

Kanwal Kishore Manchanda and anr. Vs. S.D.Technical Services Pvt. Ltd.

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Court : Delhi

Decided On : Dec-06-2013

Judge : M. L. Mehta

Appellant : Kanwal Kishore Manchanda and anr.

Respondent : S.D.Technical Services Pvt. Ltd.

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + C.S (O.S) No.1559/2003 Date of Decision:

06. 12.2013 KANWAL KISHORE MANCHANDA AND ANR. Plaintiff Through: Mr.P.S.Bindra, Adv. with Ms.Shweta Priyadarshini, Adv. versus S.D.TECHNICAL SERVICES PVT. LTD. F+ Defendant Through: CORAM: HONBLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J.

1. The plaintiffs have filed the instant suit for ejectment, mesne profits, damages and mandatory injunction directing the defendant to discharge all claims and demands of the Delhi Vidyut Board (for short the DVB) and its successor, BSES, in respect of ground floor of property bearing No.B-87, Maya Puri Industrial Area, Phase-I, New Delhi (hereinafter referred to as the suit property). The plaintiffs have also claimed damages to the tune of Rs. 20,00,500/- (Rupees Twenty Lakhs and Five Hundred Only).

2. The plaintiffs case is that, their father, Sh. Ram Prakash, granted a temporary license to the defendant vide license agreement dated February 25, 1983 in respect of the suit property, comprising of right side office rooms, center bay and godown and one bay without any portion of the terrace. The monthly fee fixed for the said portion was Rs. 10,000/- (Rupees Ten Thousand Only). The plaintiffs submit that Sh. Ram Prakash died on July 25, 1990, leaving behind a will in their favour. And that in consonance of the said will, the defendant attorned the plaintiffs as licensors/owners of the suit property and started paying license fee to them. The plaintiffs further submit that subsequently, the defendant was permitted to use the first floor of the suit property, resulting in increase in the license fee to Rs. 12,000/(Rupees Twelve Thousand Only). And that after February 1992, the license fee was further enhanced to Rs. 20,000 (Rupees Twenty Thousand) p/m.

3. The plaintiffs allege that the defendant stopped paying the license fee on October 1, 1994, whereupon they filed CS (OS) No.952/1998 for recovery of arrears of the license fee. And that subsequently, vide notice dated November 16, 2002, the plaintiffs terminated the said license with effect from May 31, 2003 and directed the defendant to remove its belongings therefrom. And that the notice also specified that if the defendant failed to comply with the said direction, it would be liable to pay use and occupation charges which worked to be Rs. 1,00,000/- (Rupees One Lakh Only) per month at that time. The notice also demanded that the outstanding license fees be paid by the defendant.

4. The plaintiffs submit that the defendant replied to the said notice through its counsel vide letter dated March 1, 2003. The plaintiffs submit that in the said letter, the defendant raised frivolous pleas. The defendant in the letter sought to deny that Sh. Ram Prakash was the proprietor of M/s Ram Prakash Kanwal Kishore but only as one of its partners. The plaintiffs claim that this stand is a clear departure from the defendants letter dated October 20, 1990. In the said letter, the defendant admitted and attorned to Sh. Ram Prakash, recognizing that he was the sole proprietor of M/s Ram Prakash Kanwal Kishore. The plaintiffs submit that the defendant also wrongly stated in the reply that an area measuring 208.75 sq. mts. was surrendered to them on February 21, 1993. And that a further area of 8.8 sq. mts. of the stairs leading to the first floor was surrendered to the plaintiffs and that

as on March 1, 1996, the defendant was in possession of an area measuring 643.5 sq. mts. The plaintiffs submit that the defendant surrendered 1/4th of the Center Bay measuring 1750 sq. mts. in the year 1993 and the entire first floor was surrendered on June 23, 2002. And that the said surrender was voluntarily made by the defendant without any reduction in their liability to pay the license fee.

5. The plaintiffs further submit that on account of failure on the part of the defendant to pay the electricity bills to the DVB, the only connection supplied to the building of the suit property was removed. And that thereafter, the defendant challenged the said action before this Court in WP (C) No.121/1992. This Court directed the defendant to pay certain sums of money on a recurring basis. The plaintiffs submit that on failure of the defendant to deposit the recurring amount, they were constrained to file WP(C) No.1732/1997, praying for a new electricity connection as the expensive plant and machinery installed in the suit premises was lying idle and this resulted in loss to the plaintiffs business. The plaintiffs submit that they have not been able to use the building because the DVB refused to provide a new connection due to the outstanding dues of the defendant. And that in addition to the electricity bills, the defendant has failed to pay the water bills and other municipal dues.

6. The plaintiffs submit that the defendant has taken contradictory stands in the various cases filed inter se the parties. In furtherance of this submission, the plaintiffs claim that in Suit No.3726/1990, the defendant admitted that 1/4th of the Bay portion was in possession of the plaintiffs. However, in Suit No.1134/1996 filed by the defendant, the defendant claimed that 1/4th of the Bay portion was in its possession. The plaintiffs claim that the defendant has failed to comply with the notice of termination of the license and continued to use and occupy the suit premises. By virtue of the unauthorized possession, the plaintiffs submit that they are entitled to mesne profits at the prevailing market rate. The plaintiffs also submit that the defendant is liable to discharge all the outstanding dues against electricity connection No.K. No.521706 and K. No.5204836 and water bills and other municipal dues. The plaintiffs also claim that by virtue of the defendant not paying the outstanding dues, the plaintiffs have incurred losses to the tune of Rs. 20,00,500/- (Rupees Twenty Thousand Five Hundred Only).

