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Sanjay Gupta Vs. Cottage Industries Exposition Ltd.

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Court : Delhi

Decided On : Jan-14-2008

Reported in : 2008(102)DRJ234

Judge : Vipin Sanghi, J.

Acts : Evidence Act - Sections 1, 91, 92, 92(4) and 151; Code of Civil Procedure (CPC) - Order 39, Rule 10 - Order 12, Rule 6

Appeal No. : I.A. 4680/01, 638/01, 4586/02 in C.S. (OS) No. 140/2001

Appellant : Sanjay Gupta

Respondent : Cottage Industries Exposition Ltd.

Advocate for Def. : Rajiv Sawhney, Senior Adv. and ; Malvika Rajkotia, Adv.

Advocate for Pet/Ap. : Manish Vashisht, Adv

Judgement :

Vipin Sanghi, J.

1. By this order I propose to dispose of I.A. No. 4680/2001 along with is Nos. 638/2002 and 4586/2002 all filed by plaintiff under Order 39 Rule 10 CPC.

2. The plaintiff filed the present suit for ejectment of the defendant who was a tenant of the plaintiff in an immovable property apart from making a claim for

damages and mesne profits for the continued use and occupation of the premises by the defendant after the termination of the lease of the defendant.

3. The admitted position is that the plaintiff was the landlord of the defendant in respect of property bearing No. 14, Anand Lok, New Delhi. The parties entered into a registered lease deed dated 18th December 1998 whereby the said property was let out on a monthly rent of Rs. 3,50,000/- for a period of 3 years commencing from 5th November 1998 and ending on 31st October 2001. However, the rent was to be paid with effect from 15th November 1998. The parties also entered into a maintenance agreement on 5th November 1998. The maintenance charges were fixed at Rs. 1,36,000/- per month, which were to be paid for the period commencing from 1st November 1998 up to 31st October 2001. The lease agreement and the maintenance agreement were to run concurrently and the maintenance agreement was to automatically stand terminated, once the lease agreement between the parties was terminated and vacant possession of the premises delivered back to the Plaintiff. At the same time, the defendant did not have the right to terminate the maintenance agreement till the defendant delivered the actual physical possession of the tenanted premises to the Plaintiff. As per the lease deed the property consisted of 8 residential flats, each comprising of 3 bed rooms with attached bath rooms, drawing room, dining room, kitchen and one family lounge, together with drive ways, front lawn, backyard etc.

4. According to the Plaintiff the defendant, in breach of the aforesaid lease, started to use the same for non-residential/office purpose. This lead to the issuance of a notice dated 6th September, 1999 by the Delhi Development Authority (DDA), which is the paramount Lesser of the plot underneath the property in question, requiring the plaintiff to stop misuse and to show cause as to why the perpetual lease of the property be not determined. Upon receipt of the said notice, the plaintiff requested the defendant to stop the non- residential user.

5. The Plaintiff avers that the defendant assured the plaintiff that there is no misuse, as a part of the premises was being used for residential purposes and a part of it was being used for office purposes. The plaintiff avers that in any case, the defendant assured the Plaintiff that in case the DDA objected to mixed use of

the premises, such misuse would be stopped. However, allegedly this assurance was not fulfillled. The DDA issued a final show cause notice on 17th December 1999 to the plaintiff stating that the Explanationn furnished by the plaintiff was not satisfactory and granted 15 days time to the plaintiff to stop the misuse of the premises and further stated that if the misuse is not stopped, it would be presumed that the plaintiff has failed to comply with the terms of the perpetual sub-lease and that his lease would consequently stand determined. Resultantly, the plaintiff served notice by registered AD post on 29th March, 2000 upon the defendant, calling upon the defendant to stop the misuse and to remove the additions and alterations and restore the demised premises in the same condition in which the same was let out to the defendant within a period of 15 days of the receipt of the notice, failing which tenancy of the premises was to stand terminated with the expiry of the tenancy month.

6. Since the notice was not complied with, the plaintiff sent another registered notice dated 11th April 2000 requiring the defendant to vacate the premises upon the expiry of the tenancy month, i.e. 30th April 2000. The plaintiff also lodged a claim of damages @ Rs. 80,000/- per day till the actual and physical possession of the premises was handed over and further stated that the plaintiff would be entitled to deduct the damages from the interest free security deposit of Rs. 15 lakhs, created by the defendant with the plaintiff. The defendant sent a reply dated 24th April, 2000 taking the stand that the premises was let out for office purposes and not for residential purpose and that the defendant was not liable to stop the said user.

