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

Date of Decision: 7th May, 2018

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\+ **RFA 520/2016**

M/S OVERNITE EXPRESS LTD. ..... Appellant

Through: Mr. Ashish Upadhayay and Mr. Pradeep Mishra, Advocates (M:9811215280) with Mr. Ranjeet Singh, AR of Appellant in person.

versus

SEELAM KUMARI & ORS. ..... Respondents

Through: Mr. Israel Ali, Advocate. (M:9818317049)

AND

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\+ **RFA 574/2016**

SEELAM KUMAR & ORS. ..... Appellants

Through: Mr. Israel Ali, Advocate. (M:9818317049)

versus

M/S OVERNITE EXPRESS LIMITED
OVERNITE HOUSE ..... Respondent

Through: Mr. Ashish Upadhayay and Mr. Pradeep Mishra, Advocates (M:9811215280) with Mr. Ranjeet Singh, AR of Respondent in person.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. These are two appeals against the judgment and decree dated 14th May, 2016 passed by the Trial Court by which it decreed the suit filed by the

Respondents/Plaintiffs (*hereinafter 'Plaintiffs'*) in RFA 520/2016 in respect of the possession of the suit property bearing no.A-74, Road No.2, Mahipalpur Extension, New Delhi (*hereinafter 'suit property'*). The Trial Court further held that the Plaintiffs are not entitled to any *mesne* profits/damages and has also simultaneously dismissed the counter claim filed by the Appellant/Defendant (*hereinafter 'Defendant'*).

2. The facts in brief are that an agreement/lease deed was executed between the Plaintiffs and Defendant on 10th September, 2005 (Ex.PW-1/2). Relevant terms and conditions of the said agreement/lease deed are set out herein below:

> "*1) That the lease agreement has been entered for a period of 21 years (Twenty One years) from the date the Lessor handover the physical vacant possession of the premises.*
>
> *2) That, the lease rent payable by the lessee for the entire agreed leased area measuring 7800 sq. ft.,(Ground Floor 3000 sq. ft. Basement area measuring 3000 sq. ft. & open area measuring 1800 sq. ft.) will be* ***Rs.60,000/- pm [Rupees Sixty Thousand Only] (subject to deduction of tax at source as per statutory provisions)****. The lease rent is payable on or before the 10th day of each following month. The rent will be applicable to joint owners/joint lessor equally as per the following details:*
>
> *Rs.6667/- to Ms. Seelam Kumari, Rs.6667/- to Sh. Ajay Kumar, Rs.6667/- to Sh. Mukesh Kumar, Rs.6667/- to Ms. Manjeet Kumari, Rs.6667/- to Sh. Deepender Singh, Rs.6667/- to Ms.Prakash Devi, Rs.6667/- to Sh. Rubal Jakhar, Rs.6667/- to Sh. Vikram Jakhar & Rs.6667/- to Sh. Deshant Jakhar.*
>
> *3) That the lease will commence from 16th*

September, 2005, the lessor handover the physical vacant possession of the premises.
4) That, the lease rent will increased by 10% [Ten] after every 3 years.
5)..............
6) The Lessor either on the expiration or at the time of any earlier termination of this Agreement for reason whatsoever, shall simultaneously upon the Lessee handing over the possession of the premises, refund to the Lessee the entire security deposit amount of Rs.180000/- (Rupees One lac Eighty Thousand Only) paid under the terms of this Agreement, after adjusting there from any amount outstanding towards rent payable till the date of termination of agreement.

7) - 18)....................

19) That the LESSEE can terminate the lease by giving to the LESSOR prior written notice of three months."

3. The lease deed admittedly is not registered. The said lease deed contemplates tenancy for a period of 21 years. However, the lease was terminated by the Plaintiffs on 24th March, 2009. It is the contention of the Plaintiffs that, from the date of termination, the Defendant's tenancy is on a month to month basis and hence the Defendant is liable to pay the damages to the Plaintiffs. Since the Defendant did not vacate the premises despite termination, the subject suit was filed by the Plaintiffs seeking the relief of possession and damages. Reliefs prayed by the Plaintiffs are to the following effect.

