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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 12th March, 2018

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RFA 440/2013

ARVIND KAUR NARULA

..... Appellant

Through: Mr. Devender Chaudhary and Mr.
Roopsi Sabharwal, Advocates.
(M:9891498983)

versus

HANMER MSL COMMUNICATIONS PVT LTD..... Respondent

Through: Mr. R. Sudhinder and Mr. Dattatray
Vyas, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The appeal arises out of the impugned order dated 8th August, 2013 by which the application for leave to defend filed by the Appellant/Defendant (*hereinafter, 'Defendant'*) was dismissed and the suit was decreed in favour of the Respondent/Plaintiff (*hereinafter, 'Plaintiff'*) for a sum of Rs.5,50,400/- with interest @ 12% per annum from 31st October, 2010 and *pendente lite* interest as well as future interest @ 10% on the suit amount from date of institution of suit till realization. When the present appeal was entertained, a sum of Rs.8,31,104/- was deposited and the same is lying in FDR with the Registry of this Court.

2. The subject transaction arises out of a lease agreement dated 30th July, 2009 in respect of premises bearing No.E-228, Ground Floor and Basement, East of Kailash, New Delhi. Relevant clauses of the said lease agreement are set out below:

“1) That in consideration of the rent hereinafter reserved and all the covenants and conditions hereafter contained and on the part of the LESSEE to pay, observe and perform the LESSOR hereby demises unto basement Property bearing No.E-228, Basement. East of Kailash, New Delhi-110065 measuring approx. 2250 sq. ft. hereinafter referred to as “THE DEMISED PREMISES”

2) The tenancy shall be for a period of five YEARS only commencing from 1st May, 2009 to 30th April, 2014. The LESSEE undertake to complete minimum lock-in period of Four years i.e. from 1st May, 2009 to 30th April, 2013. The rent will be payable with effect from 1st May, 2009

3) That the demised premises will be used by the LESSEE for their own use only w.e.f 1st May, 2009 for term of FIVE YEARS by paying to the LESSOR during the said term a monthly rent of Rs. 2,50,00/- (Rupees Two Lacs Fifty Thousand Only). Payable by every 7th of every month

4) That the LESSEE has already paid a sum of Rs. 10,00,000/- (Rupees Ten Lacs only) vide Cheque No.427934, dated 19.07.2008 drawn on HDFC Bank Ltd. Sandoz House, Dr. Annie Besant Road, Worli, Mumbai-400018, Maharashtra (payable at par at all the branches of HDFC Bank) towards interest free security deposit. Out of this, the LESSOR would be refunding the security deposit of Rs. 5,00,000/- (Rupees Five Lakhs only) to the LESSEE. The amount of Rs. 5,00,000/- is to be adjusted against the LESSEES May, June & July, 2009 rental payable to the LESSOR in three monthly installments. Further to this advance rent amount of Rs.8,41,404/- (Rupees Eight lakhs Forty One Thousand, Four hundred and Four only)

remaining with the LESSOR will be adjusted equally in 60 months, the receipt of which hereby acknowledged by the LESSOR. The balance security deposit of Rs.5,00,000/- (Rupees Five Lacs only) will be refundable to the LESSEE upon handing over to the LESSOR the vacant and peaceful possession of the demised premises after deducting the arrears, if any. At no given time or on the time of giving three months notice, the LESSEE would deduct the security deposit from the monthly rent payable to the LESSOR at any cost

.....

10) This Lease Deed may be terminated either by LESSOR or by the LESSEE by giving three months written notice only due to unforeseen circumstances arising out of MCD/ DDA/ Government of Delhi problems or any other reasons. Both the parties will have no objection of any kind to do the same. ”

3. The lease was for a period of 5 years subject to a lock-in period of 4 years. However, the lease was terminable by either party due to unforeseen circumstances arising out of MCD/DDA and other similar issues. The Plaintiff, however, gave notice to vacate the property on 30th July, 2010. The said letter is crucial and is set out below:

*“Ms. Arvind Kaur Narula,
E-228, 1st floor, East of Kailash,
New Delhi-110065.*

Sub: Termination of Lease

Dear Ms. Narula,

This is further to our letter dated 29th April 2010

and our subsequent discussions regarding the above subject.

We would like to place on record that as mutually discussed and agreed upon, we would like to terminate the agreement with effect from 30th September, 2010 and accordingly we shall be handing over the vacant peaceful possession of the basement floor premise on 30th September, 2010.

A demand draft of the refundable Security Deposit amount of Rs.5,00,000/- (Rupees Five Lacs Only) and Rs.50,400/- (Rupees Fifty Thousand Four Hundred Only) towards Security Deposit amount paid to BSES Rajdhani Power Ltd. will be handed over to Hanmer MS & L Communications Private Limited at the time of vacating the basement floor premise.

Kindly confirm the understanding by signing a duplicate copy of this letter.”