7. Another notice dated 10th June 2000 was sent by the Plaintiff to the defendant requiring the defendant to vacate the premises on or before 30th June, 2000 failing which it was stated that action would be taken for ejectment and for recovery of damages/mesne profits for unauthorized use and occupation of the premises. The defendant, however, did not vacate the suit property.

8. The DDA threatened to re-enter the lease of the plot if the misuse of the premises was not stopped. The Defendant filed a writ petition in this Court being CWP No. 6550/2000 to stay sealing of the tenanted premises by the DDA. The

Court stayed the sealing on 1.11.2000. The defendant also stopped payment of the maintenance charges of Rs. 1,36,000/- since November, 2000. Since the defendant did not stop the user of the premises as an office, and did not vacate the premises, the present suit was filed by the Plaintiff for the relief of ejectment, injunction, recovery of mesne profits and damages and mandatory injunction. Along with the suit, the Plaintiff filed the aforesaid application being is No. 4680/2001 under Order XXXIX Rule 10 CPC wherein the plaintiff sought directions to the defendants to: (i) pay arrears of maintenance charges of Rs. 8,16,000/- (ii) make continuous payment of Rs. 3.5 lakhs as part payment towards damages and Rs. 1,36,000/- per month as maintenance charges per month, subject to final determination of damages/mesne profits till the defendant vacates the demised premises.

9. is No. 638/2002 dated 11.1.2002 was filed, inter alia, claiming damages @ Rs. 80,000/- per day from 1.12.2000 onwards till date, or in the alternative @ Rs. 5,58,750/- per month, along with maintenance charges @ Rs. 1,70,000/- per month w.e.f. 1.11.2001 besides arrears of maintenance charges as claimed in the earlier application. The Plaintiff also filed I.A. No. 4586/2002 dated 9.5.2002 primarily reiterating the reliefs sought in the aforesaid IAs.

10. The admitted position is that during the pendency of the suit, the defendants tendered two cheques for the sum of Rs. 2,94,875/- each, to the plaintiff claiming the same towards rent for the month of April and May 2002. The plaintiff accepted these cheques without prejudice to his rights and contentions and towards part payment of mesne profits. After May 2002, admittedly, no further amounts have been paid by the defendants to the plaintiff. The defendant vacated the suit premises on 5th April 2003. Consequently, the claim in these application is for a direction to the defendants to pay maintenance charges from 1st November 2000 to 31st March 2003 and for payment of partial damages for use and occupation of the suit property with effect from 1st June 2002 to 31st March 2003.

11. At the outset, Counsel for the plaintiff states that the prayer in the present applications is being limited to the extent of payment of maintenance charges as also the damages for use and occupation, at the same rate at which the last rent/

maintenance charges have been paid by the defendants i.e. @ Rs. 3,50,000/- as monthly rent and Rs. 1,36,000/- per month as maintenance charges. It is stated that the claim for damages is, in fact, much larger, inasmuch as, the agreement itself provided for liquidated damages of Rs. 80,000/- per day and for revision of the maintenance charges as well. However, for the present and for the purpose of these applications, the plaintiff is not entering into the said controversy and would be satisfied if at this stage damages and occupation charges are paid at the same rate at which rent and maintenance charges were earlier being paid. It is argued that the maintenance charge was nothing but a part of the rent and it cannot be delinked from the rent.

12. In its defense, the defendant's primary contention is that the purpose of the lease was for commercial and office purpose. The plaintiff sought to obstruct and prohibit the defendant from using the premises for the purpose for which it was let. Consequently, the plaintiff is not entitled to claim any amount from the defendant as the defendant was entitled to invoke the doctrine of suspension of rent. The Defendant also claims that the Plaintiff made oral assurances that he would get the user of the premises changed from residential into commercial, and this was the basis of entering into the lease deed dated 18th December, 1998. The Defendant states that the use of the premises for commercial purpose has been known to the Plaintiff since the commencement of the lease. Furthermore, it is alleged that the Plaintiff executed 14 affidavits relating to 14 electricity connection installed at the premises for seeking permission of Delhi Vidyut Board to permit the change in the user of the said electrical connections from residential to commercial, which establishes that the plaintiff was aware of, and had consented to, and was obliged to get the user changed from residential to commercial.

