

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

% **Date of decision: 11th April, 2018.**

+ **CS(OS) 107/2018, IA No.4622/2018 (u/S 151 CPC) & IA No.4633/2018 (u/O XXXIX R-4 CPC)**

AUDIO VOICE INDIA PRIVATE LIMITED Plaintiff

Through: Mr. Jatinder Kumar Sethi, Adv.

Versus

VIVEK KHANNA & ANR

..... Defendants

Through: Dr. Man Mohan Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit against the two defendants viz. Vivek Khanna and Shikha Khanna, for i) declaration that Clause 19 of the registered Lease Deed dated 20th May, 2013 between the parties is null, void, inoperative and unenforceable; ii) declaration that there is no valid termination of the registered Lease Deed dated 20th May, 2013 and that the said Lease Deed subsists and the plaintiff has a legal right to remain in occupation of property No.D-27, Lajpat Nagar-II, New Delhi-110024 till 30th June, 2019, as long as the plaintiff continues to pay the contracted rent; iii) permanent injunction restraining the defendants from taking forcible possession of the aforesaid premises comprising of basement ad-measuring 900 sq. ft. and ground floor ad-measuring 1800 sq. ft., as threatened by the defendants; and, iv) mandatory injunction directing the defendants to take possession of the property from the plaintiff in accordance with law.

2. Clause 19 of the registered Lease Deed dated 20th May, 2013 between the parties, qua which the relief of declaration aforesaid is claimed, is as under:

“19. That the lessee shall hand over vacant and physical possession of the said premises to the Lessor on the expiry or prior termination of this agreement. In case the lessee does not vacate the premises, lessor can break the lock of the premises and take over the possession while Lessee has no right to make any sort of police case.”

3. The suit came up first before this Court on 15th March, 2018 when the same was entertained and summons thereof ordered to be issued and vide *ex parte* ad-interim order, the defendants restrained from dispossessing the plaintiff from the basement and ground floor of property aforesaid and a Commissioner also appointed to visit the property and to verify the possession of the plaintiff.

4. Both the defendants have filed a joint written statement and to which a replication has been filed by the plaintiff. The application of the defendants being IA No.4633/2018 under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC) came up first before this Court on 10th April, 2018 when none appeared for the plaintiff and the counsel for the plaintiff on being telephonically contacted expressed inability to appear. Accordingly, the matter was listed for today.

5. The counsel for the plaintiff appears.

6. I have at the outset only enquired from the counsel for the defendants whether the defendants, who as per the plaintiff also claim to have terminated the lease of the plaintiff and further claim to be entitled to eject

the plaintiff from the premises, have instituted any suit for ejectment of the plaintiff from the premises.

7. The counsel for the defendants however, referring to Clause 16 of the Lease Deed dated 20th May, 2013 as under:

“16. That this lease can be terminated by the Lessor or the Lessee even before the expiry of the lease period by giving three month’s written notice to the other party. That the Lessor reserves the right to terminate the agreement at any time in case of breach of any of the terms and conditions set out above.”

states that the defendants are not required to litigate with the plaintiff and after notice of three months which has already been given to the plaintiff, are entitled under Clause 19 supra to take back the possession without going to the Court.

8. In my opinion, the rule of law does not permit a person who has allowed another to lawfully occupy the premises, even if such another overstays, to take the law into his own hands and to forcibly take possession. The rule of law provides for such a person, who is entitled to take back possession, to invoke the process of law for taking back the possession.

9. As far back as in *Midnapur Zamindary Company Limited Vs. Naresh Narayan Roy* AIR 1924 PC 144 it was held that “in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.” The Full Bench of Allahabad High Court in *Yar Muhammad Vs. Lakshmi Das* AIR 1959 All 1 held that the obvious object for the attainment of which Section 9 of the

Specific Relief Act, 1877 (equivalent to Section 6 of the Specific Relief Act, 1963) was enacted appears to be that law respects possession, even if there is no title to support it; it will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a Court; no person can be allowed to become a judge in his own cause. It was yet further held that the object of the said section is to drive the person who wants to eject a person, into the proper Court and to prevent him from going with a high hand and ejecting such person. It was yet yet further held that the object of the said section is to discourage people from taking the law in their own hands, however good their title may be; in the interest of public order, self help is not permitted so far as possession over immoveable property is concerned; the section is intended to discourage and to prevent proceedings which might lead to serious breach of peace.

10. Supreme Court also in ***Lallu Yeshwant Singh Vs. Rao Jagdish Singh*** AIR 1968 SC 620, while dealing with the contention that a landlord does not commit trespass when he forcibly enters on land in possession of a tenant whose tenancy has expired, held (i) that the word ‘trespass’ would include forcible entry and dispossession by the landlord; (ii) that under Section 9 of the Specific Relief Act, 1877, it is well settled that question of title is irrelevant; (iii) that under the Indian Law, the possession of a tenant who has ceased to be a tenant is protected by law; although he may not have a right to continue in possession, after the termination of the tenancy, his possession is juridical and that possession is protected by statute; under Section 9 of the Specific Relief Act, 1877, a tenant who has ceased to be a

tenant may sue for possession against his landlord, if the landlord deprives him of possession, otherwise than in due course of law.

