

Anil Kumar Thakur Vs. M/S Babys Day Care and Learning Centre Pvt Ltd

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SooperKanoon Citation : sooperkanoon.com/956733

Court : Delhi

Decided On : Dec-17-2012

Judge : Kailash Gambhir

Appellant : Anil Kumar Thakur

Respondent : M/S Babys Day Care and Learning Centre Pvt Ltd

Judgement :

\$~9 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 2638/2012
ANIL KUMAR THAKUR Plaintiff Through Mr. Sameer Vashisht with
Mr.Abhinav Sharma, Advs. versus M/S BABYS DAY CARE & LEARNING
CENTRE PVT LTD Defendant Through Nemo. CORAM: HON'BLE MR.
JUSTICE KAILASH GAMBHIR % ORDER 17 12.2012 1. The plaintiff has filed the
present suit for recovery of possession, rent and damages. Counsel for the plaintiff
submits that the plaintiff is the owner and landlord of lower and ground floor of the
residential premises bearing No. B-6/16, Safdarjung Enclave, New Delhi
admeasuring about 4475.63 sq.ft. more specifically shown in green colour in the
site plan attached with the plaint. The defendant was inducted in the said premises
as a tenant with effect from 1st April, 2012, on month to month basis, on a monthly
rent of Rs. 3,50,000/-. It is the case of the plaintiff that the said premises was let
out by the plaintiff in favour of the defendant for running a play school, subject to
the defendant obtaining necessary permissions form the MCD. It is also the case
of the plaintiff that on 4th April, 2012 the defendant had deposited an amount of
Rs. 10,50,000/- vide cheque No. 736202 to the plaintiff 1 of 6 towards the interest

free security deposit, which is equivalent to three months rent and at the same time had also paid an amount of Rs. 3,50,000/- vide cheque No. 736203 dated 4th April, 2012 towards the advance rent for the month of April, 2012. The defendant had further tendered post dated cheque for an amount of Rs. 7,00,000/- vide cheque No. 534759 dated 8th May, 2012 towards the advance rent for the months of May and June, 2012. The defendant gave another cheque vide cheque No. 534758 dated 8th May, 2012 for an amount of Rs. 1,83,750/- after the adjustment of TDS and service tax etc. The defendant had also issued a separate cheque vide cheque No. 534760 dated 8th May, 2012 for an amount of Rs. 1,00,000/- towards the registration expenses for getting the lease deed registered. It is also the case of the plaintiff that all the three cheques when presented by the plaintiff to his bank, were returned dishonoured. It is also the case of the plaintiff that the defendant had issued fresh cheques in place of the said dishonoured cheques for the same amount vide the details as disclosed in para 6 of the plaint. It is also the case of the plaintiff that the defendant had also handed over another cheque dated 21st May, 2012 for an amount of Rs. 2,88,750/- towards the rent for the month of May, 2012 after adjusting the TDS and service tax etc. These cheques issued by the defendant were again dishonoured and thereafter the plaintiff had served a legal notice dated 11th June, 2012 thereby calling upon the defendant to make the payment of the aforesaid outstanding amount within a period of 15 days from the receipt of 2 of 6 the notice. It is also the case of the plaintiff that on receiving the notice, the defendant again replaced all the aforesaid cheques and issued fresh cheques in terms of the details given by the plaintiff in para 9 of the plaint. As per the case of the plaintiff these five cheques were again dishonoured with the remarks on the bank memo payments stopped. Taking account of such a conduct on the part of the defendant, the plaintiff served another legal notice dated 12.07.2012 on the defendant for terminating the tenancy of the defendant thereby calling upon it to vacate the suit premises within a period of 15 days and also to pay a sum of Rs. 15,61,250/- towards the arrears of rent along with 18% interest within a period of 15 days. It is also the case of the plaintiff that despite service of the legal notice dated 12.7.2012, the defendant neither vacated the premises nor paid the arrears of the rent amount. On the failure of the defendant to accede to the request of the plaintiff, the plaintiff was left with no option but to file the present

suit.