13. It is also contended by the Defendant that no maintenance charge are liable to be paid under the maintenance agreement as no maintenance services were provided by the Plaintiff. It is also argued that the relief claimed in the application do not fall within the parameter of Order XXXIX Rule 10 CPC, since that provision can be invoked only when there is an admission of liability. The suit has been filed to claim damages. Damages are not a debt. They have to be ascertained. Only thereafter they may assume the character of a debt. That determination has not

yet taken place and would take place only upon a trial of the suit. It is also contended that the grant of the reliefs prayed for would tantamount to decreeing the suit of the plaintiff partially, which cannot be done in view of the fact that there are no admissions made by the defendant. In fact the defendant had not only denied the claim of the plaintiff but has instituted its own suit being CS(OS) No. 2840/2000, wherein the defendant has claimed the relief of recovery of over Rs. 1.05 crores which includes, apart from damages, the refund of maintenance charges that have wrongfully been realised by the plaintiff. Another contention of the defendant is that the relief prayed for in the application is beyond the scope of the suit, since what has been claimed in the suit are damages, but now the plaintiff is seeking the payment of rent. It is argued that the claim for damages in the suit is only for Rs. 24,52,000/- whereas the claim in these applications is much higher.

14. The plaintiff has, in his rejoinder met the contentions raised by the defendant. The further submission of the Plaintiff in rebuttal is that even though the lease deed does not expressly state the purpose for which the premises had been let out, certain recitals in the lease deed sufficiently describe the nature of the property as residential. Moreover, since the property is situated in a residential area it cannot be said that the lease was for a commercial purpose. The terms of the lease deed clearly state that the Lessee shall abide with the local laws in force, and the permitted user of the said premises is residential.

15. Both parties have referred to and relied upon various decisions, which shall be dealt with presently by me.

DISCUSSION AND DECISION:

16. Since the suit is still to go to trial, and I have to determine the claims made in these applications at an interlocutary stage, the first question that arises for consideration is whether the defense that the property was let out to the defendant for commercial purposes can be dealt with at this stage without going through the motion of a regular trial and merely on the basis of the admitted facts and document, namely, the registered lease deed executed between the parties.

17. Sections 91 and 92 of the Evidence Act debar a party to a written agreement from raising a construction contradictory to the terms of the document.

Therefore, if on a reading of the registered lease deed the only interpretation that reasonably emerges is that the purpose of letting was only residential, the defense of the defendant that the premises was let for office purposes and that the defendant was not liable to pay the rent or maintenance charges since that purpose was obstructed by the plaintiff would have to fail. Section 91 in terms states 'when the terms of a contract or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained'. First part of Section 92 states 'when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.'

18. The defense set up by the defendant is that on a reading of the registered lease deed itself it is clear that the lease was for office purposes. For this purpose the defendant relies upon the Clause 10 of the lease which enlists 13 associates/sister concerns/lessee who were also permitted to use the premises, besides any other new associates or subsidiary or firm in which the directors of the lessee are interested as directors or shareholders or partners. It is argued that from the aforesaid it is clear that all these companies were permitted to have their offices within the suit property. According to the defendant the purpose of lease is silent and it is thereforee to be inferred. It is further contended that it was the understanding between the parties at the relevant time when the lease was entered into that the defendant would be permitted to use the premises for office/commercial purpose and plaintiff would obtain the necessary permissions for

change the user.

19. I have difficulty in accepting the aforesaid submissions of the defendant. A perusal of the lease deed itself shows that the purpose of letting could not be in anything other than as residential. The second recital itself states that the demised premises consists of eight residential flats comprising bedrooms with attached bathrooms, drawing room, dining room, kitchen and family lounge. Parties were, thereforee, conscious of the fact that the property that was being let was designed as, and equipped with eight residential flats and not with structure designed to house an office. Admittedly the premises is situated in a residential colony. Clauses 1 and 8 of the Lease Deed dated 18.12.1998 reads as follows:

Clause 1: That the Lesser agrees to let out and the Lessee hereby agrees to take on lease the aforesaid Demised Premises consisting of 8 residential flats (each flat comprises of 3 bed rooms with attached bath rooms, drawing room, dining room, kitchen, and one family lounge) together with the drive ways, front lawn, back yard, ground floor, garage with attached bath, one room with attached bath on the first floor, second floor and third floor above the garage and ten servant quarters and three bath rooms built upon the third/rear terrace floor of the main building and other appurtenances thereto (hereinafter referred to as the 'DEMISED PREMISES')

Clause 8: That the Lessee shall comply with the conditions and observe all bye-laws, rules and regulation issued by the Government and the local authorities in force from time to time.