11. Again, in ***Krishna Ram Mahale Vs. Shobha Venkat Rao*** (1989) 4 SCC 131, it was held to be well settled law in this country that where a person is in settled possession of property, even on the assumption that he has no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. Reference may also be made to ***State of U.P. Vs. Maharaja Dharmander Prasad Singh*** (1989) 2 SCC 505 where it was held that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. It was also held that the use of the expression “re-entry” in the lease deed does not authorise extra-judicial methods to resume possession; under the law, the possession of a lessee, even after the expiry or its earlier termination, is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law.

12. Though we are in the present case concerned with dispossession from immovable property and not with dispossession from moveable property but mention may also be made of ***ICICI Bank Ltd. Vs. Prakash Kaur*** (2007) 2 SCC 711 dealing with the practice then prevalent of the Banks engaging thugs/hooligans/gangsters/recovery agents for recovering possession, from customers in default, of vehicle bought on hire-purchase and providing therefor in the contracts. It was held that “we are governed by the rule of law in the country; the recovery of loans or seizure of vehicles

could be done only through legal means; the Banks cannot employ goondas to take possession by force.”

13 That being the situation, such an agreement as incorporated in Clause 19 supra, even if voluntarily entered into between the parties, would be void under Section 23 of the Indian Contract Act, 1872 being against the law and against public policy.

14. The High Court of Punjab and Haryana in *Tarun Bhargava Vs. State of Haryana* 2003 ILR P&H 26 held that in a loan agreement for financing goods on hypothecated basis, the creditor cannot forcibly re-possess the hypothecated item, though he can enforce the security through the Court. It was further held that if a specific clause is inserted in an agreement authorising re-possession of a vehicle or any other good by the hypothecatee, such a clause may be unconscionable and void. It was yet further held that forcible re-possession without intervention of the Court would involve commission of an offence. The High Court of Kerala also in *Shibi Francis Vs. State of Kerala* AIR 2007 Ker 296 held that the right to take possession by force, overcoming the resistance if any and thereby igniting to a law and order situation etc. cannot be conferred by an agreement by the party who is in need and who would be agreeable to sign on the dotted lines; enforcing the terms of the agreement by availing the services of hired hoodlums, cannot be justified on the basis of allegedly legally valid terms of the agreement; the terms in the agreement that the financier have the right to take physical possession of the vehicle could only be enforced through lawful means, failing which the same would be equivalent to giving license to unleash violence which cannot be permitted

in the State where law enforcement is entrusted with the State machinery. Supreme Court also, though in a different context, in ***A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies, Salem*** (1989) 2 SCC 163 held (i) that the law of contract only prescribes certain limiting principles within which the parties are free to make their own contracts; (ii) that an agreement enforceable in law is a contract; (iii) that an agreement which purports to oust the jurisdiction of the Court absolutely is contrary to public policy and hence void; (iv) that each of the citizens has the right to have his legal position determined by the ordinary Tribunal except, of course, in a contract where there is an arbitration clause which is valid and binding under the law and when parties to a contract agree as to the jurisdiction to which disputes in respect of the contract shall be subject; (v) that a contract which purports to destroy the right of one or both of the parties to submit questions of law to the Courts is contrary to public policy and is void *pro tanto*; (vi) that parties cannot by contract oust the ordinary Courts from their jurisdiction; (vii) that if parties should seek, by agreement, to take the law out of the hands of the Courts and put it into the hands of a private tribunal, without any recourse at all to the Courts in cases of error of law, then the agreement is to that extent contrary to public policy and void; (viii) that under Section 23 of the Contract Act the consideration or object of an agreement is lawful, unless it is opposed to public policy; (ix) that every agreement of which the object or consideration is unlawful is void; and, (x) hence, there can be no doubt that an agreement to oust absolutely the jurisdiction of the Court will be unlawful and void being against the public policy.

15. The counsel for the plaintiff states that the defendants in their written statement have already stated that they will not invoke force.

16. The counsel for the defendants today also, though confirms that the defendants will not use force but states that since there is a registered agreement permitting the defendants to break the lock of the premises and to take over possession, the defendants are fully entitled to do so. An undertaking on behalf of the defendants is offered not to use force. However, upon asking that since the plaintiff is not willing to vacate the premises, how will the defendants, without going to the Court and without using force, remove the plaintiff from the premises, no answer is forthcoming and repeatedly Clause 16 is referred to.

