

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

% Decided on: 25th September, 2017

+ **CS (OS) 1790/2009**

M/S KLJ RESOURCES LIMITEDPlaintiff

Represented by: Mr.Kuljeet Rawal, Advocate

versus

AURA INSTITUTION PVT. LTD. & ANR. Respondents

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Plaintiff has filed the present suit *inter alia* seeking a decree of possession, mesne profits, mandatory injunction in respect of portion of the suit premises shown in Red colour in the site plan bearing private No.B-39, Plot No.17, Najafgarh Road situated in KLJ Complex I. Summons in the suit were issued to the defendants vide order dated 22nd September, 2009. Defendants entered appearance and filed their written statement whereafter the following issues were settled vide order dated 25th January, 2011:

- i. *Whether the plaintiff is entitled to mesne profits from the defendants? If so, at what rate? OPP.*
- ii. *Whether the plaintiff is entitled to interest on the mesne profits? If so, at what rate? OPP.*

- iii. *Whether the plaintiff is entitled to decree of mandatory injunction against the defendants directing them to produce the TDS certificates? OPP.*
- iv. *If the defendants have not deposited the TDS, whether the defendants are liable to pay the amount in lieu thereof? If so, how much is the amount?*
- v. *Relief, if any.*

2. Shri H.M.Surana (PW-1) was partly cross examined by counsel for the defendant on 16th January, 2015. However, since no one appeared on behalf of the defendants to further cross examine the plaintiff's witness, the right of the defendants to further cross-examine PW-1 was closed vide order dated 1st July, 2015.

3. It is the case of the plaintiff that it is the owner and landlord of the property known as KLJ Complex-I, bearing private No.B-39, Plot No.70, Najafgarh Road, New Delhi – 110015 (in short the suit property). It entered into lease deed dated 25th August, 2008 executed in favour of defendant No.1 by virtue of which, total area of 20391 sq. ft. super area (15905 sq. ft. covered area) was let out to defendant No.1 against monthly rent of ₹13,41,400/- @ ₹ 40 per sq. ft. super area for basement and ₹80 per sq. ft. super area for ground floor. The lease deed was executed for a period of 3 years w.e.f. 1st September, 2008 to 31st August, 2011. Defendants were also required to pay interest free security deposit of ₹40,24,200/- and maintenance charges for the aforesaid premises @ ₹3.30 per sq. ft. on super area basis apart from taxes. Defendant No.2 is the Chairman/Director of the defendant No.1 and had given his personal guarantee to fulfill all obligations

in the event of failure of defendant No.1 in discharging its obligations and payments.

4. As the defendant No.2 had pleaded financial crisis and requested for 70% of the agreed rent as deferred payment for 10 months and promised to clear the arrears of rent for this deferred period on 1st September, 2009, plaintiff agreed to this request of the defendants and accordingly allowed the defendants to pay 30% of the rent only for the period 1st November, 2008 to 31st August, 2009. For this deferred payment of 70% part of the rent, the defendants had agreed to pay interest @ 16% per annum. In discharge of this obligation defendants had issued post dated cheques which were to be presented on 1st September, 2009.

5. Since the defendant defaulted even in payment of 30% of the rents nor paid the 70% rent from the period 1st November, 2008 to 31st August, 2009. Plaintiff instituted a suit being CS (OS) No.2194/2009 against the defendant under Order 37 CPC wherein declining to grant leave to defend to the defendants, this Court decreed the suit in favour of the plaintiff and against the defendants.

6. The present suit has been filed by the plaintiff seeking possession and damages pursuant to the lease deed after notice of termination dated 26th July, 2009 was issued to the defendants terminating the lease deed with effect from 31st August, 2009. During pendency of the present suit legal officer of defendant No.1 got recorded his statement, that the defendant No.1 would hand over vacant peaceful possession of the suit property to the plaintiff on or before 30th June, 2011 in terms whereof a partial decree of possession was passed in favour of the plaintiff and against the defendants by this Court. Hence the suit now is confined to the remaining prayers of

mesne profits with interest pendente lite and future, with effect from 1st September, 2009 to 31st July, 2011, TDS certificates and cost.

7. An affidavit by way of evidence of H.M.Surana (PW-1) was filed vide Ex.PW-1/A wherein he stated that he is the authorized representative of the plaintiff company and was authorized vide resolution exhibited as Ex.PW-1/7. The lease deed dated 25th August, 2008 was proved vide Ex.PW-1/1 and Indemnity Bond dated 25th August, 2008 executed by defendant No.2 Shri Harshavardhan Sarangapani Reddy vide Ex.PW-1/2. Cheque bearing No.486751 dated 10th January, 2009 of ₹40,24,200/- issued under the signature of Shri Harshavardhan Sarangapani Reddy, defendant No.2 was proved as Ex.PW-1/3, the complaint filed under Section 138 of the Negotiable Instruments Act as Ex.PW-1/5 and the Cheques bearing Nos.486732 to 486740 dated 1st September, 2009 as Ex.PW-1/6 (Colly).