Clause 8 of the lease as reproduced herein above also leaves no manner of doubt that the purpose of letting was only residential, since the defendant lessee was obliged to comply with the conditions and observe all bye-laws, rules and regulations issued by the Government and local authorities in force from time to time. As per the terms of lease deed between the plaintiff and the primary Lesser the permitted user, admittedly, was residential only. This is also clear from the notice issued to the plaintiff by the DDA, dated 6.9.1999 and 17.5.1999, the issuance whereof is not in dispute. It is pertinent to note that the defendant itself had filed WP(C) No. 6550/2000 seeking stay of the action of sealing initiated by

the DDA on account of use of the premises for office purpose wherein the counsel for the defendant made a statement on its behalf on 1.11.2000 to the effect that 'the property shall be used only for the purpose of residence as per the terms and conditions of the superior Lesser in terms of clauses of lease deed'.

20. The defense set up by the defendant that the plaintiff had agreed to get the user of the premises changed to commercial is in the teeth of Sections 91 and 92 of the Evidence Act since the defendant is seeking to contradict, vary, add to the terms of the registered lease deed. The Bombay High Court in Dinkarrai Lalit Kumar and Ors. v. Sukhdayal Rambilas and Ors. AIR 1947 Bom 293 held that the terms of a contract reduced to writing cannot be ascertained by allowing parole evidence as to what transpired antecedent to the contract or what the parties did subsequent to the contract. Once the contract between the parties is reduced to writing, the court can only look at the writing alone in order to construe what the terms of the contract were.

21. In Mehra and Mehra a Partnership Concern v. Dr. (Mrs.) Sant Kaur Grewal 1982 (1) RLR 460, this Court was confronted with a similar issue. The Court while dealing with it held as follows:

5. Before me also the first contention which has been raised is that the premises were let for residential-cum-commercial purposes and that the leave to contest should have been granted. Admittedly the premises were let by lease deed dated 7th March, 1974. What was let by the said lease deed was a house situated in a residential colony. The landlady has placed on record the deed of conveyance whereby the land was sold to her by the colonizer. In the said document it is clearly stipulated that the land is situated in a residential colony. In the lease deed it has been specifically stated that the premises will be used only for residential purpose. The lease deed, however, has to be read as whole. Reading the lease as a whole there can be no manner of doubt that the premises were let for residential purpose alone. Three of the clauses of the lease deed which are relevant are Clauses 8, 10 and 11 which are extracted below:

Clause 8:- That the lessee shall use the premises for his own use.

Clause 10:- That the lessee shall comply with all the rules and regulations of the local authorities whatsoever with relation to the demised premises.

Clause 11:- That the lessee shall not carry on any constructional additions or alterations to the building, layout fittings without the written consent of the Lesser, but have the right to install the domestic appliances wherever and whenever necessary at their own cost and also have the right to remove the same at the before the time of termination of the lease.

6. Admittedly one of the partners of the firm is residing in the premises. The contention, however, is that portions of the premises are being used for expert purposes. Clause (10) referred to above clearly postulate that the lessee will comply with all the rules and regulations of the local authorities. It is well known that in residential colonies commercial establishments cannot be opened. The fact that some of the residential houses are being used for commercial purposes cannot detract from the full meaning and import of the aforesaid Clause (10). The purpose of insertion of Clause 10 was that the tenant was required to comply with all the rules and regulations of the local authorities which obviously included that the premises will not be used for commercial purposes. Furthermore the use or the words 'domestic appliance' in Clause (11) also clearly indicates that the premises were let only for domestic purposes. If the premises were let for residential-cum-commercial purposes then the word `domestic' would not have been inserted in Clause (11). Furthermore, I am in agreement with the reasoning of the trial court that the very nature of the premises namely a residential house would indicate that the same was let for residential purpose though in Clause (8) it was specifically provided that the tenant will use the premise for his own use. The purpose of letting is thus clearly spelt out from the lease deed itself and, thereforee, there was no merit in this ground which was raised by the tenant.

