

Techpro Developers Pvt. Ltd. Vs. Rose Valley Patrika Ltd.

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Court : Kolkata

Decided On : Nov-10-2016

Judge : Ranjit Kumar Bag

Appellant : Techpro Developers Pvt. Ltd.

Respondent : Rose Valley Patrika Ltd.

Judgement :

ORDER

SHEET CS1182015 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE TECHPRO DEVELOPERS PVT.LTD.Versus ROSE VALLEY PATRIKA LTD.BEFORE: The Hon'ble JUSTICE RANJIT KUMAR BAG
Date : 10th November, 2016.

Mr.J.Chowdhury, Adv.appears with Mr.S.Mukherjee, Adv., Mr.S.Ghosh, Adv., Mr.Aritra Basu and Ms.R.Singh, Adv.for the plaintiff.

The measuring Court about : The 7693 plaintiff sq.ft.

is of the super owner built of a area space with chargeable area of 8575 sq.ft.

on the 5th floor of Circular Court at premises no.8, A.J.C.Bose Road, Kolkata-700017, along with two open car parking spaces bearing nos.23 and 27 on the ground floor of the referred to as suit premises).said premises (hereinafter On

October 15, 2011, the defendant was inducted as a monthly tenant in the suit premises at Rs.10,75,168/- inclusive of service tax.

a rental of The defendant paid the monthly rent till the month of March 2014 and thereafter the defendant failed to make payment of the rent.

The defendant failed to make payment of Rs.1,09,99,096/- towards monthly rent and electricity charges till April 30, 2015.

The defendant is bound to pay interest on delayed payment of rent and electricity charges which is calculated as Rs.26,42,397/- till the month of April 2015.

On January 5, 2015, the plaintiff terminated the tenancy of the defendant by issuing notice under section 106 of the Transfer of Property Act which was defendant on January 6, 2015.

tenancy of January 21, the defendant 2015.

The duly received by the By virtue of this notice, was terminated defendant is with effect occupying the from suit premises even after termination of tenancy and thereby the plaintiff has been suffering loss to the tune of Rs.25 lakh per month for which the plaintiff is entitled to decree for mesne profit from January 21, 2015 till recovery of decree for from the possession of the suit premises.

The recovery plaintiff of is, possession thus, of praying the suit for a premises defendant and for decree for a sum of Rs.1,36,41,493/- and also decree for mesne profit at the rate of Rs.25 lakh per month along with interest at the rate of 24% per annum on the said amount from January 21, 2015 till recovery of possession of the suit premises from the defendant.

It appears from the certificate issued by the Deputy Sheriff on August 27, 2015 that the summons was duly served on the defendant on July 13, 2015.

It also appears from three certificates issued by the Deputy Registrar (C&J.on August 31, 2015, June 22, 2016 and November 3, 2016 that the defendant November has 3, not 2016.

entered appearance Accordingly, the in suit the is suit taken till up for hearing as `Undefended Suit.

The only point for consideration of the Court is whether the plaintiff is entitled to get the decree as prayed for.

One company, Tapan has Kumar been Panda, examined Director of the witness on behalf as plaintiff of the plaintiff.

In the absence of any evidence to the contrary, I am inclined to rely on the oral testimony of the witness Tapan Kumar Panda.

It is established from the evidence on record that the plaintiff is the owner of the suit premises and that the defendant was inducted as monthly tenant in the suit premises on October 15, 2011 at a rental of Rs.10,75,168/- inclusive of service tax.

The document marked Ext.E and the statement of witness Tapan Kumar Panda in reply question no.18 go to establish that the defendant was inducted as tenant in the suit premises at a total rental of Rs.10,75,168/- with the following break-up :- Basic rent - Rs.2,87,832/-, Car parking charges - Rs.16,854/-, Maintenance charges - Rs.43,175/-, Consolidated charges - Rs.7,19,582/- and Generator charges - Rs.7,725/-.

It appears from the oral evidence of Tapan Kumar Panda that the defendant paid rent to the plaintiff till the month of March, 2014 and the electricity charges were paid till the month of June, 2014.

It is further elicited from the evidence of the witness Tapan Kumar Panda that the defendant has failed to pay the electricity charges from July, 2014 to March, 2015 for which the plaintiff raised electricity bills for a sum of Rs.13,22,584/-.

The witness Tapan Kumar Panda has stated in evidence that Rs.17,50,000/- was paid towards electricity charges by the order of the Court in connection with one writ application and Rs.9,74,000/- was deposited in the Court towards balance amount of electricity charges by virtue of the order passed in the said writ

application.

On specific query of the Court, the witness Tapan Kumar Panda has stated in evidence that the plaintiff is entitled to get from the defendant Rs.15,03,304/- towards balance electricity charges for the period from July, 2014 to April, 2015.