7. The defendant filed a Written Statement cum Counter Claim. The defendants case is that on September 25, 1967, the Delhi Development Authority (for short the DDA) executed a Perpetual Lease Deed granting lease hold rights under the Government Grants Act, 1895 in favour of M/s Ram Prakash Kanwal Kishore Arora in respect of the suit property. The defendant further submits that M/s Ram Prakash Kanwal Kishore Arora was formed under a partnership deed dated January 5, 1975, and that without obtaining prior permission from the paramount lessor executed a License Agreement in favour of the defendant on September 25, 1983. Vide the said agreement; the defendant was granted license to use and occupy the suit property for a fixed period of 11 months. The agreed license fee was Rs. 10,000/- (Rupees Ten Thousand Only) per month. The defendant submits that thereafter it was in possession of a portion measuring 1450 sq. yds., comprising of the court yard/ open space in the right side upto a power generator shed, one security/guard room on the front side adjacent to the tube well shed, office complex at the first floor, three covered bays, one open 4th bay (uncovered), two water closet/bathrooms. The defendant submits that on the expiry of 11 months, the license continued to subsist through an oral agreement arrived at between the defendant and M/s Ram Prakash Kanwal Kishore Arora. And that under the said oral agreement, the defendant became a legal tenant in the suit premises paying a rent of Rs.10,000/which was later increased to Rs. 12,000/- per month and which continues till date.

8. The defendant further submits that the DDA, vide its notice dated November 13, 1984, cancelled the Perpetual Lease in favour of M/s Ram Prakash Kanwal Kishore Arora and reclaimed possession of the plot of land and the structure standing thereon. And that due to some extraneous reasons, the DDA have yet to enter into actual physical possession of the said land. Thus the defendant submits that the plaintiffs ceased to be the lessee/owners of the suit property and that they are in illegal and unauthorized possession of the suit property. The defendant submits that in early 1991, various disputes and differences arose between them, the plaintiff and one Smt. Raksha Arora regarding the consumption of electricity from common electric meters and the payment of electricity charges. The defendant further submits that in the same year, the plaintiffs illegally disconnected the defendants electricity supply. And that thereafter, the defendant filed WP (C).

121/1992 seeking direction against the DVB, the plaintiffs and Smt. Raksha Arora for restoration of power supply to the defendants factory. The defendant submits that on the direction of the Court, the electricity was restored for short intervals from February 1991 to July 1994, during which time, the defendant alone paid a total sum of Rs. 3,98,224/- (Rupees Three Lakh, Nine Eight Thousand, Two hundred and twenty four only) towards electricity. The defendant alleges that neither the plaintiffs nor Smt. Raksha Arora paid any amount despite the defendants repeated request to discharge their liability towards the electricity charges. And that eventually in July 1994, the DVB permanently disconnected the electricity supply to the suit property.

9. The defendant further submits that on the specific request by plaintiff no.1, they handed over actual and physical possession of an area measuring 154.9 sq. mts. consisting of covered shed and a further area measuring 208.75 sq. mts. open bay on February 21 st 1993. The defendant submits that the surrendered portion amounted to 28% of rented area. Further, the defendant submits that on March 1, 1996, it surrendered 8.8 sq. mts. of stairs leading to the first floor and a further area of 207.3 sq. mts. on the first floor. The defendant submits it surrendered a total of 574.5 sq. mts. which amounted to 47.4% of the area of the suit property. And that consequentially, the defendant was in possession of 643.5sq. mts. which amounted to 52.6% of the total area. The defendant submits that the rent paid by it i.e. Rs. 12,000/- was with respect to the entire area admeasuring 1,450 sq. yds. And that by virtue of the decrease in the occupied space, the defendant was entitled to proportionate reduction in the rent payable which the defendant calculated to be Rs. 6200/- per month.

10. The defendant submits that the plaintiff has not paid the property tax/house tax to the Municipal Corporation of Delhi (for short the MCD) for many years. And that the defendant has been receiving numerous notices/letters from the MCD from the year 1995. Of these letters, two dated February 12, 2002 and February 10, 2003 demanded a sum of Rs. 54,24,032/- (Rupees Fifty Four Lakhs, Twenty Four Thousand and Thirty Two Only) on account of property tax in respect of the entire suit property. The defendant submits that the MCD in a clandestine manner have taken coercive measures such as notice of attachment of rent, attachment of bank

accounts of the defendant, and issuing warrants of distress against the defendant alone without bothering the plaintiff.

11. The defendant further submits that in pursuance of order dated March 24, 2003, passed by this Court in Suit No.952/1998 titled Kanwal Kishore Manchanda and Anr. vs S.D Technical Services Pvt. Ltd., it deposited a sum of Rs. 5,80,000/- (Rupees Five Lakh, Eighty Thousand Only) towards upto-date alleged arrears of rent of the suit premises. The defendant further submits that in March 1998, the DVB illegally transferred the arrears of electricity in respect of electric connection installed in the suit property to K No.014-5765296 and later disconnected the electricity supply in the same property. And that subsequently, the defendant was forced to file Writ Petition No.2243/1998 challenging the transfer of electricity arrears and disconnection of electricity supply. The defendant further submits that in the said case, the Court allowed the Writ Petition, observing that if the matter of dispute related to consumption of electricity between the registered consumer and a third party, the registered user would only be liable to pay the dues to the DVB, which it could later recover from the third party. In furtherance of this observation, the defendant submits that owing to the failure on the part of the plaintiff to discharge its liability in paying the electricity charges, the power supply to the defendant was disconnected in 1991. And that this disconnection forced the defendant to depend on power generators, which incurred huge costs on kerosene oil. The defendant further submits that the disconnection of the electricity supply led to shutting down of half of its factory and heavy machines used for production and shunting out large number of employees/workmen from the factory, resulting in a sharp decline in production and sale of the defendant company.