22. In S. Saktivel (dead) by LRs v. M. Venugopal Pillai and Ors. : AIR 2000 SC2633 the Supreme Court held that where under the law a contract or disposition is required by law to be in writing, its terms cannot be modified, altered or substituted by an oral contract, or disposition. Under Section 92(4) of the Evidence Act no parol evidence is admissible to substantiate such oral contract or

disposition. Where a document for its validity or effectiveness is required by law to be given in writing, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document that the terms of the earlier document can be altered, rescinded or substituted. The Supreme Court also held that parol evidence cannot be permitted to substantiate the subsequent oral agreement where the original agreement is contained in a registered document. This is not permitted by Section 92(4) of the Evidence Act. The terms of a registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement is allowed to be substantiated by parol evidence it would mean re-writing of the registered document which is not permissible.

23. The Defendants contention that the landlord was aware of the change of user of the premises and consented to it and that he gave oral assurances to the Plaintiff for the conversion of the user and filed a number of affidavits relating to the electricity connections installed at the premises for seeking permission of DVB to permit the change in the user of the said electrical connections from residential to commercial also cannot be accepted. Assuming for the sake of argument that the affidavits were in fact given by the plaintiff to permit change of user of the electrical connections from residential to commercial, that by itself in the first place cannot be set up as a defense in the light of Sections 91 and 92 of the Evidence Act, and even if it were to be accepted that the defendant can be permitted to raise this defense, the said affidavits cannot alter the purpose of letting which is clearly discernable from the registered lease deed.

24. The reliance placed by the plaintiff on Section 1 of the Evidence Act, to contend that affidavits cannot be taken in evidence under any provision of the Evidence Act, and copies of such documents cannot be taken in as evidence, however, appear to be misplaced. He has relied on Parkash Rai v. J.N. Dhar : AIR1977 Delhi73 in support of this submission. I am not impressed by this argument of the plaintiff, since reliance placed by the defendant on the copies of the affidavits is not for the purpose of proving the contents of the affidavits, but to rely on the conduct of the plaintiff in furnishing such affidavits. In fact, reading of Section 1 of the Evidence Act shows that affidavits which are presented to any

court or officer are not subject to the rigors of the Evidence Act for them to be proved. However, this has no bearing on the outcome of the case, in view of the effect of Sections 91 and 92 of the Evidence Act.

25. Reliance placed by the defendant on Clause 10 of the lease deed to contend that under the said clause not only the defendant company but 13 other associates/sister concerns of the defendant were permitted to use the suit property, which also shows that the purpose of letting is for office/commercial purpose is also misplaced. Merely because the sister/associate concerns were entitled to use the premises along with the defendant it does not lead to the inference that the user permitted by the defendant or those concerns was office/commercial. It makes no difference to my mind, whether the defendant alone (which is also a corporate entity) or the defendant along with its sister concerns/associates were permitted to use the demised premises, to the question of the permitted user under the lease deed dated 18.12.1998. A corporate entity could also use a residential house for the residence of its officers and guests.

I, thereforee, reject this argument of the defendant. Moreover, this is not a question that the defendant can put to the plaintiff. So long as the purpose of letting is expressly stated in the lease deed, or the same is expressly stated in the lease deed, or the same is clearly discernable from the said deed, it is not the concern of the landlord, and it is not for him to explain why the tenant has taken the premises on lease for that purpose of how it proposes to use it for the stated purpose.

26. My attention has also been drawn to the averments made by the defendants in SLP(C) No. 3238/2006 filed by the defendant wherein the defendant has repeatedly stated in respect of the lease deed in question that as per the said lease deed the suit property shall be used for residential purpose only. The defendant at one place states 'Though the suit premises was taken specifically for commercial purpose, since the father of the landlord was a senior advocate regularly participating in the Delhi High Court, it was represented to the petitioner that in order to protect the interest of the Lesser, in the lease deed it will be mentioned that suit premises shall be used for residential purposes alone. Since

the petitioner was not well versed with the technicalities of law, he agreed to the proposal.' It is further stated 'The understanding between the parties herein was that notwithstanding residential use of the premises having been mentioned in the lease deed due to technical reasons, the premises would be used for commercial purposes.' This also leaves no manner of doubt that even according to the defendant, the purpose of letting as per the lease was only residential. The defense set up by the defendant does not fall within any of the provisos to Section 92 of the Evidence Act, and I do not accept the contention of the defendant that the lease deed is silent about the purpose of letting. The purpose of letting as office or commercial as contended by the defendant is clearly inconsistent with the terms of lease deed. I thereforee hold that the suit property was let out only for residential purpose and the mere use of the same by the defendant for any other purpose does not impinge on the rights of the Plaintiff, or vest any rights in the defendant beyond those vested by the registered lease deed dated 18.12.1998.

