

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

% **Date of decision: 28th January, 2020.**

+ **CS(COMM) 167/2019**

SHAILENDER SINGH (HUF) **..... Plaintiff**

Through: Ms. Smita Maan & Mr. Vishal Maan,
Advs.

Versus

VILLAGE PEOPLE RESTAURANTS LLP **..... Defendant**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff Shailender Singh (HUF) has instituted this suit for recovery of possession, arrears of rent and damages / *mesne profits*, pleading that (i) the plaintiff let out 1250 sq.ft. area on the left side portion of first floor of property No.26, Hauz Khas Village, New Delhi to the defendant Village People Restaurants LLP, of which Arjun Yadav was one of the partners, on the terms and conditions contained in an unregistered Lease Agreement dated 28th July, 2015, at a rent of Rs.4,50,000/- per month and service charges of Rs.21,000/- per month, besides other charges payable, with effect from 1st October, 2015 and for a period till 30th September, 2018; (ii) the defendant paid a security deposit of Rs.13,50,000/- to the plaintiff, which was refundable without interest after deducting all dues, at the time of vacation of the premises; (iii) the defendant has not paid regular rent and other charges from 1st October, 2015 to 10th March, 2019 and a sum of Rs.1,94,68,000/- was due from the defendant to the plaintiff; (iv) the

defendant, out of the aforesaid amount, paid Rs.22,88,000/-, leaving balance of Rs.1,71,80,000/-; (v) the defendant failed to pay the remaining amount or any further amounts inspite of repeated requests and reminders; and, (vi) though the lease agreement is unregistered and not admissible in evidence and the period of lease also expired by efflux of time on 30th September, 2018 but the defendant, for occupation thereafter is liable to pay *mesne profits* at the rate of Rs.10,00,000/- per month. Hence the suit for recovery of possession / ejectment, recovery of Rs.1,71,80,000/- and for future *mesne profits* at the rate of Rs.10,00,000/- per month.

2. The suit, unaccompanied with any application for interim relief, came up before the Joint Registrar on 1st April, 2019, when without noticing that the lease agreement being unregistered, the question of the lease expiring by efflux of time did not arise and no plea of termination of tenancy in the manner prescribed in Section 106 of the Transfer of Property Act, 1882 existed in the plaint, summons of the suit were ordered to be issued.

3. The order dated 1st October, 2019 of the Joint Registrar records that the defendant had been served on 28th September, 2019 and Mr. R.K. Pillai, Advocate had appeared for the defendant.

4. However neither did Mr. R.K. Pillai, Advocate file his Vakalatnama nor did the defendant appear thereafter or file any written statement. Accordingly, the Joint Registrar ordered the suit to be listed before this Court.

5. The suit came up before this Court yesterday, when it was enquired from the counsel for the plaintiff, how the suit, without termination of

tenancy, was maintainable. Under an unregistered agreement, the tenancy remains month to month and there can be no “term of the lease”.

6. On request of counsel for plaintiff, the proceedings were adjourned to today.

7. The counsel for the plaintiff has today referred to *Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha (HUF)* 2011 (183) DLT 712 laying down that service of summons of the suit is sufficient service of notice upon the defendant, of the landlord not wanting to continue with the defendant as a tenant and has also handed over a copy of *Vijay Pal Singh Vs. Bharat Bhushan Gulati* 2016 SCC OnLine Del 6052. Both the aforesaid judgments refer to and rely on *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)* (2008) 2 SCC 728. The counsel for the plaintiff has argued that the Courts have interpreted Section 106 of the Transfer of Property Act as, “even if no notice of termination has been given, if the suit remains pending for over 15 days, the ejectment can be ordered”.

8. I am unable to agree. Section 106 of the Transfer of Property Act unequivocally lays down that in the absence of a contract to the contrary, a lease of immovable property shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by 15 days notice and that such notice must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or, if such delivery is not practicable, affixed to a conspicuous part of the property. The contract to the contrary can only be by a registered document.