12. The defendant has raised various preliminary objections in the written statement cum counter claim. The defendant submits that the plaintiffs have no locus standi to institute and file the present suit as they are not the owners of the suit property. In furtherance of this contention, the defendant submits that the Perpetual Leased Deed entered into between the DDA and the plaintiff was cancelled vide notice dated November 13, 1984 and the DDA reclaimed the possession of the plot of land and the structure standing thereon. The defendant further submits that the suit is bad for non-joinder of the following necessary

parties; i) the DDA which is currently the paramount owner of the suit property, ii) South-West Delhi Electricity Distribution Co. Ltd (successor of the DVB), to whom the plaintiff owes a large amount of electricity dues and iii) the MCD, to whom property tax dues amounting to over Rs. 54,00,000/- (Rupees Fifty Four Lacs Only) have not been paid by the plaintiff. The defendant submits that the presence of the above mentioned parties are necessary for the just and complete decision on the issues arising in the suit. The defendant further submits that the suit is liable to be dismissed since the relief of mandatory injunction directing the defendant to pay the outstanding dues to the DVB is barred by the express provisions under Section 41(i) of the Specific Relief Act, since the conduct of the plaintiffs regarding the default in payment of property tax as lessee and electricity dues as registered consumer has disentitled them to the assistance of this Court. The defendant submits that since a previous suit has been filed bearing No.952/1998, which is based on the same cause of action being for the disconnection of electricity supply, and arrears of rent since 1985, the plaintiffs are precluded from claiming such reliefs in the present suit and the suit is barred under Section 10 of the CPC.

13. The defendant claims that the cause of action in the present suit first arose in 1983 when the defendant took the possession of the suit property under a License Agreement for 11 months. And that the cause of action further arose when the said License Agreement expired and the plaintiff continued the license vide an oral agreement, taking Rs. 10,000/- as monthly rent. The defendant further submits that the cause of action arose on November 13, 1984 when the DDA cancelled the perpetual lease deed in respect of the suit property. And that the cause of action continues to arise as long as the plaintiff continues to neglect the payment of the electricity dues. In its counter claim, the defendant has prayed for the following; (i) a decree of compensation to the tune of Rs. 25,00,000/- (Rupees Twenty Five Thousand Only), (ii) decree of pendent lite and future compensation @ Rs. 70,000 (Rupees Seventy Thousand Only); (iii) a decree of mandatory injunction directing the DDA to formally cancel/ determine the Perpetual Lease Deed and to forfeit and re-enter upon and take possession of the suit property.

14. In their replication, the plaintiffs have reiterated their case as made out in the plaint and have denied all the objections raised by the defendant. They submit that the defendant cannot allege that the plaintiffs are not the owners of the suit property after having accepted them as landlords and are thus estopped from raising the said issue under Section 115 of the Evidence Act. Further the plaintiffs deny that they have illegally disconnected the electricity supply in suit property and continue to maintain that the disconnection took place due to the defendants failure to pay the electricity dues.

15. Vide order dated May 22, 2007, the following issues were framed for trial:

1. Whether the licence of the defendant was legally and validly terminated before the suit?. OPP2 Whether the licence fee of the suit premises was Rs. 20,000/per month, during currency of licence?. OPP3 Whether the plaintiffs are entitled for occupation charges @ Rs. 1 Lakh or at any other rate per month from June 2003 till the month of August 2005?. OPP4 To what extent is the defendant under obligation to pay electricity dues, municipal dues and water bills claimed under para 10 of the plaint?. OPP5 Whether the suit is barred by law of limitation?. OPD6 Whether the suit is not maintainable in view of provisions of Section 41(i) of Specific Relief Act, 1963?. OPD7 Whether the suit is without cause of action against the defendant?. OPD8 Whether the plaintiffs have not come to the court with clean hands and have deliberately concealed and suppressed material facts as well as relevant documents?. OPD9 Whether the suit is under-valued for the purposes of court fee?. OPD10 Whether the defendant is entitled to restoration of possession of the suit premises as the defendant has been evicted pursuant to Court order which has been set aside by Honble Supreme Court?. OPD11 Whether the defendant had surrendered 47.4% area of originally tenanted area to the plaintiffs as claimed under para 2 of the written statement?. If so, its effects?. OPD12 Whether on account of alleged surrender of 47.4% tenanted area, the defendant is entitled for proportionate reduction in rent/licence fee?. OPD13 Whether on account of stoppage of electricity supply to the suit premises since 1994, the defendant suffered financial loss attributable to the plaintiff as claimed under para D of Counter Claim?. OPD14 Whether the defendant is entitled for specified damages of Rs. 25 Lakhs pertaining for three years preceding to filing of

the counter claim and defendant is further entitled for Rs. 70,000/- per month till September 2005?. OPD15 Whether the parties are entitled to their respective reliefs?.

16. Before proceeding to decide the issues on merit, I find it relevant to note that it is clear that the nature of the relationship between the parties has evolved into the character of a landlord tenant as opposed to one of a licensor and licensee. This fact is apparent from the conduct of the parties since the inception of the tenancy, in the present suit and also from the various cross suits filed between the parties in the past wherein the parties have treated the agreement between them, be it oral or documentary, as one of a lease and not of a license. Keeping this aspect in mind, I shall proceed to deciding the issues framed for trial. Issue No.7:

17. The defendant contends that no cause of action has arisen in favour of the plaintiffs since the plaintiffs have waived the termination of the license. Cause of action is a bundle of facts giving a person the right to seek a relief from a court of law. Cause of action also means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. The Supreme Court in the case of Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors., (1994) 6 SCC322 observed that the cause of action is a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. The plaintiff has claimed that the cause of action stems from the fact that the defendant stopped paying the rent for the suit property in the year 1994 and further arose when the plaintiff terminated the license vide notice dated November 06, 2002.

