Plaintiff is alleged to have originally let out the suit property to M/s Intec Training and Eduware Company Pvt.Ltd who has further assigned the tenancy rights in favour of the defendant/appellant. Thus, the defendant/appellant allegedly became a monthly tenant under the plaintiff in respect of first floor on a monthly rent of Rs.50,000/- exclusive of electricity and water, hire charges and other charges w.e.f 01.06.2000. The tenancy was on month to month basis and was to expire at the end of each month. The plaintiff is alleged to have sent a notice of termination of tenancy to the defendant on 12.09.2001 through her attorney to which the defendant gave reply on 18.09.2001 wherein the defendant showed its willingness to vacate the premises but did not do so, rather put illegal demands for vacating the premises. The defendant is alleged to have asked the plaintiff for refund of Rs.1,50,000/- on account of excess electricity charges allegedly paid to it and refund of Rs.7,50,000/- on account of security deposit. The plaintiff is alleged to have sent notice through her counsel to the defendant on 09.10.2001 intimating that neither any excess payment of electricity charges had been made to her nor she was concerned about the same as the same were payable to Sh.R.C.Jain under a separate arrangement nor any security deposit had been made by the defendant with the plaintiff. It was alleged that M/s Intec Training and Eduware Company Pvt.Ltd, original tenant, had not instructed the plaintiff to refund the same to the defendant. It was also pointed out that the premises were to be put

in the original condition and certain other damages were also noticed failing which security deposit was to be forfeited in terms of the lease. It was also alleged that plaintiff did not agree to assignment of the lease nor such arrangement could have been made by M/s Intec Training and Eduware Co. Pvt.Ltd in favour of the defendant. It is alleged that defendant is in illegal and unauthorized occupation of the suit property since 01.11.2001, therefore, he is liable to pay damages for use and occupation @ 10,000/- per day from 01.11.2001 to 18.11.2001 which comes to Rs.1,80,000/- The plaintiff also claimed rent of Rs.1 lakh for the months of September and October which the defendant has not paid. The plaintiff has also claimed interest @ 18% per annum. On these facts, a decree in the sum of Rs.2,80,000/- apart from decree of possession has been prayed for.

3. In the written statement, defendant/appellant has taken the preliminary objections that the suit of the plaintiff is not maintainable as notice of the termination has not been validly and properly served on the defendant as such the tenancy had not been validly determined and that suit of the plaintiff has not been properly valued. On merits, it has been admitted that plaintiff is landlady of the defendant. The case of the defendant is that a registered lease agreement was executed between the plaintiff and M/s Intec Training and Eduware Company Pvt. Ltd and that said lease was assignable and that M/s Intec Training And Eduware Co.Pvt. Ltd. also paid a sum of Rs.7,50,000/- as refundable security

to Sh.R.C.Jain, husband and attorney of the plaintiff and that said company assigned its rights in favour of the defendant, who were thereafter accepted as tenants by the plaintiff. It is alleged that lease stipulated that plaintiff was to hand over to the defendant the security deposit after deducting the charges of unpaid electricity bills and damages, if any. It was alleged that the defendant has been demanding copies of electricity bills which plaintiff failed to do. It was alleged that the defendant had paid Rs.1,50,000/- in excess to the plaintiff on account of electricity charges. The defendant is alleged to have written a letter to the plaintiff on 06.09.2001 expressing its willingness to vacate the premises on 12.09.2001 provided excess electricity charges amounting to Rs.1,50,000/- and Rs.7,50,000/- on account of security deposit were remitted to it. The defendant is alleged to have further written a letter to the plaintiff in this regard on 11.09.2001. It was alleged that the plaintiff had not refunded the security deposit and excess electricity charges to the defendant. The defendant is also alleged to have served with a legal notice on the plaintiff wherein he asked for a refund of Rs.9 lakhs. The defendant also alleged that he had already shifted from the suit premises and thus the suit in question was not maintainable nor the plaintiff was entitled to recover any amount from it on any account. Thus prayed that the suit be dismissed.

4. The defendant also filed a counterclaim stating therein that the plaintiff executed a registered lease deed in favour of M/s

Intec Training Eduware Co.Pvt Ltd on 13.09.1999 and that said lease deed was assignable who further assigned its rights vide deed of assignment dated 01.06.2000 in favour of the defendant and plaintiff accepted the defendant as her tenant. The said Intec Training Co. is alleged to have deposited a sum of Rs.7,50,000/- with the husband of the plaintiff as refundable security. The defendant is alleged to have written a letter to the plaintiff on 06.09.2001 showing its intention to vacate the suit premises and asking for refund of Rs.7,50,000. The defendant is alleged to have also sought duplicate bills from the defendant which she did not do. The defendant is alleged to have got duplicate bills issued by Delhi Vidyut Board and came to know that a sum of Rs.1,50,000 had been paid in excess to the plaintiff. The defendant allegedly wrote another letter to the plaintiff on 11.09.2001 that plaintiff should come to take possession of the suit premises and refund Rs.9 lakhs. It was also alleged that instead of taking over possession of the property, husband of the plaintiff wrote a letter to the defendant on 12.09.2001 whereby tenancy of the defendant was terminated. It was alleged that husband of the plaintiff was neither landlord nor owner of the suit premises, therefore, proper notice of termination of tenancy was not served. On these facts, the defendant sought a decree in the sum of Rs.11,16,000/- with pendent lite and future interest @ 24 per cent per annum.

