

Lg Electronics India Ltd. Vs. Usha (India) Ltd. and ors.

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Court : Delhi

Decided On : Sep-06-2002

Reported in : 101(2002)DLT310

Judge : B.N. Chaturvedi, J.

Acts : Code of Civil Procedure (CPC) - Sections 151 and 152 - Order 12, Rule 6;
[Transfer of Property Act, 1882](#) - Sections 107

Appeal No. : IA 7331/01 in S. 762/00

Appellant : Lg Electronics India Ltd.

Respondent : Usha (India) Ltd. and ors.

Advocate for Def. : R.K. Singh and ; Sameer Chaudhary, Advs.

Advocate for Pet/Ap. : A.S. Chandhiok, Senior Adv.,; Mansoor Ali and; Vineet Jhang

Judgement :

B.N. Chaturvedi, J.

1. In a suit for recovery of Rs. 4,74,88,505/- filed by LG Electronics India Limited against M/s. Usha (India) Limited & Others, an application under Order XII Rule 6 CPC has been made by the plaintiff seeking a decree for Rs. 4,65,02,400/- in view

of alleged admissions on the part of M/s. Usha (India) Limited (defendant No. 1) and M/s. Usha Housing Development Company (defendant No. 2).

2. Resume of facts relevant for disposal of application are that the plaintiff was granted lease by defendant No. 1 in respect of super structure, with chargeable super area of 24,220 sq.ft. (carpet area 20,184 sq.ft.) on the ground floor of a building constructed on lot No. A-41, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi on a monthly rent of Rs. 7,26,600/- @ Rs. 30/- per sq. ft. w.e.f. 15.3.1997. A lease agreement dated 9.4.1997 was executed between the plaintiff and defendant No. 1 setting out the terms and conditions of the said lease. The lease document was, however, not got registered. As per terms & conditions of the lease, plaintiff deposited 24 months' lease amount totalling Rs. 1,74,38,400/- vide cheque No. 481401 dated 10.4.1997 drawn on Bank of America; cheque No. 712513 dated 18.3.1997 and cheque No. 147839 dated 18.3.1997 drawn on Bank of Tokyo-Mitsubishi Limited, as security deposit with the defendant No. 1. Lease agreement stipulated that the plaintiff would be getting the maintenance services in the demised premises from defendant No. 1 only. Accordingly, plaintiff and defendant No. 1 entered into and executed an agreement for lease of various equipments, utilities and facilities on 9th of April, 1997 (for short, 'Equipment Lease Agreement') incorporating the terms and conditions in respect thereto. An amount of Rs. 2,03,44,800/- equivalent to 24 months' lease amount was deposited by the plaintiff with the defendant No. 1 vide cheque No. 481401 dated 10.4.1997 drawn on Bank of America as interest free security deposit. The parties also agreed that the said security deposit was to be replenished by 30% at the end of three years.

3. Further, in terms of Clause 2 and 6 of the Lease Agreement and the Equipment Lease Agreement respectively, the plaintiff entered into a Maintenance and Services Agreement with defendant No. 2, to provide maintenance & Services on the leased premises on monthly maintenance charges of Rs. 3,63,300/-. The plaintiff made an interest free security deposit of Rs. 87,19,200/-, for maintenance services, with defendant No. 2 vide cheque No. 481402 dated 10.4.1997 drawn on Bank of America, which was to be replenished by 30% at the end of three years.

4. The Equipment Lease Agreement and Maintenance & Services Agreements were to run concurrently with the Lease Agreement and not in isolation. The same were co-terminus with the lease agreement.

5. The plaintiff, by a notice dated 12.12.1999, duly served upon defendant 1 & 2, terminated the lease of the demised premises as well as the Equipment Lease Agreement and the Maintenance & Service Agreement and requested them to take back the possession of the premises on March 14, 2000 and refund the security deposits amounting to Rs. 4,65,02,400/-. The plaintiff claims to have vacated the demised premises on March 14, 2000. However, the defendant No. 1 refused to take back the possession of the premises. The defendants 1 & 2 also omitted to pay back the security deposits lying with them and continue to retain the same. Apart from the amounts of security deposits, the plaintiff seeks to recover an amount of Rs. 9,86,105/- on account of interest @ 18% from March 15, 2000 to April 25, 2000, besides claiming pendente lite and future interest at the same very rate.

