

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sona Koyo Steering Systems Limited Vs. Shonkh Technologies Int'l Limited

Sona Koyo Steering Systems Limited Vs. Shonkh Technologies Int'l Limited

SooperKanoon Citation : sooperkanoon.com/710189

Court : Delhi

Decided On : Nov-17-2005

Reported in : 125(2005)DLT220; 2005(85)DRJ489

Judge : Badar Durrez Ahmed, J.

Acts : Transfer of Properties Act, 1882 - Sections 106; Contract Act, 1972 - Sections 74; Code of Civil Procedure (CPC) - Order 39, Rule 10

Appeal No. : CS(OS) 490/2003

Appellant : Sona Koyo Steering Systems Limited

Respondent : Shonkh Technologies Int'l Limited

Advocate for Def. : Madan Gera, Adv.

Advocate for Pet/Ap. : Deepak Gupta, Adv

Judgement :

Badar Durrez Ahmed, J.

1. This is a suit for ejection, recovery of arrears, mesne profits, interest and costs. The relationship between the plaintiff and the defendant is that of Lesser and lessee in respect of the suit premises being Flat Nos.1205, 1205A, 1206, 1207, 1208 and 1208A in the 12th Floor of Indraprakash Building, 21, Barakhamba

Road, New Delhi-110001. The plaintiff had let out the suit premises admeasuring approximately 2605 sq. feet (super area) together with furnitures and fixtures installed thereat as well as two parking areas. The property was let out as per the registered lease deed dated 16.05.2002 (Exhibit PW-1/3) w.e.f. 01.06.2002 for a period of three years ending on 31.05.2005 at a monthly rent of Rs.1,09,410/-.

2. An application under Order 39 Rule 10 (IA No.2824/2003 had been moved and by an order dated 27.09.2004, this court had directed the defendant to deposit the admitted arrears. Unfortunately, the defendant did not do so, as a result of which by an order dated 10.08.2005 this court struck off the defense of the defendant. Thereafter, the plaintiff was directed to lead its evidence which it did in the form of an affidavit in the first instance. The affidavit was filed on behalf of the plaintiff by Mr Sudhir Chopra, Company Secretary of the plaintiff company and he was also cross-examined. Apart from this evidence, the plaintiff has also filed various documents. From an examination of the averments contained in the plaint as well as the evidence on record, it becomes apparent that the suit properties were leased out to the defendant by the plaintiff by virtue of a lease deed being Exhibit PW-1/3 w.e.f. 01.06.2002 for a period of three years ending on 31.05.2005. It also becomes clear that apart from the payment of rent for the period of June 2002 and partly for July, 2002, the defendant has not paid any sum to the plaintiff by way of rent for the same, as a result of which a sum of Rs.59,300/- remains due and payable by the defendant to the plaintiff as arrears of rent for the month of July, 2002. Since the defendant was not paying the rent and thereby contravening the terms of the lease, the plaintiff issued a notice under section 106 of the Transfer of Properties Act, 1882 terminating the lease and thereby terminating the relationship between the plaintiff and the defendant. The notice was dated 26.11.2002 (Exhibit-PW-1/6). The termination of the lease was to take effect from 01.02.2003. The defendant has continued in possession throughout the period beginning 01.06.2002 and continues to be in possession even today. With regard to the nature of possession, it becomes clear that till 01.02.2003, the defendant was in possession of the premises as a lessee and w.e.f. 01.02.2003, the defendant continued to be in possession as a tress passer. thereforee, insofar as the period prior to 01.02.2003 is concerned, the plaintiff would be entitled to arrears of rent and insofar as the period subsequent and including 01.02.2003 till the date of

handing over of possession is concerned, the plaintiff would be entitled to damages and or mesne profits in respect thereof.

3. The learned counsel for the plaintiff drew my attention to clause 8 of the lease deed indicating that for any period of holding over by the lessee, a liquidated amount of Rs.18,250/- per day was agreed upon to be paid by the lessee to the Lesser and, therefore, the plaintiff was entitled to the said damages also.

4. The learned counsel for the defendant, being handicapped by the fact that his defense had already been struck off, had nothing to say except that the damages / mesne profits should not amount to a payment in terrorem and it should be a reasonable and fair estimate of the actual damages which the plaintiff could be said to have incurred. He wanted to place before me the provisions of section 74 of the Indian Contract Act, 1972 as well as rely upon certain case law. However, the learned counsel for the plaintiff fairly stated that this would not be necessary inasmuch as the plaintiff would be willing to have the damages / mesne profits being quantified at the last paid rent amount which is Rs.1,09,410/- per month even for the period after the termination of the lease. This, therefore, obviates the need for any further enquiry on the issue of damages.

5. Accordingly, the plaintiff is entitled to a decree for possession, decree for arrears of rent and damages as well as to a decree for interest. Accordingly, the suit is decreed for arrears of rent of Rs.59,300/-(balance amount for July, 2002) and Rs.6,56,460/- (01.08.2002 to 31.01.2003); for recovery of damages for use and occupation for the period 01.02.2003 till the vacant possession is handed over by the defendant to the plaintiff @ Rs.1,09,410/- per month and recovery of interest @ 10% per annum from the dates on which the payments become due till realisation. The suit is decreed accordingly with costs.