18. Further, the cause of action arose when the electricity supply was disconnected in the suit property based on which they pray for a decree of mandatory injunction against the defendant to clear all the arrears due to the DVB. All these facts are to be proved by the plaintiffs in order to obtain a relief in their favour. Thus I find that a sufficient cause of action has been made out so as to file the present suit. Issue No.7 is decided against the defendant. Issue Nos.1, 3 and 10:

19. Issue No.3 determines whether the plaintiffs are entitled to claim occupation charges to the tune of Rs. 1 lakh per month from June 2003 till August 2005. This issue can be decided only on determining whether the licence was legally and validly terminated. The outcome of Issue No.1 would also have a bearing on issue no.10 which relates to whether the defendant is entitled to restoration of possession of the suit property. Thus these three issues will be decided together.

20. The plaintiff no.1, Sh. Kanwal Kishore Manchanda examined himself as PW-1 and his affidavit of evidence is placed on record as Ex. PW1/A. In his affidavit, PW1 has referred to notice dated November 16, 2002, by which he contends that the defendants license was terminated. The notice is placed on record as Ex. PW1/5 and the acknowledgment of receipt of the said notice is placed on record as Ex. PW1/5 (Colly). It is seen that the said notice was sent by the counsel of the plaintiffs, informing the defendant that they havent paid the licence fee since October 1994 and that the plaintiffs wished to terminate the licence. The notice further required the defendant to vacate the suit property by May 31, 2003 and that in case the defendant failed to vacate within the stipulated time, the plaintiffs would charge a user fee of Rs. 1,00,000/- per month.

21. The defendant replied to the notice through its counsel vide letter dated March 1, 2003 as Ex. PW1/6. In the reply, the defendant took up certain pleas and allegations, finally requesting the plaintiffs to withdraw the termination notice. The plaintiffs claim that since the defendant acknowledged the receipt of the notice and replied to the same, it constituted a valid legal termination of the tenancy. This submission to my mind does not hold good since mere receipt of the termination notice would not mean that the tenancy is validly terminated. And further, in the defendants reply to the said termination notice, the termination was strongly objected to and the counsel for the defendant requested that the notice be withdrawn. Barring the termination notice and the reply, the plaintiffs have not produced any other document on record to prove that the tenancy was legally and validly terminated. Further, when PW1 was cross examined on whether the notice dated November 16, 2002 was sent by the plaintiffs, he did not remember whether the notice was sent by his counsel on his instruction and further he neither denied nor admitted sending the said notice of termination.

22. The defendant contends that the plaintiffs had waived the termination of the license when they amended the prayer clause in Suit No.952/1998 (renumbered as 350/2003), in December 2002, claiming pendent lite and future interest at a contractual rate for continued occupation of the suit premises. The defendant submits that this act of the plaintiffs tantamount to waiver of notice of termination as stipulated under Section 113 of the Transfer of Property Act, 1882 (for short the TP Act). A perusal of the amended plaint in Suit No.952/1998 reveals that the plaintiff prayed for license fee pendent lite for the continued occupation of the defendant.

23. The relevant provision with regard to termination of lease is Section 111(h) of the TP Act, which stipulates that a lease can be terminated by expiration of a notice to terminate the tenancy. Further, Section 113 of the TP Act provides that the notice sent under Section 111 (h) would be deemed to be waived when the landlord does an act either expressly or impliedly, showing that the lease still subsists. It is apparent to me that by amending the plaint in Suit No.952/1998, claiming continued license fee, the plaintiffs intended that the tenancy subsists, thereby waiving the notice of termination sent to the defendant on November 16, 2002. Although the present suit is one for ejectment, the plaintiff has claimed a license fee for the continued occupation of the defendant in Suit No.952/1998 after sending the notice of termination. Further, vide order dated August 12, 2004 in suit No.952/1998, an application was filed by the plaintiff no.2 for realisation of the 1/2th share of the rent. The Counsel for the defendant did not object to this application and submitted that an amount of Rs. 2,90,000/- has already been received by plaintiff no.1 towards the rent due. It is clear from the record of the lower court that the defendant is continuing to pay the rent to the plaintiffs which is being received by them. I am of the view that this amounts to waiver of the notice of termination of the license. Issue No.1 is thus decided against the plaintiff.

24. In light of the tenancy not being validly terminated, the plaintiff cannot claim occupation charges at the rate of Rs. 1 Lakh per month. Thus Issue No.3 is also decided against the plaintiff.

25. Regarding Issue No.10, the Ld. Single Judge while disposing the application under Order 12 Rule 6 of the Code directed that the defendant be ejected based on his admission that the defendant had admitted the relationship of landlord and tenant and that the tenancy being validly terminated was also admitted. This decision was upheld before the Division Bench. When taken in appeal to the Supreme Court, the orders of the Division Bench and the Single Judge were set aside observing as under, vide order dated September 15, 2006:

The Learned Single Judge was not justified in disposing of the prayer for eviction in the suit only on the basis of the pleadings of the parties. We feel that it was a case in which issues should have been framed and the parties allowed to lead evidence on all the issues and then the entire matter should have been decided in accordance with law. In this view of the matter, without expressing any opinion in relation to the merits of the pleadings, we feel that the matter should be remitted to the Learned Single Judge. . . We have been informed that after passing of the impugned order by the Division Bench of the High Court possession of the premises in question has been taken by the plaintiffs in execution of decree passed by the Ld. Single Judge. As we have directed the Suit to be disposed of within the time schedule, it is ordered that the defendant shall not take steps for restitution till disposal of the suit.