27. The Defendant next contends that following the sealing of the terrace on 02.11.2000 he could not enjoy the demised premises in its entirety and thereforee is not liable to pay rent/damages. He invokes the doctrine of suspension of rent. In support of his argument the Defendant has placed reliance on the case of Surendra Nath Bibra v. Stephen Court : [1966]3SCR458 , wherein the Supreme Court held that on the one hand it does not seem equitable that when a tenant enjoys a substantial portion of the property of the landlord, leased to him, without much inconvenience, he should not pay any compensation for the use of the property; in other words, to borrow the language of Sir George Rankin, that he should enjoy a windfall. On the other hand it is unfair that if a tenant is not given possession of a substantial portion of the property, he should be asked to pay any compensation for the use of the property while he is taking appropriate measures for specific performance of the contract. It will depend on the circumstances of each case whether a tenant would be entitled to suspend payment of the rent or whether he should be liable to pay proportionate part of the rent.

28. In my view, this judgment does not advance the case of the Defendant, since the facts of this case do not show that the defendant was deprived of the use of any portion of the tenanted premises, much less a substantial portion thereof for

any length of time or for any act/conduct of the Plaintiff.

29. The contention of the defendant that part of the premises had been sealed is in fact contrary to the record. This is so evident from the order passed by this Court in the aforesaid suit on 29.5.2002 wherein the statement of the defendant was recorded that the property had not been sealed till passing of the said order and stay against the sealing of the property had been obtained from the court on 2.11.2000 in WP(C) No. 6550/2000 filed by the defendant. It was the defendant's own statement that the property was not sealed. To now contend otherwise is of no avail. In any event, in view of my finding that the purpose of letting agreed to between the parties was only residential, even if any portion of the suit property were to be sealed by the DDA on account of its being put to use as an office/for commercial purpose, that would not entitle the defendant to suspend the payment of rent/damages since the sealing would have been a result of the defendants own misuse of the property for which the defendant could not penalise the plaintiff or take advantage of. Consequently, I reject the defense of the defendant that the defendant was entitled to suspend the payment of rent/damages either on account of the stoppage of the user of property as a commercial/office premises or on account of the so called sealing of portion thereof by the DDA.

30. I now proceed to consider whether in the facts of the present case at this stage even without a trial, the claim towards maintenance @ Rs. 1,36,000/- per month made by the plaintiff can be entertained. Ld. counsel for plaintiff referred to the terms of the maintenance agreement dated 05.11.1998, particularly to Clauses 3 and 5 thereof, which read as follows:

3. That it is expressly agreed between the parties hereto that this Maintenance Agreement shall not be open to the parties to terminate before the expiry of the Lease Deed deed 5th November, 1998. This Maintenance Agreement and Lease Agreement shall run concurrently and this Maintenance Agreement shall automatically stand terminated once the lease agreement entered into the parties is terminated and the vacant possession of the Demised Premises is delivered back to the First Party. The Second Party shall not have any right to terminate its Maintenance Agreement till the Second Party delivers the actual physical

possession of the aforesaid Demised Premises to the First Party.

5. This Agreement shall run concurrently and terminate simultaneously with the lease agreement dated 5th November, 1998 of the premises bearing No. 14, Anand Lok, New Delhi-110049.

31. On the basis of the aforesaid clauses it is argued that both the lease deed and the maintenance agreements were to run concurrently and the maintenance agreement could not be terminated till so long as the defendant continued to remain in the actual physical possession of the suit premises. Learned Counsel for the plaintiff also challenged the stand of the defendant that the plaintiff had not been rendering the services expected of the plaintiff under the maintenance agreement and referred to the reply dated 04.04.2000, sent by the defendant to the plaintiff's notices of 25.03.2000 and 11.04.2000. In the said reply no such allegation was ever raised by the defendant, as has subsequently been raised by the defendant to the effect that maintenance services were not being provided by the plaintiff. It was submitted that this defense raised by the defendant is an afterthought. In the said reply the defendant had, inter alia, stated 'You were also able to fetch the following gain from the said premises:

S.No. Document On account Rent/Charges (Rs.)01. Lease Deed Rent 03,50,000/-p.m.02. Lease Deed Interest free Security 15,00,000/-03. Maintenance Service Charges 1,36,000/-Agreement

32. It is argued that both parties understood that even the maintenance charges were in fact being charged for the use and occupation of the demised premises by the defendant and not on account of any maintenance services. He also argued that the defendant became wise only subsequently, when it started making false assertions to the effect that the plaintiff had not provided any maintenance services under the maintenance agreement and on that account the plaintiff was not entitled to payment thereof. He submits that defendant raised the said issue for the first time only on 30.11.2000. Learned Counsel for plaintiff argued that in case maintenance services were not in fact being rendered there would have been no occasion for the defendant to have paid the said charges continuously on its own till October, 2000.

