

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

% Decided on: 5th September, 2019

+ **CS(OS) 61/2017**

VIPIN MALIK & ANR.Plaintiffs

Represented by: Ms.Aakanksha Kaul and
Ms.Anushree Malviya, Advocates.

versus

PACL INDIA LTD. & ORS Defendants

Represented by: Ex-parte.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CS(OS) 61/2017

1. By this suit the plaintiffs had inter alia sought a decree of eviction against the defendant No.1 company to hand over vacant peaceful possession of Flat No.1 and Flat No.1A both situated at 7th Floor, Dr.Gopaldas Bhawan, 28, Barakhamba Road, New Delhi (hereinafter referred to as 'Flat No.1 and Flat No.1A'), a decree for payment of arrears of rent, damages, increased rental, service tax with interest and property tax payable till February, 2017, any other further amount that may fall due in favour of the plaintiffs along with the interest and cost.

2. Claim of the plaintiffs is that the plaintiffs and defendant No.1 Company (hereinafter referred to as 'company') entered into two registered lease deeds dated 5th January, 2007 for the two flats for a period of nine years divided into three segments of three years each, commencing from 23rd December, 2006 and terminating on 22nd December, 2015. The monthly rent agreed qua Flat No.1 was ₹1,38,600/- along with a sum of ₹5,000/- per

month as rent towards car parking. The monthly rent qua Flat No.1A was agreed at ₹66,800/- per month along with a sum of ₹5,000/- per month as rent towards the car parking. It was agreed between the plaintiffs and the company that the rent of the two flats would be enhanced by 22% after expiry of first three years ending on 22nd December, 2009, that is, w.e.f. 23rd December, 2009 for another period of three years, that is, till 22nd December, 2012. The second enhancement was further contemplated by 22% after the expiry of the second three years period, that is, w.e.f. 22nd December, 2012 for a further period of three years ending w.e.f. 23rd December, 2012 till 22nd December, 2015.

3. With effect from 23rd November, 2014 the company failed to pay the agreed monthly rent despite occupying the two flats and also failed to pay the agreed common maintenance and service charges as applicable under the Flat Buyer Agreement as well as payable under the lease deeds. The plaintiffs also prayed to the Joint Director/Deputy Director (Enforcement), Enforcement Directorate, Jaipur for release of the arrears of rent qua the two flats whereafter the company paid a rent of ₹7,68,150/- qua Flat No.1 and ₹3,97,929 for Flat No.1A for the months of December, 2014 to March, 2015. Thereafter again the company defaulted and despite letters, no rent as agreed was paid resulting in the plaintiffs writing repeated letters dated 18th November, 2015 and 29th December, 2015. On 31st December, 2015 the company informed by two separate letters that it is unable to pay the rent as their accounts were frozen by the CBI and the rents would be paid in due course however, company was silent about the handing over the peaceful vacant possession of the two flats. The plaintiffs also filed an application before the Committee headed by Hon'ble Justice (Retd.) Mr.R.M. Lodha,

which was constituted by the Hon'ble Supreme Court in proceedings against the defendant company requesting for release of the rentals however, it was clarified that the committee's function was to dispose of the properties of the company so that the sale proceeds could be paid to the investors and thus the application of the plaintiffs was withdrawn on 6th September, 2016. Hence the present suit.

4. Summons to the defendant No.1 company was issued by this Court vide order dated 13th February, 2017, however, company could not be served as it had become defunct and as noted above a committee was constituted to dispose of its property. On an application filed by the plaintiffs seeking notice to implead the committee as defendant, the application was dismissed for the reason the Hon'ble Supreme Court had directed that no proceedings qua the Committee can be entertained by any Court, forum or authority. Thus the company was served through publication in the newspaper.

5. Since none appeared on behalf of the company, the company was proceeded ex-parte vide order dated 15th March, 2019 whereafter the plaintiffs led their ex-parte evidence. During the pendency of the suit physical vacant possession of the two flats was handed on 11th January, 2018

6. To prove its case plaintiffs examined plaintiff No.1 as PW-1, who tendered his evidence by way of affidavit as Ex.PW-1. In his affidavit by way of evidence the plaintiff No.1 deposed about the facts as noted above and claimed that from 23rd November, 2014 the company failed to pay the agreed monthly rent, the agreed common maintenance and service charges and other liabilities under the lease deeds executed between the parties. As per the affidavit, Clause-6 of the lease deeds were invoked to terminate the lease deeds and company was called upon to comply with the contractual

obligation and pay mesne profit till handing over the peaceful, physical and vacant possession of flats.