"*a. pass a decree of possession in favour of the plaintiffs and against the defendant with*

respect to the property bearing no.A-74, Road No.2, Mahipalpur Extension, New Delhi, measuring 7800 sq. ft. consisting of Ground Floor, measuring 3000 sq. ft, Basement, measuring 3000 sq. ft and an open area, measuring 1800 sq. ft;
b. pass a decree in favour of the plaintiffs and against the defendant, of pendente-lite and future mesne profit / damages @Rs.2 lacs p.m. from the date of filing of the present suit till the time the defendant vacates and hands over actual, vacant and physical possession of the suit property to the plaintiffs or is evicted in accordance with law alongwith Interest @ 24% per annum on the damages mentioned above;
c. award cost of the present suit in favour of the plaintiffs and against the defendant;"

4. The Defendant filed its written statement and the counter claim. The primary defence of the Defendant is that under the terms of the lease deed, the Plaintiffs did not have a right to terminate the lease as it was meant for 21 years and as per the clauses, only the Defendant could have terminated. It was also pleaded that the Defendant had invested and made huge capital expenditure in the premises as it was taken on a long term basis. The Defendant further pleaded that the termination was illegal, inasmuch as the Plaintiffs could not have terminated this lease without any reason. The Defendant's counter claim prayed for the following reliefs.

"*a. Pass a decree against the plaintiffs and in favour of the defendant for specific performance, thereby directing the plaintiff to get the lease deed registered.*
b. Pass a further decree of damages against

the plaintiff and in favour of the defendant to pay a sum of Rs. 5,00,000/- as damages to the defendant.
If this Hon'ble Court choses to exercise its discretion to decline a Specific performance, award damages to the defendant as an alternative relief, the defendant undertakes to pay the appropriate court fee on the amount so determined by the Hon'ble Court.
c. Cost of the suit and counter claim be also awarded in favour of the defendant and against the plaintiffs."

5. In the suit, the following issues were framed by the Trial Court on 24th September, 2015.

"*1. Whether counter claimant/defendant is entitled to a decree against the plaintiff and in favour of counter claimant for specific performance, thereby directing the plaintiff to get the lease deed registered?.... OPD*
2. Whether counter claimant is entitled to a decree of damages, if yes, in what amount?.....OPD
3. Relief."

6. On issue no.1, the Trial Court held that the termination of the tenancy was legal. On issue no.2, the Trial Court held that the onus of this issue was upon the Defendant, however, the same was not proved as the mere acceptance of rent does not constitute waiver of termination of tenancy. On issue no.4 regarding damages, the Trial Court held that since the agreement/lease was not registered, the Plaintiffs' conduct was not just and equitable and hence damages were not granted. On the issues framed in the counter claim, the Trial Court held that no legally permissible evidence was

produced and the counter claim is not liable to be entertained and hence it was dismissed.

7. In the appeal, on 1st August, 2016, this Court directed the Appellant to deposit a sum of Rs.2 lakhs in the first instance and the operation and execution of the judgment and decree was stayed. Thereafter, on 6th March, 2017 this Court passed the following orders.

> "*1. The matter is listed for arguments today.*
> *2. Counsel for the appellant states that he has instructions to make an offer to the other side to the effect that the appellant is ready and willing to hand over vacant peaceful possession of the suit premises to the respondents within a couple of months and pay the use and occupation charges @Rs.66,000/- per month as agreed between the parties, till the date of handing over possession thereof to the respondents.*
> *3. Counsel for the respondents submits that if the appellant is genuinely interested in arriving at a comprehensive settlement with the respondents, then the appeal filed by the respondents assailing the very same judgment, where under the trial court had returned a finding against the respondents/plaintiffs with regard to the damages claimed, may also be directed to be negotiated for arriving at a reasonable figure that may be paid by the appellant towards the use and occupation charges of the suit premises.*
> *4, Counsel for the appellant states that he shall have to obtain instructions from his client on the above aspect.*
> *5. At the request of the counsel for the appellant, list in the category of 'Directions'*

for reporting instructions on 16.03.2017."

8. On 16th March, 2017, a statement was made on behalf of the Appellant that it is ready and willing to hand over vacant and peaceful possession of the suit property. This was accepted by the Respondents. It was thereafter recorded on 13th April, 2017 that the Appellant had vacated the suit property. The matter remained pending on the issue of damages.

9. Learned counsel for the Appellant submits that the Plaintiffs/Respondents are not entitled to any damages on account of use and occupation. The Plaintiffs had no power to terminate the lease under the agreement. It is his submission that insofar as the admitted rent is concerned, after adding the increase of 10% after every three years, the Defendant has already made the payments to the Plaintiffs. It is his submission that clause 6 imposes an obligation on the lessor to refund the security deposit, if any early termination takes place or the lease expires. In his submission, clause 19 only gives powers to the lessee to terminate the lease. He further submits that the entire purpose of the lease taken on a long term basis was defeated and the Plaintiffs terminated the lease without any reason whatsoever. He further submits that the factum of non-registration of the lease should not benefit the Plaintiffs, inasmuch as neither party contemplated or insisted on registration of the lease. There is no reason for termination of the lease and as his client had to suffer the huge losses due to early termination of the lease, no damages are liable to be paid.

