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

% ***Date of Decision:*** 01.02.2019

\+ CS (COMM) 122/2017

INDIAN MEDICAL ASSOCIATION (REGD.) ..... Plaintiff
Through Mr.Nitesh Jain, Adv.

versus

M/S. ARTH BUSINESS NEWS CHANNEL PVT. LTD.... Defendant
Through None

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This is a suit for recovery of possession and arrears of rent with respect to the suit property at IMA House, Indraprastha Marg, ITO, New Delhi comprising of ground floor, mezzanine floor, servant quarters and washrooms measuring 5500 sq. ft *(herein after referred to as the "suit property")*. Other connected relief are also sought.

2. Notice to the present suit was issued to the defendant on 17.02.2017. Despite service the defendant failed to appear and was proceeded *ex-parte* by this court on 16.08.2018.

3. Essentially, the case of the plaintiff is that the plaintiff is an association duly registered and represented by Dr. R.N. Tondon, Authorised Representative of the plaintiff, entered into an unregistered lease agreement dated 08.09.2015 for a period of 9 years with the defendant company for taking the suit property on rent at Rs. 8 lakhs per month.

4. It was agreed between the parties that the defendant shall pay the rent amount on or before 10th day of every month failing which the plaintiff will

be entitled interest @15% per annum on delay of more than 15 days. Further, as per the said lease agreement the defendant paid a security deposit of Rs. 24 lakhs to the plaintiff.

5. Despite of various reminders by the plaintiff, the defendant defaulted in payment of rent from 01.02.2016 onwards and also failed to deposit necessary service tax, electricity and water charges. Thereafter, various emails were exchanged between the parties wherein, the defendant accepted the default and assured the plaintiff to pay the outstanding amount due, till date the defendant has failed to comply with the said undertaking.

6. Legal notice dated 08.12.2016 was served to the defendant whereby the plaintiff terminated the said lease agreement and called the defendant to pay the outstanding amount of Rs. 74,62,768/- (i.e. after adjustment of security deposit of Rs. 24 lakhs) as principal outstanding rent, service tax, electricity and water charges and delayed interest of the period from 01.02.2016 to 31.12.2016. The defendant has maintained their silence and till date not sent a reply to the notice nor has paid the outstanding amount due to the plaintiff.

7. Hence, this suit is filed for recovery of possession and arrears of rent towards the suit property.

8. I have heard the learned counsel for the plaintiff and have examined the contents of the plaint, the documents placed on record.

9. I may note that the lease agreement dated 08.09.2015 purports to create a lease in respect of the suit property for the period of 9 years. However, being an unregistered deed of more than one year it is directly hit by section 49 of the Indian Registration Act, 1908 and is therefore inadmissible as evidence of any transaction affecting the suit property.

10. Reference may be had to the judgment of the Supreme Court in ***Burmah Shell Oil Distributing v. Khaija Midhat Noor AIR 1988 SC 1470***, held as follows:

> "In view of the paragraph 1 of Section 107 of the Act, since the lease was for a period exceeding one year, it could only have been extended by a registered instrument executed by both the lessor and the lessee. In the absence of registered instrument, the lease shall be deemed to be "lease from month to month". It is clear from the very language of Section 107 of the Act which postulates that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered instrument, it must be a monthly lease. The lessee and the sub-lessee in the facts of this case continued to remain in possession of the property on payment of rent as a tenant from month to month. The High Court so found. We are of the opinion that the High Court was right."

Hence, the Apex Court has laid down the principles establishing that the lease shall be deemed to be a lease for month to month basis.

11. The plaintiff has led the evidence by way of affidavit, Dr. R.N. Tondon, AR of the plaintiff as PW1.

12. A perusal of the affidavit by way of evidence of Dr. R.N. Tondon, AR of the plaintiff association would show that he is appointed as an authorized representative of the plaintiff in a Board resolution dated 17.01.2017, the same is exhibited as Ex. PW1/1. He has affirmed the contents of the plaint. He states that the plaintiff is the absolute owner of the suit property measuring 5500 sq. ft. It is further stated that the defendant company approached the plaintiff for let out of the suit premises. On 08.09.2015, the parties entered into an unregistered lease agreement for the period of 9 years, wherein the defendant agreed to pay the rent of Rs. 8 lakhs per month and