Pursuant to the order of the Supreme Court, the Ld. Single Judge passed the following order dated February 12, 2007:

I accordingly, direct that in the event of the plaintiff transferring the title or possession of the suit property or constructing upon the same, the plaintiff shall inform the proposed transferee of the pendency of the present proceedings in writing and the rights claimed by the defendant herein in the suit. The plaintiff shall also immediately inform this Court and the defendant of any transfer of possession or title effect by them. It is made clear that the transferee would be bound by the final determination of this suit and shall acquire his proprietary or possessory rights, subject to any orders that may be passed in this proceeding. In the event of the plaintiffs failing in the present suit, the plaintiffs shall also ensure that they restore back possession of the suit property to the defendant in the same condition

as it was when possession thereof was taken from the defendant on these terms, the instant application stands disposed of.

(emphasis supplied) Relying on the decision passed by the Supreme Court and the directions of the Single Judge, Issue No.10 is decided against the plaintiffs. Issue No:

2. 26. Before proceeding to decide this issue, I find it pertinent to note that a similar issue has been framed in Suit No.952/1998 which is pending before the Ld. Additional District Judge, Tis Hazari Court. However, since the abovementioned suit is still pending, the issue of res judicata would not be attracted and thus there would be no bar in deciding this issue in the present suit.

27. Issue no.2 decides whether the rent payable to the plaintiff was Rs. 20,000/- pm. The plaintiff claims that the suit property was originally let out at Rs. 10,000/- per month as per the agreement which was later increased to Rs.12,000/- when a portion of the first floor of the suit property was permitted to be used by the defendant and was finally increased to Rs. 20,000/- after February 1992 by mutual agreement. In proof of the increased rent, the plaintiffs rely on the TDS Certificates issued by the defendant in favour of the plaintiffs. The said TDS Certificates are placed on record as Ex. PW5/1-PW5/5. On a close examination of the said documents, the three TDS Certificates (Ex. PW5/5, Ex. PW54 and EX. PW53) pertain to the months April-June, 1996; July-September, 1996; and October-December 1996 respectively. It is seen that the total amount paid during the said periods separately was Rs. 60,000/- i.e. Rs.20,000/- per month.

28. When asked about the TDS Certificates, the managing director of the defendant, Sh. Datt Kumar (examined as DW-1), denied that any TDS Certificates were issued to the plaintiffs showing a license fee of Rs. 20,000/-. He further stated that the defendant company does not usually issue TDS Certificates. However, it is seen that the said TDS Certificates were admitted by the counsel for the defendant, Smt. C.M Chopra in Suit No.952/1998 (renumbered as Suit No.350/2003) filed by the plaintiff for recovery of arrears of rent. The defendant objected to the reliance on these documents stating that the said documents were forged and fabricated and that the TDS Certificate did not bear a mark or seal of

the defendant company.

29. I find force in the evidence led by the plaintiff. The TDS certificates clearly do show that payment for three months at a time amounted to Rs.60, 000/- i.e. Rs.20, 000/- a month. The veracity of these documents was substantiated by PW-5, Sh Ajab Singh, Alhmod in the Court of Sh. Sunil Rana, ADJ (W)-03, Tis Hazari Courts, who brought the summoned record of Suit No.952/1998 (currently renumbered as Suit No.111/2008/98). He deposed that the letter dated February 12, 1997 and the envelope (Ex. PW5/1 and Ex PW5/2) and the 3 TDS Certificates dated November 17, 1996, January 16, 1997 and July 17, 1996 Exs. PW5/3-PW5/5) were all true copies of the original record. Moreover, the defendant has not been able to produce anything on record to prove that the said TDS certificates were forged and fabricated. Thus it is clear to me that the defendant did issue TDS Certificates in favour of the plaintiff showing payment of rent of Rs. 20,000/- per month.

30. Further, the plaintiffs rely on the statement of accounts filed by the defendant against the plaintiffs and Smt. Raksha Arora, in Suit No.1134/1994 seeking declaration and injunction. The said statement of accounts which is placed on record as Ex. PW1/9 (typed version is on record as Ex. PW1/10). On a simple calculation of the statement of accounts, it is seen that till March 1991, the license fee payable per month was Rs. 12,000/-. A perusal of the tabular form of the payments made by the defendant to the plaintiffs (Ex. PW1/10), it is seen that from April 1991 to February 1992 (for 11 months) the total rent paid was Rs. 1,32,000/- i.e. Rs.12,000/- per month. After that the entry was from the period March 1992 to January 1993 (for 11 months) of Rs.2,20,000/- i.e. Rs.20,000/- and a further Rs. 4,00,000/- for the period for 20 months between February 1993 to September 1994. In cross examination, the plaintiff no.1 stated that PW1/10 was prepared by him based on the statement of accounts filed as PW1/9. He denied that the said document was forged and fabricated. The defendant has not led any evidence either documentary or oral to prove that the said document is forged and fabricated. Further, from the statement of PW4, it is seen that Ex. PW1/9 is a copy of the document placed on the Court record in suit No.1134/1994.

31. Although during the cross examination of the plaintiff no.1 in Suit No.952/1998 he stated that there was no settlement in writing in respect of the enhanced monthly rent, I find that the documentary evidence placed on record is sufficient to prove that the rent was increased to Rs. 20,000/-. Thus Issue no.2 is decided in favour of the plaintiffs. Issues No.4, 13 and 14:

32. Issue Nos. 4, 13 and 14 are connected as they decide the liability of defendant to pay the outstanding dues to the DVB and consequently whether the defendant has suffered loss by virtue of the disconnection of the electricity supply, thereby entitling it to damages.

