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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 08th February 2018

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RFA 852/2016

INDUS TOWERS LTD

..... Appellant

Through: Mr. Rohit Jain, Advocate (M-9811074162).

versus

SHEELA CALICOTEY

..... Respondent

Through: Mr. Vishal Gohri, Advocate (M-9711455398).

CORAM:

JUSTICE PRATHIBA M. SINGH

PRATHIBA M. SINGH, J (Oral)

RFA 852/2016 & CM APPLs.40432/2016, 23087/2017

1. This is an appeal against the judgment and decree dated 13th July, 2016 by which the Trial Court has decreed the suit for damages in favour of the Respondent/Plaintiff (*hereinafter*, 'Plaintiff').

2. The brief facts are that the Appellant/Defendant (*hereinafter*, 'Defendant') and the Plaintiff entered into lease deed (Ex. PW-1/1) dated 23rd September, 2008 by which the Defendant took on lease the roof top area of the property of the Plaintiff bearing No.C-115, Old Nangala Raya, Delhi Cantt., New Delhi (*hereinafter* 'suit property'). The relevant clauses of the lease are set out herein below:

"2.1 This Agreement is for a period of Twenty years (20) commencing from 03/11/2008 till 02/11/2028. This Lease shall be irrevocable for the said term from the date of commencement. Provided always however, the Lessee shall have the right to determine this

Lease by giving to the Lessor (s) one month's prior notice in writing at any time during the currency of this Lease.....”

10. SUSPENSION OF LEASE

10.1 *In the event of destruction of the Demised Premises or the Building or any substantial part thereof on account of force majeure, the lease in respect of that part of the Demised Premises which has been destroyed shall be suspended from the date of written notice received by the Lessor from the Lessee in respect thereto and during the period of suspension the Lessee shall not be liable to pay Lease Rent or other outgoings hereunder in respect of that part of the Demised Premises which has been destroyed, including the proportionate taxes levied by the local authority or State Govt, payable by the Lessee, under this Lease Deed in respect of such portion of the Demised Premises, which has been destroyed.*

10.2 *During the period of suspension, the Lessor shall restore the part of the Demised Premises that has been destroyed and make the same available duly restored and complete in all respects to the Lessee for its use in 60 days from the date of suspension as aforesaid. The Lessee undertakes to extend its full physical co-operation to the Lessor to enable it to restore part of the destroyed Demised Premises or any part thereof.*

10.3 *If on expiry of the said period of, 60 days, the destroyed Demised Premises has not been restored, then in that event. Lessee shall have the option either to terminate the Lease in respect of entire Demised Premises or only that part which has been lost or destroyed by giving a 15 days written notice*

10.4 *In the event the Lessee continues the Lease in respect of the part of the Demised Premises that has not been destroyed, then the Lessee shall pay the rent, as per the rates payable at that time in respect of the Demised Premises not destroyed and hand over the possession of the destroyed area to the Lessor.”*

3. From the clauses above, it is evident that the lease was for a period of 20 years at Rs.12,000/- per month. The same was terminable as per the clauses extracted above. The Defendant issued a notice of termination (Ex. PW-1/3) dated 1st May, 2009 which reads as under:

“REGISTERED AD

1st May 2009

To .

Mrs.Sheela Calicotey

W/o Sh.Subhash Calicotey

R/o C-115, Old Nangala Rayan

Delhi Cantt.

Delhi-110010

Sub: Termination of Lease Deed Agreement dated 20th Jan 2009 with respect to premises No.C-115/, Old Nangala Rayan Delhi Cantt. Delhi-110010.

Dear Sir,

This is in reference to the aforesaid agreement wherein Indus Towers Limited had taken, on a Lease basis, your property at C-115, Old Nangala Rayan Delhi Cantt. Delhi-110010, for installation of telecommunication tower at a monthly Lease Fee of Rs.12000/- (Rupees Twelve Thousand only).

We would like to bring it to your kind notice that Indus Towers Limited is no longer interested to continue with above mentioned lease deed agreement as per the aforesaid Agreement vide clause 10, we are hereby giving a notice of one month for the termination of the afore-said Agreement.

Accordingly, the Agreement shall stand terminated with immediate effect.

*Yours faithfully
For Indus Towers Ltd,”*

4. In the said notice, no reason has been assigned for termination of the lease except that the termination is under clause 10 of the lease deed. Thereafter, another legal notice (Ex. PW-1/5) was served upon the Plaintiff on 1st June, 2010 again invoking clause 10 of the agreement. It is the allegation of the Defendant that the Plaintiff did not allow its equipment to be removed from the property. The counsel for the Defendant submits that this is a month to month tenancy. Therefore it can terminate it at will.

5. Before the Trial Court, the Plaintiff Smt. Sheela Calicotey (PW-1) and Shri Neeraj Calicotey (PW-2) were examined as witnesses and the Defendant led the evidence of its official, Mr. Manish Kumar Singh (DW-1). The Trial Court after examining the documents and evidence, decreed the suit in the following terms:

“(1) A decree in the sum of Rs. 12,000/- per month w.e.f. 5.7.2009 onwards till defendant company removes its equipments/machinery from the leased premises is passed in favour of plaintiff and against the defendant.

(2) A decree in the sum Rs. 1,00,000/- (one lac) is passed in favour of the plaintiff on account of mental harassment and inconvenience suffered by her.

(3) A decree of mandatory injunction is passed in favour of plaintiff thereby directing the defendant company to remove all its goods, equipments, machinery etc. from the leased premises and to restore the same to its original position and to handover the same to the plaintiff.”