6. In their common written statement, defendant 1 & 2, while admitting letting of the demised premises to the plaintiff and execution of the aforesaid three agreements, pleaded that the lease was for a period of six years and the same was not terminable in any case for the first three years' period. According to them, the lease was terminable by giving a three months' notice. It is added that since the plaintiff sought to terminate the lease against the agreed terms, the notice of termination from the plaintiff was suitably replied vide letter dated 28.2.2000. The defendants refuted the averment to the effect that the plaintiff vacated the premises on 14th of March, 2000 and maintained that it continued to hold possession of the premises even thereafter. As the plaintiff failed to pay the rent/charges from 15th of March, 2002 till the date of filing of the written statement, the amount of security deposit in terms of the lease agreement was adjusted as under:-

Security deposit Rs. 4,74,38,400/- Less rent/charges from 15.3.2000 to 14.2.01 (i.e. for 10 months @ Rs. 94,45,800/- Rs. 9,44,580/- p.m.) Balance security deposit Rs. 79,92,600/-

7. In respect of the security deposit on account of Equipment Lease Agreement, the averment is that the defendant No. 1 had leased out Air Conditioning, Including Ducting, AHU's & Central Plant etc., 100% Power Back-up through D.G. sets, false ceiling, fire fighting equipments including smoke detectors, hydrant systems, flooring, lighting fixtures, grills/diffusers etc. and the security deposit was insisted upon to secure the safety and return of the equipments and that plaintiff was under an obligation to hand over the said equipments in the same condition to the defendant No. 1 or its successor in interest and the security deposit was to be refunded only thereafter. According to the defendants, the plaintiff never offered to return the aforesaid equipments and, as a matter of fact, 90% of such equipments are allegedly missing and the remaining 10% of equipments, which are available, are said to be badly damaged. It is claimed that apart from recovering cost of the equipments, a sum of Rs. 1,10,20,100/- has already become due and payable by the plaintiff on account of rent/charges under Equipment Lease Agreement for the period from 15.3.2000 to 14.1.2001 @ R. 11,02,010/- per month, which the plaintiff is liable to pay to the defendant No. 1

8. Regarding maintenance agreement with defendant No. 2, it is pointed out that the same was co-terminus with the lease agreement and since lease of the premises has not come to an end as yet, the security deposit has been adjusted on account of maintenance charges for the period from 15.3.2000 to 14.1.2001. @ Rs. 4,72,290/- per month for ten months leaving a balance of Rs. 39,96,300/- only. Break-up of the amount adjusted on different counts out of the total security deposits of Rs. 4,65,02,400/- till the date of filing of written statement is stated as under:-

Total Security deposit Rs. 4, 65, 02, 400/- Less: rent for premises (for 10 months) Rs. 94,45,800/- Less: rent for equipments(for 10 months)Rs.1 ,10,20,100/- Less: security for equipments (which would be refundable only on return of equipments Rs. 2, 03, 44, 800/- Less: Maintenance charges for ten months Rs. 47,22,900/- Balance security deposit Rs. 9,68,800/-

9. I have heard arguments on either side.

10. To attract application of Order XII Rule 6 CPC, admissions are to be clear, unambiguous and unequivocal. Such admissions may emanate from the pleadings or otherwise, de hors the pleadings and the same may be either for the entire claim made in the suit or for a part for which a decree can be passed separately. Admissions need not be made expressly in the pleadings and even constructive admissions can constitute basis to pass a decree in plaintiff's favor. [See 'Surjit Sachdev v. Kazakhstan Investment Services Private Limited and Ors.', : 66(1997)DLT54 .

11. In the context of present case, service of notice dated 10.12.1999 terminating the lease in relation to the premises, equipment lease agreement and maintenance agreement and deposit of security amount totalling Rs. 4,65,02,400/- are admitted by the defendants 1 & 2. However, the defendants pleaded that notwithstanding service of notice terminating the aforesaid agreements, the lease agreement in respect of demised premises still subsists. In the course of hearing, it was emphasised on behalf of the defendants that since the lease, in terms of agreement between the parties, could have been terminated under no circumstance during the period of first three years, notice terminating the same, was legally inconsequential.