33. The Plaintiff has relied on a judgment of this Court in Surjit Singh v. H.N. Pahilaj : 65(1997)DLT22 wherein at para 16 the Court held:

The premises let out includes fittings and fixtures therein. Fittings and fixtures form part of the premises let out and are not meant to be used separately and the rent of the premises and that for the fittings and fixtures will be the rent for use and occupation of the premises as part of the letting.

34. It is contended that in the case of Sewa International Fashions v. Suman Kathpalia and Ors. : AIR2000 Delhi69 , the lease deed contained a recital that the rate of rent stipulated was inclusive of all taxes, rates and charges but exclusive of maintenance charges, yet the court held that maintenance charges formed part of the rent. The court relied on the decision of the Supreme Court in Karnani Properties Ltd. v. Miss Augustine and Ors. : [1957]1SCR20 and held at para 8:

It is an established proposition of law that rent includes not only what is originally described as rent in agreement between a landlord and tenant but also those payment which is made for the amenities provided by the landlord under the agreement between him and the tenant. The payment made towards the maintenance charges of the premises rented out and also for providing amenities to the tenant would also come within the expression 'rent' as rent includes all payments agreed to be paid by the tenant to his landlord for the use and occupation not only of the building but also of furnishing, electric installations and other amenities.

35. On the other hand learned Counsel for defendant argued that merely because the defendant had made payment of amounts towards maintenance charges in the past, it cannot be assumed that maintenance services were in fact rendered either in the past or, in any event, they were continued to be provided after October, 2000. He argued that the defendant upon Realizing its mistake had already filed a suit for recovery of, inter alia, the payments made by the defendant towards maintenance charges which were in fact not due and payable.

36. In my view the issue is not whether the component of maintenance charges can be clubbed with the rent for the premises for certain purposes or not. They

may be so considered as a part of the rent for certain purposes. However, maintenance charges are payable under a separate agreement, which required the plaintiff to render certain services mentioned therein. A perusal of the maintenance agreement would show that the plaintiff had undertaken to provide the following maintenance services to the defendant.

a) Maintenance of fixtures and fittings in the demised premises.

b) Maintenance of potted plants.

c) Employment of security guards/chowkidars.

d) Providing plants and flowers at the cost of the Second Party and ensure the maintenance of the same by employing the services of the Horticulturists and gardeners.

e) External colour-wash of the entire house and removal of seepage by proper treatment/cure.

f) Setting up and repairing electrically operated booster pump and maintenance of underground and overhead water tanks.

It cannot be said that the maintenance charges were payable for the use and occupation of the tenanted premises. They were payable for the aforesaid maintenance services, while the defendant remained in use and occupation of the demised premises. Whether those services were in fact rendered by the plaintiff or not would have to be adjudicated upon after a trial and I cannot conclude one way or another on this issue. Consequently, at this stage it would not be correct for me to pass any orders requiring the defendant to pay or deposit in Court the claim towards maintenance charges @ Rs. 1,36,000/- per month from November, 1998 onwards till the vacation of the property in question by the defendant.

37. Now I come to the defendant's argument that no relief can be granted under Order 39 Rule 10 CPC since there is no admission by the defendant that he holds any money as a trustee for the plaintiff, or that it belongs to the plaintiff.

38. Order 39 Rule 10 of the CPC reads as follows:

10. Deposit of money etc. in Court. - Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to further direction of the Court.