4. What is more important is the fact that this letter is duly acknowledged by the Defendant with a remark as under:

“Subject to bill or dues to be cleared + All pending jobs related to the premises to be completed.”

5. The above letter along with the endorsement therein is also admitted by the Defendant in its list of dates. Plaintiff also gave notice dated 27th September, 2010 and 25th November, 2010 clearly intimating that it will be vacating the premises with effect from 31st October, 2010. Vide a letter dated 25th November, 2010, the Plaintiff called upon the Defendant to refund the security deposit of Rs.5,00,000/-, which request was not adhered to. The Defendant issued a notice to the Plaintiff alleging breach of contract on 18th

January, 2011. Relevant portion of the said notice is set out below:

“.....We never had a callous approach towards the matter and our intentions are very clear in this regard till date therefore all your deposits would be paid to you very soon. As of now we are reverting back to you that we are in the process and everything would be settled accordingly but even if you still feel that your company has acted more maturely in this matter and us being called for irresponsible behaviour then I would also have no option left but to claim all the remaining amount from your company for the remaining 3 years of contract under the BREACH OF CONTRACT OF THE LEASE AGREEMENT in the court of Law.”

6. In these circumstances, the Plaintiff filed the present suit seeking recovery of security amount deposited. Relevant prayers are set out as under:

“a) Pass a decree in the sum of Rs.5,50,400/- (Rupees Five Lacs Fifty Thousand and Four Hundred only) in favour of the Plaintiff and against the defendant alongwith interest at the rate of 18% per annum from 31.10.2010.

b) Pass a decree for pendente lite interest as well as future interest at the rate of 18% on the Suit amount from the date of institution of the suit till the date of final payment.

c) Costs of the present suit.

d) Pass such other and further order as this Hon'ble court may deem fit and proper in the facts and circumstances of the present case.”

7. The Defendant filed an application for leave to defend. The primary stand of the Defendant is that the Plaintiff is not liable to get refund of the security deposit as it vacated the property before the expiry of the lock-in period which led to huge losses to her. The Defendant also contended that it had never agreed to refund the security amount.

8. The Trial Court however decreed the suit primarily on the ground that the security deposit was liable to be refunded and the Defendant had admitted that it would be refunded. Relevant paragraphs of the Trial Court judgment are set out herein below:

“29. Plaintiff has also submitted that it contacted the defendant over phone requesting for refund of the deposits, however, she did not refund and the defendant in response to letter dated 13.01.2011 written by plaintiff to defendant sent a reply dated 18.01.2011. In the said reply, the defendant has specifically stated that she is in receipt of the letter dated 13.01.2011 and earlier communiques regarding termination of lease and refunding of security deposit and BSES Ltd. In the said reply, the defendant had expressed annoyance with respect to plaintiff terminating the lease before the expiry of lock-in-period, however, the defendant assured the plaintiff in these words - "We never had a callous approach towards the matter and our intentions are very clear in this regard till date, therefore, all your deposits would be paid to you very soon. As of now we are reverting back to you that we are in the process and everything would be settled accordingly but even if you still feel that your company has acted more maturely in this matter and us being called for irresponsible behaviour then I would also have no option left but no claim all the remaining amount from your company for

the remaining 3 years of contract under the BREACH OF CONTACT OF THE LEASE AGREEMENT in the court of law. We finally conclude on this matter and will try to do the needful as soon as possible"

30. The contents quoted above clearly reflect that defendant had agreed to refund all the deposits of the plaintiff reserving no right to herself under the lease deed nor she had objected on account of non refunding of deposit because of the lock-in-period. On perusal of the whole lease deed reveals that it does not provide any provision as to what will be the outcome in case the lease deed is terminated by either of the parties before the expiry of lock-in-period. Clause 10 of the lease deed specifically permits either of the parties to terminate the lease agreement by giving three months notice due to reasons given therein i.e. "unforeseen circumstances arising out of MCD/DDA/ Government of Delhi problems or any other reasons". The defendant in its reply dated 18.01.2011 has stated that terminating the lease prior to lock-in period is breach of contract but only complained that the plaintiff company did work and ran things as per their mutual convenience. In the same breath, the defendant has assured the plaintiff that all its deposits would be paid to it very soon and also that defendant will do the needful as soon as possible. Thus, there is no force in the submission of the defendant that it had accepted the termination of lease agreement subject to non refunding of security deposit or non refunding of security deposit paid to BSES by the plaintiff.