12. Countering this plea, the arguments advanced on behalf of the plaintiff is that since the lease was created by an unregistered document, contrary to the provisions contained under Section 107 of the [Transfer of Property Act, 1882](#), the terms and conditions of lease, including the duration thereof, as embodied therein, are not referable to supplement the aforesaid assertion, being inadmissible in evidence. In their written statement, the defendants sought to retrieve their position on this score by raising a self-defeating plea that the lease in respect of the demised premises, was, in fact, created by an oral agreement, the terms and conditions whereof were later incorporated in the lease agreement dated 9.4.1997 executed between the plaintiff and defendant No. 1. Section 107 of the [Transfer of Property Act, 1882](#) expressly provides that a lease from year to year, or for any term exceeding one year or reserving a yearly rent can be made by means of a registered instrument only. In the given case, since the lease was created by an unregistered agreement, no reference to such agreement is permissible in support

of argument that the lease was for a period of six years and that the same could have been terminated under no circumstance during the currency of initial three years' period. The defendants' plea being contrary to statutory provisions, is liable to be ignored. [See ' Privar Seva Sansthan v. Dr. (Mrs.) Veena Kalra and Ors. ', : AIR2000 Delhi349]. Lease agreement being unregistered one, the lease in respect of the premises was in effect from month to month, which stood terminated with effect from 14th of March, 2000 by notice dated 10.12.1999.

13. In spite of termination of lease agreement, equipment lease agreement and maintenance agreement, the defendants omitted to refund the amount of security deposits. They seek to justify their action in this respect by pleading that the plaintiff failed to hand back the possession of the premises and the leased equipments. In this connection, looking back in retrospect, it is noticed that the plaintiff filed the suit on 27th of April, 2000 and simultaneously an application under Section 151 CPC (IA.3644/00) was made seeking appointment of a local commissioner to visit the demised premises to make an inventory of the items, if any, lying there to facilitate deposit of the keys thereof in the Court. The application came up before the Court for consideration on 1st of May, 2000 and a local commissioner was appointed, who visited the premises on 8th of May, 2000 and filed his report on 22nd of May, 2000. Yet another application under Sections 151/152 CPC (IA.4733/00) was filed by the plaintiff on 20th of May, 2000 seeking permission to deposit the keys of the premises in the Court and, accordingly, on 25th of May, 2000, an order was passed allowing the local commissioner to deposit the keys, which had earlier been entrusted to him by the plaintiff vide its letter dated 8.6.2000. The local commissioner appears to have deposited the keys with the Registry on 12th of July, 2000 along with his second report. The keys are, thus, found to have remained with the plaintiff until 8th of June, 2000 before the same were handed over to the local commissioner.

14. On his visit to the demised premises on 8th of June, 2000, the Local Commissioner, in terms of his report, found the demised premises absolutely vacant, which implies that the plaintiff had vacated the same sometime earlier thereto. Service of notice terminating the lease being not in dispute, the lease came to an end w.e.f. 14.3.2000. The defendants deny that the plaintiff actually

offered to hand back vacant possession of the demised premises on 14th of March, 2000 or thereafter. In this context, last para of the termination notice dated 10.12.1999 is significant to take note of. It reads thus:

'The security deposits as listed in paragraph 3 of this termination notice should be refunded to us at the end of this notice period so that we can hand over peaceful possession of the premises on or before 14th March, 2000.'

15. Admittedly, the defendant 1 & 2 did not refund the security deposits. If one goes by the above extracted contents of the notice dated 10.12.1999, it would appear that handing over of the possession of the leased premises was made conditional on refund of the security deposits. Whether the plaintiff was prepared to hand over vacant possession of the demised premises on 14th of March, 2000 or thereafter until deposit of keys in the Court, in spite of the defendants 1 & 2 failing to refund its security deposits, thus, turns out to be a question of fact, which needs to be adjudicated upon in the given situation. It is, however, quite clear that the plaintiff had vacated the premises prior to 8th of June, 2000 when the local commissioner had visited that place.