33. This issue decides as to whether the defendant was under an obligation to pay the electricity dues, municipal dues and water bills. The plaintiffs allege that the defendant failed and neglected to pay electricity dues of DVB because of which the supply to the suit premises was disconnected. Relying on the decision of this Court in CWP1211992 filed by the defendant, the plaintiffs state that the Court finally ordered the defendant to clear all liable outstanding dues to the electricity connection in question. The plaintiffs further relied on the order of this Court in Suit No.3726/1990 filed by Smt. Raksha Arora wherein the defendants were directed to pay the electricity dues. The order in WP(C) 121/1992 is placed on record as Ex. PW1/11 and the order in Suit No.3726/1990 is as Ex. PW1/13.

34. On the other hand, the defendant contends that it is only the registered consumer who has to pay the electricity charges and that it was not the responsibility of the defendant. Further the defendant submits that the order in WP(C) 121/1992 has been stayed pending disposal of appeal in LPA No.1055/2006. The defendant submits that the LPA has been adjourned sine die till the disposal of the case Mrs Madhu Garg v. NDPL before the Supreme Court since the writ court followed the Division Bench decision in WP(C)121/1992.

35. At this juncture, I find it pertinent to reproduce the finding of this Court in Suit No, 3726/1990. The relevant portion of the order is as under:

The defendant no.1 (the defendant in the present suit) has not installed any meter so far. It is pointed out at the Bar that the DESU is not prepared to install the meter

unless and until the arrears of the bills already accrued are cleared. It also appears that the defendant no.1 has filed a writ petition before a Division Bench of this Court disputing the liability to be charge at the LIP (Large Industrial Power) tariff and submitting that he was liable to be charged on the basis of SIP (Small Industrial Power). On 22.5.92, the Division Bench has directed the DESU to restore supply of electricity on the condition that the defendant no.1 would go on furnishing the charges on the basis of SIP and would go on furnishing security for the difference between the SIP and LIP bill charges. The Court proceedings before the Division Bench show that the security offered by defendant no1 (petitioner before the Division Bench) was found to be inadequate and so the electricity supplied could not be restored. The defendant no.1 had sought for modification of order of the Division Bench which was not allowed. It is submitted now by the learned counsel for the plaintiff (Smt. Raksha Arora) that the defendant no.1 has specifically undertaken to pay the arrears or to clear the payment by furnishing security and he should be held bound by his undertaking but in any case, the supply of electricity ought to be restored in absence whereof the petitioner (defendant in the present suit) is suffering irreparably. During the course of hearing, the learned counsel for the DESU submitted that the DESU had no objection to a sub-meter being installed to the defendant no.1 so as to regulate and record the electricity consumed by the defendant no.1 out of the electricity supplied to the plaintiff and it also had no objection to provide independent electricity connection to defendant no.1 but in any case, subject to the clearance of the arrears. In the opinion of the Court, looking to the serious disputes between the parties, the nature of allegations and counter-allegations made, it will not serve any purpose to keep defendant no.1 tagged with the electricity connection available to the plaintiff. They must have separate connections. In view of the undertakings given by the defendant no.1 before this Court and before the Division Bench as also in view of the several orders made by the Division Bench, the defendant no.1 should be held bound to clear the arrears of electricity before securing fresh supply through independent connection. (emphasis supplied).

Further, this Court in WP(C) 121/1992 made a similar observation as under:

84. It would be relevant to note that under order date 17.1.1992 in WP(C) 121/1992 electricity was restored. Order dated 22.5.1992 modified the ex-parte order requiring petitioner to furnish security to the satisfaction of the Registrar and subject to the furnishing of security, petitioner (defendant in the present suit) was to pay as per SIP charges and DESU was restrained from disconnecting electricity supply. Petitioner failed to furnish the security to the satisfaction of the Registrar of this Court and vide order dated 23.5.1994 it was held that if the petitioner does not comply with the order dated 22.5.1992 out of 14 days DESU would be entitled to disconnect the electricity supply. Only thereafter electricity supply was disconnected.

85. As a result of the interim order, S.D Technical Services Pvt. Ltd continued to enjoy the benefit of electricity. Demand raised when writ petition was filed was in sum of Rs. 1.7 lacs out of which Rs. 85,000/- has already been paid. Due to continued consumption of electricity by S.D Technical Services Pvt. Ltd the demand went to over Rs.21 lacs when due to non-compliance with the interim orders, electricity was disconnected. S.D Technical Services Pvt. Ltd have to recompense as it took benefit of the interim order passed by this Court.

36. I am in agreement with the observations made in both the orders quoted above. There is no doubt that the registered consumer is liable to pay the electricity charges as required by the DVB. However, there is no bar on the registered consumer from claiming the said dues from a third party. It is settled law that the registered consumer can seek recovery from the third party who has been consuming the electricity. However, when there is an existing contract between the registered consumer and the third party, the liability of the registered consumer passes on to the third party. In the instant case, the defendant in the petition in WP(C) 121/1992 has admitted to paying the electricity and water charges in respect of the suit property. A copy of the petition is placed on record as Ex. PW1/12. The relevant paragraph of the petition is as under

5. The petitioner had agreed to pay the sum of Rs.10, 000/- per month being the rental of the premises let out to him by Mr. Ram Prakash Arora in addition to electricity and water charges as per consumption.

(emphasis supplied) 37. It is thus clear to me that the defendant is under a liability to clear all the outstanding dues of the DVB and its successor BSES, as well as water charges. With regard to municipal dues, the plaintiffs have not produced anything on record to show that the defendant is under a liability to pay the municipal charges. This issue is thus decided partly in favour of the plaintiffs.

38. In order to prove loss in the business of the defendant due to disconnection of the electricity supply, the defendant has placed on record its statement of A/c as per balance sheet showing losses in 1990-1994 as Ex DW1/10. The defendant has calculated the loss in profit between the years 1992-1994 at Rs. 31 Lakhs. The plaintiffs on the other hand contend that since the electricity connection was disconnected due to the omission of the defendant, the loss was not attributable to the plaintiffs.