Mr.Mukherjee, learned Counsel for the plaintiff, submits that the amount which was deposited in the Court on account of electricity charges in connection with the writ application and the amount which was paid to the plaintiff on account of electricity charges in connection with the writ application do not match with the amount of electricity charges payable by the defendant to the plaintiff for the period for which the plaintiff has claimed the electricity charges in the instant suit.

Since the amount of electricity charges payable to the plaintiff in connection with the suit premises is the subject matter of adjudication by the Writ Court, I am not inclined to pass any decree in connection with the electricity charges claimed by the plaintiff from the defendant in connection with the suit premises for the period from July, 2014 to March, 2015.

The witness Tapan Kumar Panda has proved the notice under Section 106 of the Transfer of Property Act issued on behalf of the plaintiff to the defendant on January 5, 2015 and the same is marked Ext.O.It appears from the Postal receipt (Ext.P) and the A/D Card (Ext.Q) that the notice was duly served on the defendant.

On perusal of the notice marked Ext.Q, I find that the suit premises is properly described in the said notice and the claim of the plaintiff is properly reflected in the said notice.

By this notice (Ext.O) the plaintiff terminated the tenancy of the defendant on expiry of 15 days from the date of receipt of the notice and called upon the defendant to vacate the khas possession of the suit premises in favour of the plaintiff.

Since the defendant has not vacated the possession of the suit premises in favour of the plaintiff after receiving the notice and after termination of the tenancy, the plaintiff is entitled to get the decree for recovery of possession of the suit premises

from the defendant.

The bunch of documentary evidence coupled with the oral evidence of the witness Tapan Kumar Panda go to establish that the plaintiff has not received arrears of rent from the defendant to the tune of Rs.96,76,512/- for the period from April, 2014 to March, 2015.

I have already observed that I am not inclined to pass any decree in favour of the plaintiff with regard to the balance amount of electricity charges payable by the defendant to the plaintiff for the period from July, 2014 to March, 2015 as some amount towards electricity charges has already been received by the plaintiff and some amount has already been deposited in the Court by order passed in connection with one writ application and the balance amount of electricity charges is the subject matter of adjudication of the said writ application.

The plaintiff has claimed interest at the rate of 24% per annum on arrears of rent and electricity charges for which I do not find any basis.

In my view, the plaintiff is entitled to get interest at the rate of 8% per annum on the entire amount of arrears of rent, that is, Rs.96,76,512/- from the date of the order till the date of realisation of the entire decretal dues from the defendant.

The witness Tapan Kumar Panda has categorically stated in evidence that the defendant deducted Tax at Source but the TDS was not deposited with the Income Tax Department and thereby the plaintiff will be liable to pay the said amount of tax.

It appears from Annexure E to the plaint that the total amount of TDS to be payable by the plaintiff to the concerned department for non payment of the same by the defendant is Rs.6,20,676/-.

The plaintiff will have to pay penal interest on Rs.6,20,676/- @ 18% per annum, as contended on behalf of the plaintiff.

In the absence of any evidence to the contrary I would like to accept the evidence of the witness Tapan Kumar Panda and hold that the plaintiff is entitled to get a

decree for the said amount of Rs.6,20,676/along with interest at the rate of 18% per annum on the said amount from October 10, 2013 till the date of realisation of the same from the defendant.

The plaintiff has prayed for decree for mesne profit at the rate of Rs.25 lakh per annum from January 21, 2015 till the date of recovery of possession of the suit premises from the defendant.

No explanation is forthcoming about the basis of claiming mesne profit at the rate of Rs.25 lakh per month when the monthly rent is Rs.10,75,168/-.

In my view, the plaintiff is entitled to get a decree for mesne profit at the rate of Rs.10,75,168/- along with interest at the rate of 8% per annum accrued thereon from January 21, 2015 till recovery of possession of the suit premises from the defendant by the plaintiff and in case of non-payment the amount interest will be charged at the rate of 12% per annum on the entire amount from the date it becomes due till actual payment by the defendant.

In view of my above findings, the suit is decreed in part ex parte.

The plaintiff do get a decree against the defendant for recovery of possession of the suit premises within a period of two months from the date of this order, in default of which the plaintiff is at liberty to pray for execution of the decree.

The plaintiff also do get a decree against the defendant for a sum of Rs.1,02,97,188/- along with interest @ 8% per annum on Rs.96,76,512/- from the date of the order till the date of realisation of the amount and interest @ 18% per annum on Rs.6,20,676/- from October 10, 2013 till the date of realisation of the amount.

The plaintiff also do get a decree against the defendant for mesne profit at the rate of Rs.10,75,168/- per month along with interest @ 8% per annum on the said amount from January 21, 2015 till recovery of possession of the suit premises from the defendant and in case of non-payment of the entire amount, entire interest amount will from be the charged date it @ 12% per becomes annum due on the till actual the decree payment by the defendant.

The Department is directed to draw up expeditiously.

(R.K.BAG, J.) tk/sn

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