16. It was contended on behalf of the defendants that in spite of having handed over keys of the premises to the local commissioner, the plaintiff continued to retain a duplicate set of keys, and, therefore, handing over of the keys to the local commissioner could not be taken to amount to vacating the premises and delivering possession thereof. A reference to the local commissioner's report dated 8.6.2000 would indicate that he, on his visit to the demised premises on 8th of June, 2000, found the premises absolutely vacant with no article or goods found lying there. This clearly shows that the demised premises was no longer in possession of the plaintiff on 8th of June, 2000. The defendants do not question the correctness of the Local Commissioner's reports nor the fact that the keys of the premises had been handed over to the Local Commissioner on 8th of June, 2000, which were eventually deposited with the Registry on 12th of July, 2000. This implies a constructive admission on the part of the defendants. Thus, in the light of clear position emerging out of the record that the plaintiff had vacated the suit premises sometime prior to 8th of June, 2000. The plaintiff's security deposit,

in terms of lease agreement, was to the tune of Rs. 1,74,38,400/-. The rate of monthly rent being Rs. 7,26,600/-, the defendant No. 1 may, for the time being until adjudication on the actual date of vacation of the premises by the plaintiff, be allowed to retain an amount of Rs. 20,21,198/- only for adjustment, if any, against arrears of rent for the period between 15th of March, 2000 to the date of actual vacation of the premises by the plaintiff. The balance of security deposit amounting to Rs. 1,54,17,202/-, is liable to be refunded to the plaintiff.

17. The equipment lease agreement as well as the maintenance and the services agreement were also terminated by the plaintiff simultaneously with lease agreement by its notice dated 10.12.1999. Both these agreements were to continue to be in force only during the currency of the lease of the premises and were co-terminus with the lease agreement. Evidently, both these agreements together with lease agreement stood terminated with effect from 14th of March, 2000 by notice dated 10.12.1999. The plea of the defendants is that since the plaintiff have failed to hand over possession of various equipments, possession whereof was with them; the security deposit on account of equipment lease agreement cannot be refunded. The plaintiff asserted that no equipment was in their possession and, therefore, there was no question of handing back possession thereof. No equipment was found lying at the demised premises on the date when the local commissioner visited the place on 8th of June, 2000. Clause 14 of the agreement for lease of various equipments, utilities and facilities stipulated that the plaintiff would 'hand over peaceful and vacant possession of the various equipments, utilities and facilities like Air-conditioning, including ducting, AHU's and central plant, etc. and 100% power back up through D.G. sets and false ceiling, fire fighting equipment, including smoke detectors, hydrant system etc., at the end of the lease period in the condition as received except for normal wear and tear, damage by fire, acts of God, riots and other civil commotion, war, enemy action and/or other causes not within the control of the defendant No. 1'. The language of this clause, prima facie, suggests as if the aforesaid equipments were placed at the disposal of the plaintiff and the same were under its possession and control. Since no equipment is claimed by the plaintiff to have been returned to the defendant No. 1 at any point of time after terminating the lease with effect from 14th of March, 2000, the fact if any equipment, as stated in Clause 14 of the

agreement, had actually been placed under exclusive possession and control of the plaintiff and if the plaintiff continues to with-hold possession thereof, remains to be adjudicated upon on the basis of evidence to be adduced by respective parties. In the given situation, until an answer to this question is found, the amount of security deposit cannot be ordered to be refunded at this stage.

18. The security deposit on account of maintenance services is to the tune of Rs. 87,19,200/-. The question of rendering maintenance and services and the liability of the plaintiff to pay maintenance charges at a monthly rate of Rs. 3,63,300/- could arise only during the period the plaintiff continued in possession of the demised premises. As the date when the plaintiff actually vacated the premises after terminating the lease thereof with effect from 14th of March, 2000 is in dispute, the defendant No. 2 may be allowed to retain part of amount out of security deposit for adjustment, if any, subject to final decision of the suit, on account of maintenance charges for the period from 15th of March, 2000 to the date of actual vacation of the premises by the plaintiff. In any case, as the plaintiff had vacated the premises some time prior to 8th June, 2000, clearly, its liability to pay any amount on account of maintenance charges ceased with effect from 8th of June, 2000. In the circumstances, the balance amount of security deposit on account of maintenance and services, which comes to Rs. 77,08,601/- is held to be refundable to the plaintiff.

19. Apart from seeking refund of the security deposits, a claim for an amount of Rs. 9,86,105/- on account of interest @ 18% per annum from 15th of March, 2000 to 25th of April, 2000 has also been made. The question of entitlement, if any, to interest is left open for adjudication at the time of final disposal of the suit.

20. In the result, the application is partly allowed and the suit is decreed to the extent of Rs. 2,31,25,803/- with proportionate costs and pendente lite and future interest @ 12% per annum.

21. A decree be drawn accordingly.

22. The application stands disposed of.