39. I am in agreement with the submission of the plaintiff. It is clear that due to the inadvertence of the defendant despite its undertaking to clear the arrears of the DVB, the electricity supply to the suit property was disconnected. Further, the loss showed by the defendant was before 1994 when admittedly, the electricity supply continued till the year 1994. The defendant has not placed on record any evidence to show that loss occurred after the electricity was disconnected. Thus Issue No.13 is decided against the defendant. Consequently, Issue No.14 is also decided against the defendant. Issue Nos. 5 and 9:

40. The defendant in its written submissions has stated that they do not wish to press the said issues. In light of the same, Issue Nos. 5 and 9 are deleted. Issue Nos. 6 and 8:

41. These two issues are connected and are thus dealt with together. The defendant contends that the suit is not maintainable in view of the provisions under Section 41(i) of the Specific Relief Act, 1963. According to the said provision, an injunction should be refused when the conduct of the plaintiff or his agents have been such as to disentitle him to a decree of injunction. In this regard, the defendant claims that the plaintiffs are not entitled to an injunction since they have concealed certain material facts and documents. The defendant alleges that the following facts have been suppressed by the plaintiffs: (i) That the plaintiffs have

admitted to the rate of license @ Rs. 12,000/- by not filing for written statement in Suit 1134/1994 (ii) That the defendant surrendered some of area of suit premises. (iii) Mrs. Raksha Arora was co-consumer of electricity from same connection for her industrial purpose and she was liable to pay 50% of electricity dues. (iv) Mrs. Raksha Arora was registered consumer.

42. The plaintiff contends that the defendant has not led any evidence in proof that they have concealed any relevant documents, thereby disentitling them to a mandatory injunction.

43. I shall now proceed to deal with each of the facts alleged to be concealed by the plaintiffs. The defendant submits that by not filing the written statement in Suit No.1134/1994, the plaintiffs have admitted to the rent of the suit property being Rs.12,000/-. Suit No.1134/1994 was filed by the defendant against Smt. Raksha Arora and the plaintiffs herein for declaration and injunction. During the cross-examination of the plaintiff no.1 in this regard, he has admitted to not filing the written statement in the abovementioned suit stating that he opted not to file the same. Although it is true the plaintiffs herein did not file their written statements in Suit No.1134/1994, the veracity of the facts still have to be proved by the defendant (plaintiff in Suit No.1134/1994).

44. The Apex Court in the case of Modula India vs Kamakshya Singh Deo, 1988 SCC (4) 619 examined the scope of Order 8 Rule 10 as under:

An objection to our above conclusion has been raised on the basis of the provisions of Order VIII of the Code of Civil Procedure. Rules 1, 5 and 10 of this Order have been recently amended by the Amendment Act of 1976. We find nothing in these rules which will support the contention urged on behalf of the respondents. Rule 1 merely requires that the defendant should present a written statement of his defence within the time permitted by the court. Under rule 5(2), where the defendant has not filed a pleading it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint except against a person under disability but the court may in its discretion require any such fact to be proved. Again under rule 10 when any party from whom a written statement is required fails to present the same within the time permitted or fixed by

the court, the court "shall pronounce judgment against him or make such order in relation to the suit as it thinks fit."

It will be seen that these rules are only permissive in nature. They enable the court in an appropriate case to pronounce a decree straightaway on the basis of the plaint and the averments contained therein. Though the present language of rule 10 says that the court "shall" pronounce judgment against him, it is obvious from the language of the rule that there is still an option with the court either to pronounce judgment on the basis of the plaint against the defendant or to make such other appropriate order as the court may think fit.

(emphasis supplied) Relying on the observations of the Supreme Court above, I find that even though the written statement in Suit No.1134/1994 has not been filed, it does not necessarily mean that whatever stated in the plaint in the said suit should be taken to be the gospel truth. Also, the plaintiffs have produced evidence in this suit in support the rent was being increased Rs. 12,000/- to Rs.20,000/-. Also for the purposes of the mandatory injunction as prayed in this suit, I am of the view that the rate of rent is irrelevant.

45. With regard to alleged concealment of the fact that the defendant had surrendered a certain portion of tenanted area in the suit property, the defendant relies on a letter sent by the plaintiff no.1 to it on October 14, 1996, which is placed on record as Ex. DW1/4. In the said letter, the plaintiff has stated that the defendant has surrendered 1/4 th of the Bay in 1993 and the entire first floor in 1996. This is the same stand taken by the plaintiffs in their plaint. Thus, it cannot be said that they have concealed that a portion of the suit property was surrendered. The only question in dispute is with regard to the area surrendered and whether the defendant is entitled to proportionate deduction in the rent payable. Further, this fact is also irrelevant to the mandatory injunction as claimed by the plaintiffs.

46. Lastly, the defendant claims that the plaintiffs have concealed that Smt. Raksha Arora was a registered consumer of the suit property and that she was also a co-consumer of the electricity therein. The fact that Smt. Raksha Arora was a registered consumer has clearly been pointed out in order dated April 17, 2006

WP(C) 121/1992 wherein the Court observed that the registered consumer was Sh. Ram Prakash Arora and after his death, his son plaintiff no.1 and daughter, Smt Raksha Arora inherited the property vide a will executed in their favour. Again in the order dated September 5, 1994 passed in Suit No.3726/1990, this Court observed that as per the provisions of the will, the connection installed in the suit property has fallen into the share of Smt. Raksha Arora. Both these documents have been placed on record by the plaintiffs and have been exhibited as Ex. PW1/11 and Ex. PW1/13.