5. In the replication and written statement to counterclaim, the case of the plaintiff was that since suit premises

was not put in its original condition, therefore, security amount furnished by M/s Intec Training and Eduware Co.Pvt. Ltd stood forfeited and since the said company had not instructed the plaintiff to refund the same to the defendant, therefore, the defendant is not entitled to recover Rs.7,50,000/-. As regard to recovery of Rs.1,50,000/- by the defendant on account of electricity charges, it was alleged that neither any excess electricity charges were paid to the plaintiff nor she was concerned about the same as electricity charges were payable to Sh.R.C.Jain, under a separate arrangement, therefore, defendant is not entitled to recover this amount from the plaintiff. It has been denied that defendant is entitled to recover any amount. Thus, it was prayed that the counter claim be dismissed.

6. On completion of pleadings, the following issues were framed:

- 1) Whether the plaintiff is entitled to recover any amount on account of rent, if so, for what period and to what amount? OPP.
- 2) Whether the plaintiff is entitled to recover any amount from the defendant on account of damages for use and occupation of the suit premises by the defendant, if so, for what period and to what amount? OPP.
- 3) Whether plaintiff is entitled to recover any amount from the defendant on account of interest, if so, at

what rate, for what period and to what amount?
OPP.

4) Whether the defendant is entitled to any amount as claimed by the defendant in the counterclaim, if so, to what amount? OPD.

5) If issue no.4 is decided in favour of the defendant, whether the defendant is entitled to recover any amount from the plaintiff, if so, at what rate, for what period and to what amount? OPD.

6) Whether counterclaim by Infovision Solutions is maintainable as alleged in the preliminary objections? OPD.

7) Whether the counterclaim has been instituted by a duly authorized person? OPD.

8) Relief.

7. After hearing the arguments of both the sides and evidence adduced and the material placed on record, the learned Addl. District Judge has decreed the suit in favour of the plaintiff thereby directing the defendant to pay rent @ Rs.50,000/- per month for the month of September and October, 2001 and damages @ Rs.50,000/- per month from 01.11.2001 to 05.04.2003 with cost and simple interest @ 6 per cent per annum from the date of filing of the suit till amount is paid by the defendant. However,with

regard to the mesne profits, it was directed that the same shall be executable only on payment of requisite court fee on the amount of mesne profits accruing after filing of the suit till 05.04.2003 the date on which the possession was delivered by the defendant. Simultaneously, the counterclaim filed by the defendant was ordered to be dismissed.

8. Aggrieved by the aforesaid judgment and decree of the learned ADJ, the defendant/appellant has preferred the instant appeal on the ground; that the Trial Court ought to have drawn adverse inference against the plaintiff in respect of her alleged claims in the suit that what she has stated in her pleading is not correct inasmuch as the plaintiff herself did not enter into the witness box to make statement on oath and had not offered herself to be cross examined by the defendant/appellant in respect of her pleadings thereby resulting that a presumption had to arise that the case set up by her was not correct. Therefore the suit of the plaintiff ought to have been dismissed; that the lease rights were validly assigned by the erstwhile tenant in favour of the defendant/appellant with the consent of the plaintiff. Therefore, the rights under the security deposit agreement also flowed to the appellant; that M/s Intec Training and Eduware Co.Pvt.Ltd was competent to validly assign the leasehold rights in favour of the appellant in view of inclusion of the words 'hereinafter called the lessee which expression shall include its legal representatives, assigns and successors' in the title of the lease agreement; that in

terms of the security deposit agreement, the appellant was entitled to retain the possess of the suit property without payment of any rent/user charges till the security was refunded to the defendant/appellant; that only reason cited by the plaintiff for not refunding the security deposit to the defendant has been that the erstwhile tenant had not instructed the plaintiff to refund the security deposit to the defendant/appellant, the no objection given by the said M/s Intec Training and Eduware Company Pvt. Ltd in the form of an affidavit during the pendency of the said suit to refund the said security deposit in favour of the defendant/appellant has been ignored; that the defendant/appellant had proved on record that the plaintiff had overcharged the electricity charges to the tune of Rs.1,50,000/-, still the learned Trial Court has rejected its counterclaim; that the Trial Court erred in considering the material fact that M/s Intec Training and Eduware Company Pvt. Ltd had deposited a sum of Rs.7,50,000/- with the husband of the plaintiff on behalf of her as refundable security and that the said M/s Intec Training and Eduware Co.Pvt. Ltd had validly, legally and with the consent and knowledge of the plaintiff/respondent assigned its leasehold rights vide deed of assignment dated 01.06.2000 in favour of the defendant/appellant;that the defendant/appellant vide its letter dated 06.09.2001 written to the plaintiff showed its intention to vacate the suit premises and asked for refund of Rs.7,50,000/-; that instead of taking over possession and refunding the amount to the tune of Rs.9 lakhs, the husband of the plaintiff wrote a letter to the defendant/appellant on 12.09.2001

allegedly terminating the said tenancy and that the husband of the plaintiff was neither the owner nor the landlord of the suit premises, therefore proper notice of termination was not served.