8. The relevant clause in Para 10 (III) of lease deed dated 25th August, 2008 regarding termination is as under:-

“At the expiration of the term of lease or on early termination thereof, the Lessee shall immediately thereupon handover the possession of the demised Premises to the Lessor, in such state of repair and condition as shall in all respects be consistent with a full and due performance by the Lessee of the covenants, except for normal wear and tear and in case the Lessee fails to deliver the vacant and peaceful possession of the demised Premises in that case the Lessor shall be entitled to recover the overdue rent as damages @ double the last rent payable besides maintenance, electricity and other dues without prejudice of getting the demised premises vacated.”

9. Claim of the plaintiff in the present plaint is thus unauthorized occupation charges from 1st September, 2009 to 31st July, 2011 in terms of

para 10 (III) of the lease deed dated 25th August, 2008 i.e double of ₹13,41,400/- for 23 months, totaling to ₹6,16,86,000/-.

10. Even though no evidence has been led by the defendant as noted above however the case of the defendants in the written statement filed is that the property was constructed without sanction from the MCD and thus unauthorized, hence the defendants are not liable to pay either the rent or the damages to the plaintiff. This issue was decided by this Court in the earlier suit between the parties being CS (OS) No.2194/2009 on 25th February, 2015 as under:-

“10. The question which thus arises for consideration is, whether the plea of the defendants, of the defendants being not liable for payment of the admitted amount of unpaid rent to the plaintiffs for the reason of having a counter-claim against the plaintiffs for damages for misrepresentation and/or for the reason of the defendants having been deprived of the use and enjoyment of the premises for reasons attributable to the plaintiffs, raises any triable issue.

11. I am of the opinion that the said pleas do not raise any triable issue.

12. The plea of the defendants, of being unable to use the tenancy premises owing to a misrepresentation by the plaintiffs of the use to which the premises could be put, is akin to a tenant being unable to use the tenancy premises for the reason of the tenancy premises being wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let. A provision for such a contingency, in the event of contract to the contrary, has been made in Section 108(B)(e) of the Transfer of Property Act, 1882 which provides that in such a case, the lease, at the option of the lessee become voids. In the absence of a registered lease deed, there can be no contract to the contrary. Even otherwise, no such contract is pleaded.

13. This Court as far back as in **The Chamber of Colours and Chemicals (P) Ltd. Vs. Trilok Chand Jain** 9 (1973) DLT 510 has held that the only option left to the tenant after the destruction of the tenancy premises is to treat the lease to be void and if the tenant does not exercise the said option and continues to hold on to the tenancy premises, the tenant remains liable for rent thereof and there cannot be any unilateral suspension of rent. It is not the case of the defendants that they, during the subject period, gave any notice to the plaintiffs determining the lease or offered to the plaintiffs possession of the premises, for the reason of the premises being rendered unfit for use on account of misrepresentation practiced by the plaintiffs.

14. Reference, in this regard can also be made to the **Chander Mohan Jain Vs. State Bank of Patiala** 58 (1995) DLT 799, **Jwala Pershad Ashok Kumar (HUF) Vs. Nath Tubes Pvt. Ltd.** AIR 1994 Delhi 317, **Vannattankandy Ibrayi Vs. Kunhabdulla Hajee** (2001) 1 SCC 564 and **Varinder Sahni vs MGRM Net Ltd.** MANU/DE/3571/2009.”

11. The right of the defendants to lead evidence was closed. As the evidence led by the plaintiff has gone unrebutted, from the documents proved by the plaintiff this Court finds that a case is made out for passing a decree in favour of the plaintiff and against the defendant. Thus a decree is passed in favour of the plaintiff and against the defendants jointly and severally for a sum of ₹6,16,86,000/- + interest pendente lite and future @ 9% till realization to the plaintiff. A decree is also passed in favour of the plaintiff and against the defendants to issue TDS certificate for a sum of ₹4,55,940/- or in the alternative to pay sum of ₹4,55,940/- along with interest @ 9% per annum till realization.

12. No order as to costs.

CCP (O) 60/2011

Since the suit is decreed in favour of the plaintiff, learned counsel for the plaintiff submits that he does not wish to press the contempt petition at this stage.

Petition is dismissed as withdrawn with liberty to initiate appropriate proceedings if need arises.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 25, 2017

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