47. Thus I am of the view that the plaintiffs have not concealed the material facts that are relevant for passing a decree of mandatory injunction. Issue nos. 6 and 8 are decided accordingly. Issue Nos. 11 and 12:

48. These issues determine the area of the suit premises surrendered by the defendant and decide as to whether the rent thereof would consequently be reduced. The burden to prove these issues is on the defendant. DW-1, Sh. Datt Kumar, Managing Director of the defendant company deposed that an area of 1451 sq. yds. was initially let out in the year 1983. He further deposed that on specific request by the plaintiffs, the defendant surrendered and handed over physical possession of a cover shed admeasuring 154.9 sq. mts. and 208.75 sq. mts. of an open bay No.4 on February 21, 1993. And that subsequently, on March 1, 1996 the stairs leading to first floor (measuring 8.8 sq. mts.) along with a built up area of 207.3 sq. mts. at the first floor was surrendered on the request of the plaintiff. DW-1 further stated that because of the said surrender, it was agreed between the parties that the license fee will be reduced proportionately. On a simple calculation, a total area of 579.75 was surrendered by the defendant which comes to 39.95% and not 47.4% as per the calculation of the defendant. In this regard, the defendant relies on a letter dated October 14, 1996 sent by plaintiff no.1 to the defendant. This letter is placed on record as Ex. DW1/4. In the said letter, the plaintiff no.1 has admitted to the fact that the defendant has surrendered no.4 bay in the year 1993 and also the first floor in the year 1996. However it is seen that the area of the said surrendered portions has not been mentioned in the letter. During the cross examination of DW-1, he admitted to surrendering 1/4th of Central Bay or Fourth Bay in 1993 and a portion of the first floor in 1996, though,

he did not remember the exact area that was surrendered 49. In the affidavit of evidence PW-1, he states that 4th Bay measuring 1750 sq.ft. was surrendered in the year 1993 and the first floor portion was surrendered on June 23, 2002. PW-1 further deposed that the surrender was voluntarily made without any ratable or proportionate reduction in liability to pay license fee. In cross examined on this fact, the plaintiff no.1 admits that possession of the 4th bay was handed over by the defendant in 1993 and that the first floor was also handed over subsequently, though he did not remember the exact date.

50. It is seen from a perusal of the affidavits and their respective cross-examinations that both parties admit to the fact that the 4 th bay was surrendered by the defendant in the year 1993 and that the first floor was also surrendered by the defendant. The question that remains is whether 47.4% of the total area was surrendered by the defendant. However, according to the defendants own admission, a total of 579.75 sq ft of the total area licensed out was surrendered which amounts to 39.95%. Thus Issue no.11 is decided against the defendant.

51. With regard to Issue no.12, the defendant has claimed that on surrender, it was agreed between the parties that there would be a proportionate reduction in the rate of rent payable. Nothing to this effect has been placed on record to prove that such an arrangement was agreed to between the parties. Furthermore, as observed in Issue No.2, the defendant has continued to pay an amount of Rs. 20,000/- since 1992 as evidenced from its statement of accounts (Ex. PW1/9 and Ex PW1/10) and the TDS Certificates issued by it in favour of the plaintiffs (Ex. PW5/1 TO Ex. PW5/5). Thus Issue no.12 is also decided against the defendant.

52. Issue No.15-Relief: In light of the factual matrix discussed above and the legal provisions applicable to them, the following reliefs are awarded: With regard to the prayers claimed in the plaint: A. The mandatory injunction as prayed under prayer clause (iv) is allowed. By virtue of this, defendant is directed to clear all the arrears and the dues payable to the erstwhile DVB, now BSES Rajdhani Power Ltd. B. Pursuant to the outcome of Issues 1, 3 and 10, prayer clauses (i) and (iii) are dismissed. C. Since the plaintiffs have not been able to prove financial loss they are not entitled to damages as claimed in prayer clause (ii). D. Since the

defendant was not in possession during the pendency of the trial, the plaintiffs are not entitled to recovery pendent-lite. Thus prayer clause (v) is also dismissed. With regard to the prayers claimed in the Counter claim A. Prayer clauses (i) and (ii) are dismissed as observed in Issue No.14. B. With regard to prayer clause (iii) I find it pertinent to note the observation of court in WC (P) 1100/2002 (Ex. PW1/15) on September 13, 2002:

The petitioner (defendant herein) has filed the present petition seeking determination of the perpetual lease deed dated 25.9.1967. The petitioner is in occupation of the property in question. There is a dispute about the status of the occupation of the petitioner in as much as whether it is as a tenant or as a licensee. The rights the petitioner as claimed in the property are from one Sh. Ram Prakash Arora who was the predecessor in interest of respondents 3 (Plaintiff no.1 herein) and 4 (Smt Raksha Arora). Civil Suits are stated to be pending between the said parties. . Surprisingly, the grievance of the petitioner is that the petitioner was inducted as a tenant in breach of the terms of the perpetual lease w.e.f 1.3.1983 without prior permission of the perpetual lessor. Disputes are stated to be pending between respondents 3 and 4 for succession to estate of Sh. Ram Prakash. In my considered view, it is an attempt on the part of the petitioner to settle scores with respondent No.3 and 4 in view of the mutual disputes with the petitioner. The proceedings under Article 226 of the Constitution of India are not meant for this purpose. In my considered view the petition is wholly misconceived is an abuse of the process of court. Dismissed with costs of Rs.5000/- payable to the Advocates Welfare Fund-Trustee Committee. Receipt of the payment of costs be filed within two weeks in the court.

The prayer clause (iii) is consequently dismissed. The suit thus stands decreed in part. Decree be drawn accordingly. M.L. MEHTA, J.

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