7. He also exhibited the documents mentioned in the affidavit including the two lease deeds as Ex.PW-1/B to Ex.PW-1/X and PW-1/X1 which included the notices sent to the company. On the basis of the evidence adduced by PW-1 the plaintiffs are entitled to the following claim:

8. Rental claim towards flat No.1 from the period 23rd April, 2015 to 11th January, 2018 as per Clauses 2, 10 & 11 of the Lease Deed dated 5th January, 2007 is as under:

CALCULATIONS OF ARREARS OF RENT					
MONTH	ACTUAL RENT + PARKING RENT	DAMAGES (AS PER CLAUSE 11)	ACTUAL RENT AFTER TDS	RATE OF SERVICE TAX ON ACTUAL	SERVICE TAX
April, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	12.36%	25,498.00
May, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	12.36%	25,498.00
June, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	14%	28,881.00
July, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	14%	28,881.00
August, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	14%	28,881.00
September, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	14%	28,881.00
October, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	14%	28,881.00
November, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	14.50%	29,912.00
December, 15	198,850.00 +7,442.00	N.A.	1,85,663.00	14.50%	29,912.00
TOTAL-A			16,70,967.00		2,55,225.00
CALCULATION OF RENTALS AS PER LEASE DEED IF NOT VACATED					

MONTHS	ACTUAL RENT + PARKING RENT	DAMAGES (as per Clause 11)	ACTUAL DAMAGES AFTER TDS	RATE OF SERVICE TAX/GST	SERVICE TAX
January, 16	N.A.	4,12,584.00	3,71,326.00	14.50%	59,825.00
February, 16	N.A.	4,12,584.00	3,71,326.00	14.50%	59,825.00
March, 16	N.A.	4,12,584.00	3,71,326.00	14.50%	59,825.00
April, 16	N.A.	4,12,584.00	3,71,326.00	14.50%	59,825.00
May, 16	N.A.	4,12,584.00	3,71,326.00	14.50%	59,825.00
June, 16	N.A.	4,12,584.00	3,71,326.00	15%	61,888.00
July, 16	N.A.	4,12,584.00	3,71,326.00	15%	61,888.00
August, 16	N.A.	4,12,584.00	3,71,326.00	15%	61,888.00
September, 16	N.A.	4,12,584.00	3,71,326.00	15%	61,888.00
October, 16	N.A.	4,12,584.00	3,71,326.00	15%	61,888.00
November, 16	N.A.	4,12,584.00	3,71,326.00	15%	61,888.00
December, 16	N.A.	4,12,584.00	3,71,326.00	15%	61,888.00
January, 17	N.A.	5,15,730.00	4,64,157.00	15%	77,360.00
February, 17	N.A.	5,15,730.00	4,64,157.00	15%	77,360.00
March, 17	N.A.	5,15,730.00	4,64,157.00	15%	77,360.00
April, 17	N.A.	5,15,730.00	4,64,157.00	15%	77,360.00
May, 17	N.A.	5,15,730.00	4,64,157.00	15%	77,360.00
June, 17	N.A.	5,15,730.00	4,64,157.00	15%	77,360.00
July, 17	N.A.	5,15,730.00	4,64,157.00	15%	77,360.00
August, 17	N.A.	5,15,730.00	4,64,157.00	GST-18%	92,831.00
September, 17	N.A.	5,15,730.00	4,64,157.00	GST-18%	92,831.00
October, 17	N.A.	5,15,730.00	4,64,157.00	GST-18%	92,831.00
November, 17	N.A.	5,15,730.00	4,64,157.00	GST-18%	92,831.00
December, 17	N.A.	5,15,730.00	4,64,157.00	GST-18%	92,831.00
December 23, 2017 to January 11, 2018	N.A.	3,99,275.00	3,59,347.00	GST-18%	71,870.00
TOTAL –			1,03,85,143.00		18,09,886.00

B					
TOTAL – A+B			1,20,56,110.00		20,65,111.00

9. Rental claim towards Flat No.1A from the period 23.04.2015 to 11th January, 2018 as per Clauses 2, 10 & 11 of the Lease Deed dated 5th January, 2007 is as under:

CALCULATION OF ARREARS OF RENT					
MONTHS	ACTUAL RENT + PARKING RENT	DAMAGES (as per Clause 11)	ACTUAL RENT AFTER TDS	RATE OF SERVICE TAX ON ACTUAL	SERVICE TAX
April, 15	99,425.00 + 7,442.00	N.A.	96,180.00	12.36%	13,209.00
May, 15	99,425.00 + 7,442.00	N.A.	96,180.00	12.36%	13,209.00
June, 15	99,425.00 + 7,442.00	N.A.	96,180.00	14%	14,961.00
July, 15	99,425.00 + 7,442.00	N.A.	96,180.00	14%	14,961.00
August, 15	99,425.00 + 7,442.00	N.A.	96,180.00	14%	14,961.00
September, 15	99,425.00 + 7,442.00	N.A.	96,180.00	14%	14,961.00
October, 15	99,425.00 + 7,442.00	N.A.	96,180.00	14%	14,961.00
November, 15	99,425.00 + 7,442.00	N.A.	96,180.00	14.50%	15,496.00
December, 15	99,425.00 + 7,442.00	N.A.	96,180.00	14.50%	15,496.00
TOTAL –A			8,65,620.00		1,32,215.00