17. Though I had asked the counsel for the defendants yesterday also to satisfy me about the legality of Clause 19 supra but the counsel for the defendants inspite of repeated asking has not addressed thereon.

18. As far as the other reliefs claimed by the plaintiff are concerned, of declaration of invalidity of the termination claimed by the defendants of the Lease Deed and of the entitlement of the plaintiff to continue in possession of the premises till 30th June, 2019, the counsel for the plaintiff also agrees that the same are not required to be adjudicated in this suit and if the defendants institute any proceedings for ejectment of the plaintiff, the said pleas would remain open to the plaintiff in defence to the said suit.

19. Though the counsel for the defendants has also argued that the plaintiff has not approached this Court with clean hands and has made false representations but without going into the said controversy, even it be so, the same would still not entitle the defendants to forcibly eject the plaintiff from the premises and take law in their own hands and not revert to the due

process of law. The defendants, if are of such an opinion, would be at liberty to file a complaint of offence, if any committed by the plaintiff.

20. Finding that the remaining period of the lease claimed by the plaintiff is also not much, I have asked the counsel for the plaintiff that the plaintiff having approached this Court in equitable jurisdiction ought to give an undertaking to this Court to handover vacant, peaceful, physical possession of the premises to the defendants on or before 30th June, 2019, till which date only, the plaintiff also claims to be entitled to remain in the premises and to pay to the defendants all charges and rents which the plaintiff is obliged to pay under the Lease Deed. This would obviate the defendants approaching the Court against the plaintiff and if the plaintiff is in default of the undertaking, entitle the defendants to take appropriate measures for breach of undertaking so given.

21. The counsel for the plaintiff states that the plaintiff is willing to give such an undertaking. Rather, it is stated that up to date rent save for the month of April, 2018 which the defendants refused to accept, has been paid and all charges with respect to the premises also have been paid.

22. The counsel for the plaintiff has also tendered pay order for the rent for the month of April, 2018 on behalf of Mr. Sanjay Mehta, Director of the plaintiff. In addition, the plaintiff gives an undertaking to this Court to handover vacant, peaceful, physical possession of the premises aforesaid to the defendants on or before 30th June, 2019 and to continue paying rent and other charges in terms of the Lease Deed.

23. The counsel for the defendants, without prejudice to the rights and contentions of the defendants, accepts the pay order so tendered by the

plaintiff and photocopies of which are stated to have been annexed with IA No.4622/2018.

24. During the hearing, it has also transpired that the genesis of the dispute between the parties is the desire of the defendants to install an elevator for accessing the upper floors and the refusal of the plaintiff to allow the defendants to do so. I have enquired from the counsel for the defendants, whether the defendants are willing to extend the lease of the plaintiff beyond 30th June, 2019, if the plaintiff so permits the defendants to install the elevator.

25. The counsel for the defendants states that the defendants would be willing to consider.

26. The counsel for the plaintiff also, on instructions states that the plaintiff would be also willing to negotiate terms in this regard.

27. However, the same need not come in the way of disposal of the suit and the parties, if so desire can negotiate on the aforesaid lines. It is further clarified that the observations in this regard will not prejudice the rights of the defendants to immediately eject the plaintiff through due process of law and the defence of the plaintiff thereto.

28. Accordingly, a decree is passed in favour of the plaintiff and against the defendants i) of declaration that Clause 19 of the registered Lease Deed dated 20th May, 2013 between the parties, to the extent the same entitles the defendants to break the lock of the premises in occupation of the plaintiff and to take over possession thereof, is null and void and of no effect; and, ii) of permanent injunction restraining the defendants from dispossessing the plaintiff from the basement ad-measuring 900 sq. ft. and ground floor

ad-measuring 1800 sq. ft. of property no. No.D-27, Lajpat Nagar-II, New Delhi-110024 save by due process of law.

29. The undertakings of the plaintiff and its Director Mr. Sanjay Mehta to handover vacant, peaceful, physical possession of the premises to the defendants on or before 30th June, 2019 and to, till the date of vacation of the premises pay rent and other charges undertaken to be paid in terms of the Lease Deed is also accepted and the plaintiff and its Director Mr. Sanjay Mehta are ordered to be bound therewith and cautioned of the consequences of breach of undertaking given to the Court.

30. If the plaintiff and Mr. Sanjay Mehta, Director of the plaintiff are found to be in breach of the undertaking, the defendants shall be entitled to take appropriate proceedings against them therefor.

31. The aforesaid will not come in the way of the defendants, if entitled to, even prior to 30th June, 2019, instituting suit or other legal proceedings for ejectment of the plaintiff from the premises, to through the process of law recover possession and claim other reliefs.

32. The parties are left to bear their own costs.

33. The date already given of 24th April, 2018 is cancelled.

34. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 11, 2018/‘gsr/bs’