2. The plaintiff has proved the averments made in the plaint through the evidence of the plaintiff himself who entered the witness box as PW1. PW1 in his evidence has proved copy of the lease deed dated 4.4.2012 as Exhibit PW1/1, original cheques dated 8.5.2012 for Rs. 7,00,000/- towards advance rent for the months of May and June, 2012 with return memo as Exhibit PW 1/2, original cheques along with return memos dated 8.5.2012 for Rs. 1,83,000/- and Rs. 1,00,000/- as Exhibit PW 1/3 and Exhibit PW 1/4 respectively, original cheques dated 21.5.2012 along with return memos 3 of 6 dated 24.5.2012 for Rs. 7,00,000/-, Rs. 1,83,750/- and Rs. 1,00,000/- as Exhibit PW 1/5, Exhibit PW 1/6 and Exhibit PW 1/7 respectively, original cheque bearing No. 004441 dated 21.5.2012 with return memo dated 24.5.2012 for Rs. 2,88,750/- as Exhibit PW 1/8, letter dated 14.6.2012 as Exhibit PW 1/9, replaced original cheques dated 20.6.2012 with return memos dated 26.6.2012 for Rs. 7,00,000/- for Rs. 1,83,750/- Rs. 1,00,000/-, Rs. 2,88,750/- and Rs. 2,88,750/- as Exhibit PW 1/10, Exhibit PW 1/11, Exhibit PW 1/12, Exhibit PW 1/13 and Exhibit PW 1/14 respectively, copy of legal notice dated 12.7.2012 with proof of service as Exhibit PW 1/15 (colly), reply dated 23.7.2012 as Exhibit PW 1/16. The said evidence of the plaintiff, PW1, remained un-rebutted and unchallenged and in the absence of any challenge to the said testimony of the plaintiff there is no reason to disbelieve the deposition of the PW1. The defendant has failed to file the written statement and, therefore, the averments of the plaintiff also remained uncontroverted. In his evidence the plaintiff has proved on record that the subject premises were let out by him in favour of the defendant on a monthly rental of Rs. 3,50,000/- and amount of Rs. 10,50,000/- was paid by the defendant to the plaintiff towards the security which was equivalent to the amount of three months rent. The defendant has failed to pay the arrears of the rent w.e.f. May, 2012 @ Rs. 3,50,000/- per month. The plaintiff, PW1, in his deposition has proved that the various cheques issued by the defendant were returned dishonoured. The said dishonoured cheques issued 4 of 6 by the defendant clearly prove that the defendant failed to pay the arrears of rent amount to the plaintiff and continued to enjoy the possession in the tenanted premises at the same time. The plaintiff terminated the tenancy of the defendant vide legal notice dated 12.07.2012 and the said legal notice was also duly acknowledged by the

defendant through its reply dated 23.7.2012.

3. Having failed to vacate the plaintiffs premises after termination of the tenancy and also having failed to contest the present suit, the plaintiff is entitled to the decree of possession with respect to the premises bearing No. B-6/16, Safdarjung Enclave, New Delhi. The plaintiff is also entitled to recover the rent @ Rs. 3,50,000 per month for the months of May 2012 to July 2012. The plaintiff is further entitled to recover an amount of Rs. 1,73,040 with respect to the service tax for the months of April 2012 to July 2012. The plaintiff has claimed damages @ Rs. 5 lakhs per month w.e.f. 1 st August, 2012 till the actual handing over of the said premises, but since the plaintiff has not led any evidence to substantiate the said amount of damages, the Court is not inclined to grant damages at the said rate as claimed by the plaintiff but certainly the plaintiff is entitled to damages at the rate of Rs.3,50,000 per month w.e.f. 1st August 2012 till date of handing over of the possession.

4. The suit filed by the plaintiff for the recovery of possession of the premises bearing No. B-6/16, Safdarjung Enclave, New Delhi is accordingly 5 of 6 decreed in favour of the plaintiff and against the defendant. A decree for recovery of rent totaling upto Rs.10,50,000 is passed in favour of the plaintiff and against the defendant. A decree for the recovery of Rs. 1,73,040 with respect to the service tax for the months of April 2012 to July 2012 is also passed in favour of the plaintiff and against the defendant. The plaintiff is also granted a decree for an amount of Rs. 3,50,000/- towards damages w.e.f. 1st August 2012 till date of handing over of the possession. A decree for an Interest @ 18% per annum on the outstanding amount of arrears of rent is also granted in favour of the plaintiff and against the defendant. Costs of the suit are also awarded in favour of the plaintiff and against the defendant.

5. Decree sheet be drawn up accordingly. KAILASH GAMBHIR, J DECEMBER 17 2012 rkr 6 of 6