

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

+ **RFA No.372/2018**

% 4th May, 2018

MEGA COMPUTERS (MEGA-E-STORE) Appellant
Through: Ms. Usha Pandey, Advocate.

versus

LALIT THUKRAL & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 18201/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 18202/2018 (delay in re-filing)

For the reasons stated in the application, delay in re-filing is
condoned.

CM stands disposed of.

RFA No.372/2018 & CM No. 18200/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in an Order 37 CPC Suit filed by the landlords/plaintiffs, challenging the impugned judgment dated 20.12.2017 whereby the trial court has dismissed the leave to defend application filed by the appellant under Order 37 Rule 4 CPC and has decreed the suit by passing a money decree of Rs.5,63,016/- alongwith interest at 12% per annum.

2. In terms of the suit plaint the respondents/plaintiffs claimed amounts from the appellant/defendant under three heads. First head was with respect to the rental charges for the lock-in-period. The second claim was towards maintenance and other related charges, and the third claim was for unauthorized occupation charges after the lock-in-period. The relationship of landlord and tenant between the parties is not disputed. The lock-in-period of the lease was 12 months from 1.2.2013 till 31.1.2014 is also not disputed. It is also an undisputed fact on record that appellant had vacated the suit premises on 14.3.2014.

3. Trial court has dismissed the leave to defend application and decreed the suit for the amount of rent payable for the lock-in-period as also the charges at the admitted rate of rent from expiry of the first year period i.e 1 ½ months from 1.2.2014 till 14.3.2014. The original claim of the plaintiffs as per the suit has been set down in paras 6 and 7 of the impugned judgment and these paras read as under:-

“6. Now, the plaintiffs have filed the present suit for recovery of following amounts:

(i) *Rs. 6 lacs being rent for the lock-in-period i.e. from August-2013 to January-2014;*

(ii) *Rs. 74,160/- on account of service tax for 6 months covering the lock-in-period;*

(iii) *Rs. 4,20,000/- @ Rs. 10,000/- per day for use and occupation charges w.e.f. 01.02.2014 till 14.03.2014 in terms of clause-27 of the rent agreement;*

(iv) *Rs. 46,644/- towards maintenance charges for the period w.e.f. October-2013 to 13.03.2014. The said claim is supported by receipt and cheque issued to the maintenance agency;*

(v) *Rs. 3398/- on account of outstanding electricity bills till February-2014.*

7. As per plaintiffs, they are entitled to recover sum of Rs. 11,44,252/- from the defendant on account of monthly rent, service tax, maintenance charges, electricity charges etc. The have adjusted an excess payment of TDS to the tune of Rs. 11,236/- deposited by defendant in their account and also amount of Rs. 3 lacs lying deposited with them and after adjustment they are entitled to recover principal amount of Rs. 8,33,016/- alongwith pendentelite and future interest @ 18% per annum.

4. As against this the trial court has decreed the suit only for a sum of Rs.5,63,016/- as stated in para 15 of the impugned judgment and this para reads as under:-

“15. A perusal of plaint would show that the plaintiffs have already adjusted the amount of interest free security of Rs. 3 lacs as well as excess amount of TDS paid by the defendant. However, against their claim of Rs. 4,20,000/- @ Rs. 10,000/- per day, plaintiffs are held entitled only for the amount of Rs. 1,50,000/- being use and occupation charges for one and a half month i.e. 01.02.2014 to 14.03.2014 @ last agreed rent of Rs. 1 lac per month. Hence, an amount of Rs. 2,70,000/- claimed by the plaintiffs is excess under this held which needs to be deducted from the principal suit amount and after the said deduction, the amount to which the plaintiffs are entitled to recover from the defendant comes to Rs. 5,63,016/- (Rs. 8,33,016/- minus Rs. 2,70,000/-).”

5. It is an undisputed fact that the actual physical possession was taken by the respondents/plaintiffs in terms of a compromise in the other civil suit filed by the respondents against the plaintiff for possession and mesne profits and possession was delivered to the respondents/landlords in Court on 14.3.2014. The appellant had paid rent only up to June 2013. Lock-in-period of rent from July 2013 till 31.1.2014 was payable. To the amount due adjustment was granted by the respondents/landlords for a sum of Rs. 3 lacs being the amount of security deposit of the appellant lying with the respondents. Trial

court has also not granted the charges from 1.2.2014 to 14.3.2014 at Rs.10,000/- per day as claimed by the respondents/landlords but has only awarded the admitted rate of rent for this period of 1 ½ months.

6. In view of the aforesaid position of fact that admittedly there is a lock-in-period, the appellant was liable to pay rent for the lock-in-period, appellant had not paid the rent for the balance lock-in-period on and from July 2013 till 31.1.2014 alongwith the necessary service tax and maintenance charges, I do not find that the trial court has committed any illegality in dismissing the leave to defend application and decreeing the suit for the admitted amount due in terms of the facts arising from the admitted lease agreement as also the vacating of the suit premises by handing over possession by the appellant to the respondents on 14.3.2014 as per the compromise in the other suit for possession and mesne profits which was filed by the respondents against the appellant.

7. Dismissed.

VALMIKI J. MEHTA, J

MAY 04, 2018/ib