31. Defendant has submitted that she suffered losses for the remaining period of lock-in-period

as she did not let out suit premises to anybody else and the same could not be let out at any point of time. In the letter dated 18.01.2011, the defendant had written "certainly when we were getting propositions from other companies to hire our premises, your company were still occupying the premises". The said statement after about three months of vacating of suit property reveals that defendant was getting offers from other companies for taking the premises on rent for the period when the plaintiff was in possession of the property. No reason is stated by the defendant as to why the suit premises could not be let out again after vacation of the same. Neither the plaintiff company in any of its letters had stated or requested the defendant to not to let out the premises for the remaining period nor the defendant had made any such statement in its reply dated 18.01.2011 that it was encountering any problems or losses as the premises were lying vacant or it was facing problem as nobody was taking the suit premises on rent again. There is no whisper in the reply dated 18.01.2011 that the defendant is keeping the lease deed alive and despite the notice of termination issued by the plaintiff, it will not let out the suit property for remaining period of lock-in-period.

32. Further, it is pertinent to mention that security deposit paid by the plaintiff to the defendant was to be payable after vacation of the premises and clearing all the dues. Defendant has not stated any dues which remained due to be recovered from the plaintiff in its reply dated 18.01.2011."

9. Learned counsel for the Defendant, in the present appeal, submits that the letters exchanged between the parties cannot be the basis for

decreeing the suit under Order XXXVII CPC as there was no agreement between the parties. He further submits that the Plaintiff having vacated the suit premises prior to the end of lock-in period, the Defendant was put to huge losses and the Plaintiff is liable to compensate the Defendant for the same. Learned counsel for the Defendant further submits that the conduct of the Plaintiff constitutes breach of contract and, therefore, the amount is not liable to be refunded. He further submits that there are arrears due towards electricity and other charges and the amount of rent for one month is outstanding.

10. Learned counsel for the Plaintiff, on the other hand, submits that the letter dated 30th July, 2010 have to be treated as an agreement. He further submits that the three letters were the result of discussions between the parties and as was mutually agreed at that time. In fact, the endorsement on the letter dated 30th July, 2010 to the effect that subject to all the dues to be cleared and all pending jobs related to the premises have to be completed, means that the Defendant had agreed to the Plaintiff vacating the suit property before the lock-in period expires.

11. A perusal of the lease agreement reveals that there was undoubtedly a lock-in period of 4 years. The total term of the lease is 5 years, however, lock-in period was of 4 years. The option was given to both the parties to give three months' notice and termination only due to unforeseen circumstances arising out of MCD/DDA/government problems or any other reasons. This clause is broad enough to take within the ambit of '*other unforeseen circumstances... or any other reasons*' any reason which the Plaintiff may have had to vacate the premises. A perusal of the letter dated 30th July, 2010 clearly appears to suggest that there were discussions

between the parties on the subject of vacation of the property and it was as mutually discussed and agreed upon, that Plaintiff gave notice to terminate the lease and to vacate the suit property. Obviously, under clause 4 of the agreement, Rs.10 Lakhs was given as interest free security deposit by the Plaintiff to the Defendant. As per clause 10, at the time of vacation of the suit property, it had been agreed between the parties that Rs.5 Lakhs were to be refunded *“upon handing over to the lessor the vacant and peaceful possession of the demised premises after deducting the arrears, if any”*. Thus, non-refundable amount of Rs.5 Lakhs was to be adjusted to the rent of May, June and July, 2010 and the remaining amount of Rs. 5 lakhs was refundable.

12. The dispute in the present case, only relates to Rs.5 Lakhs refundable security deposit. This was refundable after deducting arrears, if any. The correspondence between the parties does not show any facts to the contrary. In fact, the noting on the letter dated 30th July, 2010, as also the notice dated 18th January, 2011 sent by the Defendant showed agreement between the parties that the deposit would be paid back subject to clearing of dues.

13. Under such circumstances, since there was no serious dispute to the fact that security deposit is refundable subject to payment of any dues, the Trial Court was not in error. The judgment of the Trial Court not granting the leave to defend is as per law. In view of the fact that the Plaintiff had vacated the property well before the lock-in period, rate of interest is modified to 6% per annum.

14. Learned counsel for the Defendant submits that rent for one month and electricity dues are payable. Rent for one month being due has not been mentioned in the leave to defend application. Insofar as electricity dues

are concerned, upon the Defendant showing proof of electricity charges till the date 31st October, 2010 being due in any manner, the Plaintiff is bound to bear the same.

15. In view of the above, the decree is modified and the suit is decreed for the sum of Rs.5,50,400/- along with interest @ 6% simple interest per annum from the date of filing of the suit i.e. 24th October, 2011 till 16th September, 2013.

16. A sum of Rs.8,31,104/- is lying deposited in the FDR in this Court. The amount payable, as per the modified decree passed hereinabove, shall be released to the Plaintiff subject to any electricity dues, if any payable. The remaining amount, if any, shall be refunded to the Defendant. Registry to submit a report as to the total principal amount along with interest accrued thereon on or before the next date of hearing. Defendant to also bring the electricity bill, if any, which is outstanding or any other dues which are outstanding.

17. Appeal is disposed of in the above terms.

18. List for directions on 4th April, 2018.

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PRATHIBA M. SINGH
Judge

MARCH 12, 2018/dk