10. Learned counsel for the Plaintiffs on the other hand submits that the termination dated 24th March, 2009 is perfectly valid in law. Moreover, clause 6 cannot be read in the manner as the Appellant reads. As per the

Plaintiffs, Clause 6 permitted the lessor to terminate the lease. Learned counsel for the Plaintiffs further submits that since, upon the termination of lease the tenancy is on month to month basis, the Plaintiffs are entitled to damages for use and occupation. Reliance is placed upon two lease agreements exhibited by Sh. Manjeet Sehrawat (PW-2) and Sh. Sanjay Kumar (PW-3). One lease deed is of a property taken on lease by Reebok India Limited and the other lease deed is where a premises nearby was taken on rent by the Bank of India. In the said two lease deeds the rent contemplated is much higher than what is specified in the subject lease. In his submission, the Plaintiffs ought to have been awarded damages as per the two lease deeds placed on record as Ex.PW-2/1 and Ex.PW-3/1. He further submits that the lease deed had a termination clause and when the Plaintiffs had invoked the said termination clause, the Defendant himself had taken a plea that the lease was not registered and hence it should be understood that this is a month to month tenancy.

11. The Court has perused the evidence on record and heard submissions of learned counsels for the parties.

12. A perusal of the lease deed clearly reveals that the same is an un-registered lease. It is also the admitted position that any lease for a period longer than 11 months has to be registered in law. The judgment cited by learned counsel for the Respondent in ***Aspire Investments P. Ltd. v. Nexgen Edusolutions P. Ltd., 220 (2015) DLT 316*** clearly held that an un-registered lease deed cannot be recognized in law and no equity flows from the same. Thus, equitable relief is not liable to be granted to either party in this case.

13. A perusal of the un-registered lease deed shows that the term of 21 years under the lease, would have to be ignored as the same has to be treated

as an unregistered lease and a month to month tenancy. Treating the relationship as a month to month tenancy, the question would be as to whether the rent would be payable at the market rate or the rent as agreed between the parties.

14. The Agreement is dated 10th September, 2005 and within a period of 4 years, it was terminated. A perusal of the termination notice reveals that the only reason in the termination is that the agreement is an unregistered lease and no other reasons have been given for terminating the tenancy.

15. The admitted position is that the premises has been vacated on 31st May, 2017. Even if this lease deed is one which is unregistered, the amount payable was agreed for 21 years with 10% increase after every three years. The Plaintiffs, who have not given any reason for the termination, cannot take advantage of the unregistered nature of the lease. That would in effect mean that a party can benefit from its own wrong. Nature of the lease being a month to month tenancy does not, however, give a right to demand market rent. Admittedly, the parties had understood the lease agreement and were *ad idem* on the terms, at the time when it was executed. Within the period of four years, termination has taken place for whatsoever reason but both parties should not be given an advantage of the early termination of the lease owing to the unregistered nature of the lease.

16. The Trial Court has observed in the impugned judgement as under:

> *"49. The Court has another view. The podium of the plaintiffs in seeking damages/mesne profits for the occupancy of the suit premises through these legal proceedings is not so* ***morally high*** *as they pretend it to be. Plaintiffs are not completely innocuous children who were misled by the defendant. Had it been a criminal act, to execute such an agreement as it was*

> ***Ex. PW1/2**, then they would be prosecuted under the law as an accomplice. If the face of the agreement **Ex.PW1/2** is unlawful, then plaintiffs are equally responsible for its execution and also liable to its consequences. They were not misled by the defendant to execute such an unlawful agreement."*

17. Such observations are wholly un-called for. However the conclusion would still be the same. The Plaintiffs having not insisted upon registration of the lease cannot terminate the lease once the Defendant has invested and presumed that it would have the premises for a period of 21 years. Irrespective of the nature of the lease, the rent with increase of 10% after every three years, has been paid as per the Defendant till October, 2016. The Plaintiffs have to be held as being bound to the terms of the lease, as to the quantum of use and occupation charges payable. The Plaintiffs, under the circumstances, would be entitled to only 10% increase as agreed and as understood between the parties and nothing more.

18. Insofar as the counter claim is concerned, admittedly there is no evidence on record proffered by the Defendant to support any of the expenses that have been incurred by it on the premises. DW-1 deposes in his cross examination as under:

> "*I have neither placed any proof on record qua the expenses incurred by the defendant company in the suit premises as stated by me in para 7 of my affidavit nor I have brought any such proof today with me.*"

19. Thus, the Defendant has also not made out any case for award of damages. The Defendant is directed to ensure that the entire outstanding

rent as agreed in the lease deed dated 10th September, 2005 is cleared within a period of four weeks from today as per the terms of the lease. Any delay beyond the period of four weeks, would entail payment of simple interest @ 10% per annum.

20. Both the appeals are dismissed.

PRATHIBA M. SINGH
JUDGE

MAY 07, 2018/*dk*