also agreed to pay Rs. 24 lakhs as security deposit. The defendant also agreed to pay interest @ 15% per annum in case the rent amount is delayed beyond 15 days. The defendant was further liable to pay tax, electricity and water charges as per consumption. The defendant deposited the security amount of Rs. 24 lakhs to the plaintiff but failed to pay the rent from 01.02.2016 onwards and also failed to pay service tax, electricity and water charges in spite of various reminders made by the plaintiff. Vide email dated 30.08.2016 the defendant though its director, Mr. Amit Sinha agreed to pay the outstanding amount in four instalments. The said email dated 30.08.2016 is marked and exhibited as Ex. PW 1/3. Reply dated 06/07.09.2016 to the said email dated 30.08.2016 was sent by the plaintiff to the defendant demanding an interest of Rs. 3,22,520/- and Rs. 52,052/- electricity charges. The said reply is marked and exhibited as Ex. PW 1/4. Thereafter, the defendant vide email dated 09.09.2016 accepted the failure to deposit the outstanding amount and assured the plaintiff that the same shall be reimbursed through RTGS/NEFT in a short period of time. However, no such transfer has been made till date despite various reminders. The email dated 09.09.2016 and reminder letter dated 02.11.2016 are marked and exhibited as Ex. PW 1/5 and Ex. PW 1/6. Legal Notice dated 08.12.2016 was served to the defendant whereby the said lease agreement dated 08.09.2015 was terminated. The said legal notice is marked and exhibited as Ex. PW 1/7. It is further stated that despite various reminders and legal notice the defendant has failed to hand over the physical possession of the vacant suit property. It is also stated that on 26.02.2018, the defendant approached the plaintiff and handed over the vacant, physical possession of the suit property. The receipt is marked and exhibited as Ex. PW 1/9 and Ex. PW 1/10.

Thereafter, the defendant on 13.12.2017, 02.02.2018 and 16.03.2018 has deposited a total amount of Rs. 18.5 lakhs via RTGS as part payment to the outstanding amount and requested that the remaining amount will be cleared within 3-4 months. Since then, the defendant has made no payment towards the outstanding amount. The calculation sheet on total outstanding amount due to the plaintiff is marked and exhibited as Ex. PW 1/11.

13. The plaintiff is also claiming arrears of rent at the rate of Rs. 8 lakhs per month from February, 2016 to February, 2018 amounting to Rs. 4,35,21,315/-. The plaintiff is also claiming electricity and water charges of Rs. 98,552/-. However, it is admitted by PW1 that an amount of Rs. 18.5 lakhs has already been deposited by the defendant to the plaintiff. It is also pertinent to mention that the plaintiff has already received physical and vacant possession of the suit property on 26.02.2018 and the same is also recorded by this court on 04.05.2018.

14. The suit to the extent that it seeks a decree of possession in respect of the suit property is infructuous as the plaintiff has already on 04.05.2018 submitted in court that the plaintiff has received possession. The issue remains about arrears of rent and *mesne profits*. The plaintiff has claimed a sum of Rs.88 lacs towards arrears of monthly rents @ Rs.8 lacs per month for the period 01.02.2016 up to 31.12.2016. The plaintiff has also claimed a sum of Rs.13,04,000 towards the service tax liability for the period up to 31.12.2016 and Rs.88,129/- towards outstanding electricity charges and interest on the outstanding arrears of rent @ 15% up to 31.12.2016 amount to Rs.6,98,632/-. Based on this, the total liability is Rs.1,08,90,761/-.

15. It is a matter of fact that the defendant has not paid any rent for the period w.e.f. 01.02.2016 to 31.12.2016. The service tax liability and

electricity and water dues remain outstanding. The plaintiff is entitled to a decree on the above grounds. The defendant has deliberately not paid the rent etc. despite receipt of legal notice and various reminders. Claim for interest is also valid.

16. Accordingly, a decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.1,08,90,761/-.

17. After filing of the suit, the defendant has vacated the suit property on 26.02.2018. The defendant would be liable to pay rent/mesne profits of Rs.1,11,42,857/- @ Rs.8 lacs per months also for the period, i.e. with effect from 01.01.2017 to 26.02.2018. A decree is passed accordingly. The plaintiff shall also be entitled to actual cost. The plaintiff shall also be entitled to interest @ 10% per annum on the decreetal amount from the date of filing of the suit till the decree. The plaintiff shall also be entitled to interest @ 10% per annum from the date of decree till recovery of the entire outstanding amount.

18. The suit is accordingly disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

FEBRUARY 01, 2019/ss