CALCULATION OF RENTALS AS PER LEASE DEED IF NOT VACATED					
MONTHS	ACTUAL RENT + PARKING RENT	DAMAGES (as per Clause 11)	ACTUAL DAMAGES AFTER TDS	RATE OF SERVICE TAX/GST	SERVICE TAX/GST
January, 16	N.A.	2,13,734.00	1,92,361.00	14.50%	30,991.00
February, 16	N.A.	2,13,734.00	1,92,361.00	14.50%	30,991.00
March, 16	N.A.	2,13,734.00	1,92,361.00	14.50%	30,991.00
April, 16	N.A.	2,13,734.00	1,92,361.00	14.50%	30,991.00
May, 16	N.A.	2,13,734.00	1,92,361.00	14.50%	30,991.00
June, 16	N.A.	2,13,734.00	1,92,361.00	15%	32,060.00
July, 16	N.A.	2,13,734.00	1,92,361.00	15%	32,060.00
August, 16	N.A.	2,13,734.00	1,92,361.00	15%	32,060.00
September, 16	N.A.	2,13,734.00	1,92,361.00	15%	32,060.00
October, 16	N.A.	2,13,734.00	1,92,361.00	15%	32,060.00
November, 16	N.A.	2,13,734.00	1,92,361.00	15%	32,060.00
December, 16	N.A.	2,13,734.00	1,92,361.00	15%	32,060.00
January, 17	N.A.	2,67,168.00	2,40,451.00	15%	40,075.00
February, 17	N.A.	2,67,168.00	2,40,451.00	15%	40,075.00
March, 17	N.A.	2,67,168.00	2,40,451.00	15%	40,075.00
April, 17	N.A.	2,67,168.00	2,40,451.00	15%	40,075.00
May, 17	N.A.	2,67,168.00	2,40,451.00	15%	40,075.00
June, 17	N.A.	2,67,168.00	2,40,451.00	15%	40,075.00
July, 17	N.A.	2,67,168.00	2,40,451.00	15%	40,075.00
August, 17	N.A.	2,67,168.00	2,40,451.00	GST-18%	48,090.00
September, 17	N.A.	2,67,168.00	2,40,451.00	GST-18%	48,090.00
October, 17	N.A.	2,67,168.00	2,40,451.00	GST-18%	48,090.00
November, 17	N.A.	2,67,168.00	2,40,451.00	GST-18%	48,090.00
December, 17	N.A.	2,67,168.00	2,40,451.00	GST-18%	48,090.00
December 23, 2017 to January 11, 2018	N.A.	2,06,840.00	1,86,156.00	GST-18%	37,231.00
TOTAL –B			53,79,900.00		9,37,581.00
TOTAL –A +B			62,45,520.00		10,69,796.00

10. Learned counsel for the plaintiffs also states that the plaintiffs would be entitled to recover the enhanced rental @22%. As noted above the lock-in period of the lease deeds was nine years and after the expiry of the said period of nine years and there being no fresh lease deeds executed between the plaintiff and the company, the plaintiffs will not be entitled to the enhanced rental beyond the period of nine years from the date of initial lease deeds. Though learned counsel for the plaintiffs also claimed that difference in the property tax submitted by the plaintiffs is required to be paid however, no evidence has been led on this count and hence the same cannot be allowed.

11. Consequently the decree is granted in favour of the plaintiffs and against the defendant No.1 company directing it to pay a total sum of ₹10,69,796/- as per the rent of the two flats along with the interest that has accrued thereon @12% from the date of accrual of the interest on the particular amount.

12. An affidavit of cost has also been submitted by the plaintiffs as per which the plaintiffs have spent a cost of ₹10,16,057 including the court fees. Thus the cost is directed to be paid to the plaintiffs within four weeks and in case the cost is not paid within four weeks, the plaintiffs would also be entitled to an interest @12% till payment.

13. Decree sheet be drawn accordingly.

14. Suit is accordingly disposed of.

I.A. No.1873/2017 (under Order XV-A CPC)

Application is dismissed as infructuous.

I.A. No.1874/2017 (under Section 151 CPC for permission to file suit without service under Section 80 CPC to defendant Nos.3, 4 and 5)

In view of the order dated 5th May, 2017 passed by the learned Joint Registrar whereby it noted that 'it appears that defendant Nos.3 to 5 are neither necessary nor proper party to the suit, hence they are not required to be summoned', this application is dismissed as infructuous.

SEPTEMBER 05, 2019
'vn'

(MUKTA GUPTA)
JUDGE



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