6. The specific grievance of the Defendant is that within six months after

the lease was executed, the Defendant did not wish to continue to remain in the property and had deputed its officials to take back the equipment. For the period of six months during which the property was being used, the rent had already been paid. The Plaintiff, having illegally prevented the Defendant from removing the equipment, cannot be entitled to rent amount for the period between May, 2009 and October, 2016, which has been granted by the Trial Court. It is the submission of the Defendant that the written statement also categorically states that the Delhi Cantonment Board has raised an objection to the installation of the tower and hence the Defendant could not continue in the premises. Paragraph 6 of the written statement is as under:

“6. That the defendant No.1 in pursuant to lease deed dated 23.09.2008 took 850sq. ft. of roof top of property, bearing No.C-115, Old Nangal Raya, Delhi Cantonment, Delhi-110010 for the purpose of installation telecommunication tower, DG set and other equipment on the lease property. The lease commenced from 03.11.2008 with a monthly rent of Rs.12000/-. The defendant No.1 due to the objections raised by the Cantonment Board was constrained to terminate the lease deed vide termination letter dated 01.05.2009 by giving one month notice to the plaintiff. In the termination letter the defendant No.1 categorically made it clear to the plaintiff that it has not intention to continue with the lease deed and the said lease stand terminated with the expiry of period one month as indicate in the termination letter dated 01.05.2009 and defendant No.1 will further remove its equipments DG set from the lease premises within the notice period. The defendant No.1 paid the monthly rent to the plaintiff upto 30.03.2009.

The officials of the defendant No.1 not only during the notice period but even thereafter numerous time

went to the leased premises in order to remove equipments and DG set but the plaintiff did not allow officials of the defendant No. 1 to remove equipments and DG set from the leased premises and raised unreasonable demands on the defendant No. 1 for enabling the defendant No.1 to remove its equipments and DG set from the leased premises. The defendant No.1 due to the obstruction and hindrance created by the plaintiff was not able to remove the equipments and DG set from the leased premises as such the defendant No.1 again sent the legal notice dated 01.06.2010 thereby calling upon the plaintiff to dissuade herself from creating hindrance and obstruction in the way of the officials of the defendant No.1 company in removing the equipment and DG set from the leased premises. The plaintiff instead of permitting the officials of the defendant No.1 to remove equipments and DG set from the leased premises told officials of the defendant No.1 that after settling the account with the plaintiff the defendant No.1 can remove equipments and DG set from the leased premises.

The equipment and DG set are lying at the leased premises not due to any act, omission or negligence or wilful act of the defendant No.1 but it is the plaintiff who is not permitted the defendant No.1 to remove equipments and DG set from the leased premises."

7. On the other hand, counsel for the Plaintiff submits that the Defendant never invoked or brought to the notice of the Plaintiff any complaint of the Cantonment Board. The Defendant has merely invoked clause 10 of the lease deed which relates to *force majeure* but the said clause was wholly inapplicable. The Plaintiff relied upon the cross examination of DW1 who admitted in cross-examination as under:

".....I am unable to produce before this court the complaint raised by Cantonment Board."

8. Having considered the documents and the evidence on record as also the judgment of the Trial Court, it is clear that the Defendant has not been able to support its case of *force majeure*. Clause 10 of the lease is clear that it relates to termination of the lease "*in the event of destruction of the demised premises or the building on any substantial part thereof on account of force majeure...*". The witness of the Defendant could not produce any complaint by the Cantonment Board. The Plaintiffs were entitled to stop the Defendant from removing the equipment as long as their dues were not cleared. The Defendant ought to have cleared the entire dues before attempting to remove the equipment. It is also the case of the Plaintiff that damage had been caused to the property which has also not been rectified. The Trial Court has clearly recorded that there was no witness who had been examined by the Defendant who had visited the suit premises for removing the equipment/machinery. Relevant portion of DW-1's cross examination reads:

".....I had visited the property No. C- 115, Old Nangal Rai, Delhi Cantt., Delhi about six months ago. I had gone to the suit property only for the purpose of exploring the possibility of settlement between the parties. I had not prepared any inventory of the goods/machines lying there. Site technician of our company was also accompanying me at the time of my aforesaid visit to the suit property. I am unable to produce before this court the complaint raised by Cantonment Board."

From this it is clear that the witness of the Defendant could not give the dates when he visited the Plaintiff's premises for removal of the equipment, either in the examination-in-chief or in the cross-examination. The witness of the Defendant clearly states that he visited the Plaintiff's premises only to

settle the matter. The Trial Court records that the Defendant did not remove the equipment/machinery and thus, continued to enjoy the suit property. These findings are thus fully borne out from the evidence on record.

9. The direction to pay damages for the period of occupation of premises is, thus, liable to be upheld. The Trial Court has also directed the Defendant to remove the equipment from the suit property. The Trial Court has granted a decree in the form of Rs.12,000/- per month with effect from 5th July, 2009 till the removal of equipment and has also granted Rs.1 lakh in damages due to mental harassment and inconvenience. In the facts of the present case, the judgment and decree is not liable to be interfered with.

10. The Defendant has deposited the decretal amount in this court as directed vide judgement and decree dated 27th October, 2016. The same is directed to be released to the Plaintiff within 10 days by the Registry of this Court. After the payment being made to the Plaintiff, the Defendant shall, within a period of one week thereafter, remove its equipment. No further amount would be payable to the Plaintiff either towards damage to the property or on any other count.

11. The appeal is dismissed with no orders as to costs.

PRATHIBA M. SINGH
Judge

FEBRUARY 08, 2018/R