9. To appreciate the rival contentions of the parties, I have gone through the impugned judgment, documents exhibited on behalf of both the sides and the material placed on record. This court observes that the undisputed facts of the case are that there is a registered lease deed (Ex.D-4 executed by the plaintiff in favour of M/s Intec Training and Educare Co.Pvt.Ltd, there is a security deposit agreement executed by M/s Intec Training and Educare Co.Pvt.Ltd in favour of the plaintiff being Ex.DW1/6; M/s Intec Training and Educare Co.Pvt.Ltd assigned tenancy rights in favour of the defendant vide a deed of assignment dated 01.06.2000 which was intimated to the plaintiff and plaintiff accepted the same;

10. As per the original lease agreement dated 13.09.1999, which is a registered document, M/s Intec Training and Educare Co.Pvt.Ltd had taken on lease the suit property from the plaintiff for a period of two years commencing from 13.09.1999 till 12.09.2001. As per clause 11 of the same, the lessee was debarred from subletting or otherwise parting with whole or part of the tenanted premises and violation of the clause was to automatically terminate the tenancy and security amount was to be forfeited. According to the defendant, original lessee assigned the rights under the lease in favour of the defendant vide agreement. Photostat copy of the agreement placed on record shows that it is neither a

registered document nor typed on requisite stamp paper and thus does not qualify to be a proper conveyance deed. As per the said document, leasehold rights of M/s Intec Training and Educare Co.Pvt.Ltd were to be assigned to the defendant/appellant for a period of 15 months. This document not being a registered document, the Trial Court rightly held that assignment of lease rights by way of this document could not be acted upon. Trial Court, observing that the plaintiff accepted rent w.e.f from 01.06.2000, held that no lease hold rights stood conveyed to the defendant as the original lessee under the lease deed ExD-4 had no right to make assignment of tenancy rights nor defendant has been able to prove that remaining rights of the original lessee were duly conveyed to the defendant. As for the claim of the defendant seeking refund of the security deposit, the Trial Court held that the if the original lessee had conveyed remaining lease hold rights in the suit property to the defendants, certainly it ought to have found mention in the deed of assignment whereas there is no such mentioning in the same. Right to recover security amount is an actionable claim which is transferable and in instant matter, there is no evidence on record that actionable claim stood conveyed to the defendant and he does not have any right to claim the refund and though the defendant has relied upon various documents in support of its case, but has failed to prove on record that the conveyance deed was in accordance with law. Ever otherwise, the lease hold rights under the lease were not transferable nor right to recover the security deposit stood conveyed, thus, the defendant does not have

any right to claim recovery of security amount. As for the excess electricity charges paid by the defendant, the Trial Court held that the defendant was not entitled to retain the possession unless excess charges were refunded by the plaintiff for the same reason for which defendant had no right to retain possession unless security amount was refunded. Thus, Trial Court, held that the defendant ought to have handed over possession of the suit premises.

11. The plea taken by the defendant/appellant is not sustainable as though the defendant came into possession in the left over period of the earlier tenancy, the fact remains that in the present case, even the earlier tenancy was completed on 12.09.2001 and despite being completion of earlier tenancy in favour of the original tenant that had already come to an end and the defendant had been continuing as unauthorized occupant on the suit property and the claim is barred. The defendant being unauthorized occupant cannot claim the benefit of any earlier tenancy by pleading that he was in the shoes of the original tenant. Apparently, the defendant/appellant entered into the possession without any written consent of the plaintiff (owner) of the property despite there being a clause in the original lease that the lessee was debarred from subletting or otherwise parting with whole or part of the tenanted premises and violation of the clause was to automatically terminate the tenancy and security amount was to be forfeited and a bar had been put on shifting of tenancy in favour of any other person. The plea taken by the defendant/appellant had not been vacating the

premises on account of non refund of security deposit and excess payment of electricity charges, it is a plea taken for the sake of it and cannot be taken as a ground to protect the possession and to continue being in an unauthorized occupation of the suit property.

12. Thus this Court does not find any different view from the one taken by the Trial Court to the effect that the plaintiff/respondent is entitled for possession of the suit property as well as recovery of damages. Accordingly, the finding of the Trial Court is upheld.

13. With the above observations, the present appeal is dismissed.

OCTOBER 31, 2017
dm

(P.S.TEJI)
JUDGE