9. The said statutory provision, to my knowledge, has not been struck down or obliterated by any of the judgments. The cases referred to by the counsel for the plaintiff, as also other judgments referred to in ***Vijay Pal Singh*** supra, were all cases, where there was a notice of termination and the dispute was as to the delivery thereof and where the defendants were contesting the litigation. In such circumstances, the Courts held that pedantic proof of service of notice should not be insisted on, as delivery of summons was enough especially as such summons were accompanied by a copy of the plaint in which the notice by which tenancy was terminated was filed as a document, and which document is again served on the defendant/tenant along with the other documents in the suit, as substantiated in ***Abhinav Outsourcing Pvt. Ltd. Vs. Sunita Seth*** (2012) 186 DLT 689, ***Sharvan Aggarwal Vs. Kailash Rani*** 2012 SCC OnLine Del 156 and ***Cement Corporation of India Ltd. Vs. Bharat Bhushan Sehgal*** 2012 SCC OnLine Del 3259. Even in ***Vijay Pal Singh*** supra, though there was no notice but the defendant contested the suit and had preferred an appeal against the decree of his ejectment.

10. Such is not the case here. The summons ordered to be issued to the defendant vide order dated 1st April, 2019 were returned unserved with the report that the premises were found locked and / or that no such firm existed at the address given. The order dated 28th August, 2019 records that the fresh summons issued had also been returned with the report that the owner was hospitalized. Thereafter on the next date i.e. 1st October, 2019, Mr. R.K. Pillai, Advocate appeared but did not even file his vakalatnama. In the present case thus, the service of summons of the suit even on the defendant is doubtful. Moreover, even if the summons with plaint were served on the

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defendant, there is no plea in the plaint, of any notice of termination of tenancy having been issued or served.

11. In the aforesaid circumstances, the principle laid down in the judgments cited cannot be invoked and the judgments cannot be read as a carte blanche to the landlords, to ignore the provisions of Section 106 of the Transfer of Property Act, which are salutary in nature, and to straightaway file suits for ejectment.

12. The suit is thus liable to be dismissed on this ground alone. Rather, the counsel for the plaintiff states that the plaintiff will withdraw the suit with liberty to file again.

13. However, the Court Master has pointed out that there is on record a vakalatnama dated 30th September, 2019 and filed on 1st October, 2019 of Mr. Darshan Paliwal, Advocate, Enrolment No.D-950/2003 with the address of T-43, Tehsil Lane, Tis Hazari Courts, New Delhi, on behalf of Arjun Yadav as partner of defendant no.1. The same confirms that the defendant has been duly served and has chosen not to appear. In fact, yesterday, the counsel for the plaintiff had informed that the defendant is not even using the premises for a restaurant, for which purpose it was taken, and the premises are lying locked and the counsel for the plaintiff today also confirms.

14. In the aforesaid view of the matter, the principle laid down in the judgments cited can be invoked, though cautioning that suits should not be instituted without terminating the tenancy and such suits, if filed, are liable to be dismissed on the very first date when the same come up for admission before the Court. Merely because the Joint Registrar, before whom the

present suit came up for admission, did not do the same, would not prevent this Court from, in appropriate cases, so dismiss the suit at a later stage also.

15. The defendant having not appeared inspite of service, is proceeded against *ex parte*.

16. Considering the averments in the plaint and the documents filed therewith and further considering that the plaint is accompanied with an affidavit, need to relegate the plaintiff to lead *ex parte* evidence, which would be nothing but reiteration of what is already on record, is not felt.

17. The plaintiff, on the basis of averments in the plaint and documents filed therewith is found entitled to the relief of ejectment and recovery of arrears of rent and *mesne profits* at the rate not exceeding the rate of rent. The defendant being a limited liability partnership, the entitlement of the plaintiff to recovery of monies would be only against the defendant and its assets.

18. A decree is accordingly passed, in favour of the plaintiff and against the defendant, of (i) ejectment of the defendant from left side portion, ad-measuring 1250 sq.ft., of the first floor of property No.26, Hauz Khas Village, New Delhi; (ii) recovery of Rs.1,71,80,000/- together with *mesne profits* at the rate of Rs.4,71,000/- with effect from the date of institution of the suit till the date of ejectment, together with interest @ 7% per annum on the arrears, with effect from the end of the month for which rent / *mesne profits* are due and till the date of payment. The plaintiff shall also be entitled to costs of the suit limited to the court fees paid on the plaint.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 28, 2020/‘gsr’
(corrected and released on 10th February, 2020)