39. In a landlord tenant dispute where their relationship is admitted, the obligation of the tenant to pay rent for the tenanted premises during the period that the tenant is in occupation of the premises cannot be disputed. Inherent in this admission is embedded an obligation to pay the rent/occupation charges, because the admission of the said relationship excludes a claim based on any other title to the property. The relationship between a landlord and a tenant is one where the tenant agrees to pay the rent/occupation charges in consideration for the right granted to him by the landlord to use and occupy the premises. thereforee, he cannot, while being in use or occupancy of the premises, not pay the rent/occupation charges thereforee. However, the tenant may set up defenses to justify suspension of his obligation to make payment of rent, of the kind raised in the present case. Once those defenses have been been considered and rejected by the court, it necessarily follows that the obligation of the tenant to pay the rent is established and the tenant holds the money due on account of rent on behalf of landlord. In Sangeeta Prints v. Hemal Prints and Ors. : AIR1986 Bom423 the Bombay High Court relied upon its earlier Division Bench Judgment in the case of Chandrakant Shankarrao Deshmukh v. Haribhau Tukaramji Kathane 1983 MLJ 88 to hold that in case of a landlord and a tenant, the tenant cannot dispute his liability to pay rent to the landlord although the quantum of such rent may be in dispute. The tenant, in fact, is deemed to admit some money is due to the plaintiff. In such situation the court can direct the tenant to deposit such amount as the court may deem fit under Order XXXIX Rule 10 CPC.

40. Also, in Surjit Singh v. H.N. Pahilaj : 65(1997)DLT22 this Court while considering the object of Order 12 Rule 6 CPC, held that relief under the said provision was also available where liability to pay is not denied but being avoided on untenable pleas. The power in such cases could also be exercised under Order

XXXIX Rule 10 CPC. The court held that under Section 151 every court is constituted for the purpose of doing justice according to law and must be deemed to possess, as a necessary corollary and as inherent in its very constitution, all such powers as may be necessary to do the right and to undo a wrong in the course of the administration of justice. In appropriate cases the Court can exercise powers under Section 151 CPC where Order 12 Rule 6 or Order 39 Rule 10 CPC may not be applicable for the purpose of doing justice or to prevent abuse of the process of the court.

41. There is no dispute and the admitted position is that there existed a landlord-tenant relationship between the Plaintiff and the Defendant. Admittedly, rent/damages/occupation charge has not been paid by the Defendant after May 2002 till the premises were vacated by the Defendant after March 2003. This liability cannot be avoided, since it is to be met by the defendant irrespective of whether the status of the defendant during the period in question was that of a tenant or of a trespasser holding over after the determination of the lease. The last paid rent would be the minimum charges that would be payable either on account of rent or on account of damages. If it is ultimately found that the tenancy of the suit premises subsisted throughout till the vacation of the property, it would be adjusted towards rent, and if it is found that the lease was validly terminated, it would be adjusted towards partial damages. The defendant is wrong in contending that the plaintiff by way of the applications under considerations is claiming 'rent' while the claim in the suit is for damages. The claim even in the applications is for damages, though, to avoid a controversy at this stage the plaintiff has limited the prayer for grant of partial damages computed at the rate at which admittedly the rent was last paid. After a trial, it may be found that the lease of the defendant stood validly terminated and in that eventuality the damages could be still higher, but to the extent of the last paid rent it is the minimum.

Therefore, so far as the amount of last paid rent is concerned @ Rs. 3.50 lakhs per month, the defendant is liable to pay the same to the plaintiff for the period June 2002 to March 2003. The defendant is hereby directed to pay the same to the plaintiff within two months of the passing of this order for the period 1.6.2002 till 31.3.2003 i.e. for a period of ten months, which translates to Rs. 35 lakhs. The

plaintiff had taken a security deposit of Rs. 15 lakhs from the defendant under the lease deed. After adjustment of the same, the defendant would be liable to pay to the plaintiff at this stage, a sum of Rs. 20 lakhs. Since the amount now being directed to be paid to the plaintiff is not in excess of the amount for which the suit is valued, no further court fee is payable at this stage. Consequently, no issue of payment of court fee would arise for the time being. The question of payment of interest, if any, on the said amount would be considered at the final stage. So far as the maintenance charge are concerned, in view of the law discussed hereinabove, since the said liability is conditional upon the rendering of the agreed services by the landlord and it cannot be treated as payment for use and occupation of the tenanted premises and there is a dispute about the said services having been rendered or not, at this stage, I am not inclined to pass any order to direct the defendant to either pay the same to the plaintiff or even to deposit the same in the court. The payments directed by me by this order are without prejudice to the rights and contentions of the plaintiff in relation to its claim for damages and so far as the claim for arrears of maintenance charges are concerned. The said claims, and the claim for interest shall be considered only after the parties have led their evidence in respect thereof.

42. With these observations the present applications are disposed of as partly allowed with costs quantified at Rs. 20,000/-.

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