

(2010) 09 DEL CK 0199
In the Delhi High Court
Case No : C.S. (OS) 1581 of 2009

Artlife Wellness Products Pvt. Ltd.

APPELLANT

Vs

Dr. (Mrs.) Nirmala Taneja and Another

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 107

Citation : (2010) 09 DEL CK 0199

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Arun Batta, Yudhvir B. Arya and Tripti Sood, for the Appellant; None, for the Respondent

Judgement

S. Ravindra Bhat, J.—The plaintiff seeks a decree directing the defendants to take back possession of premises bearing No. B-20 (first floor), Mayfair Gardens, Hauz Khas, New Delhi-16 measuring about 2000 square feet (herein after referred to as "the suit property"). The plaintiff also seeks a decree for Rs. 38,00,000/- towards the refundable security of Rs. 18,00,000/- and Rs. 20,00,000/- as damages, against the defendants (the latter hereafter referred to collectively as "owners"). The owners had entered appearance in these proceedings on 28.10.2009 but thereafter failed to represent or file a written statement. In the circumstances, they were set down ex-parte.

2. The brief facts of the case are that the plaintiff entered into an agreement with the owners, for leasing the suit property for a period of three years effective from 15.09.2008 and ending on 14.09.2011. The concerned document executed by the parties -which was concededly not registered-has been marked as Ex-PW-1/2. The monthly rent for the suit premises was Rs. 1,00,000/- with the stipulation that the advance rent amount was to be adjusted on the first and last month of the tenancy. In addition, the plaintiff was to pay a refundable security of Rs. 3,00,000/- and further an Additional security of Rs. 3,00,000/- (the total of the said security amounts aggregating to Rs. 6,00,000/-). The agreement

included a stipulation that in the event the plaintiff wished to vacate the premises it had to serve six months notice. The parties also apparently entered into two other Agreements -one for maintenance of the premises and the other characterized as a "Hire Agreement". The same have been produced as Ex-PW-1/3 & Ex-PW-1/4. These agreements were executed by the second defendant with the plaintiff. In all material particulars, they are identical to exhibit PW-1/2 as regards monthly payments; advance to be paid and the refundable and the additional refundable security deposited with the owners. In all these disclose that the total refundable security deposited with the owners was Rs. 18,00,000/-, repayable at the time of handing-over possession to them.

3. The plaintiff contends that due to various problems, it decided to vacate the premises and it accordingly issued a notice to the defendants on 29.05.2009, terminating all the three agreements. These notices are marked as Ex-PW-1/5 & Ex-PW-1/6. The plaintiff has also produced postal receipts evidencing service of the said notices. It is contended that on 30.05.2009, immediately upon receiving intimation of the notice to vacate the premises, the defendants disconnected electricity and water to the suit premises. The plaintiff apparently filed another suit being CS(OS) No. 863/2009 on 08.06.2009 for permanent injunction with an inter locutory application to direct the owners to restore electricity and water supply. A copy of the suit has been produced as Ex-PW-1/11. The District Judge issued summons on 09.06.2009 and subsequently, on 16.07.2009 directed that the concerned authorities i.e. the electricity service provider as well as local police should co-operate and ensure that the electricity was restored to the premises. A certified copy of the said order has been marked as Ex-PW-1/12. It is contended that in compliance with the order, electricity supply was restored on 17.07.2009.

4. The plaintiff apparently was fed up with the defendants' obstruction and sought termination of their tenancy by a notice to vacate the premises by the end of July; in this regard it issued legal notice to that effect giving 15 days notice on 14.07.2009; the document has been produced as Ex-PW-1/13. The defendants again did not co-operate and take back the premises. In these circumstances, the plaintiff was constrained to approach this Court, by filing the present suit.

5. After the present suit was filed and summons were issued, the defendants entered appearance on 28.10.2009 after repeated attempts to serve them in the ordinary process. The records of this case disclose that the defendants had refused to accept summons and eventually, had to be served by affixation, for 28.10.2009. In these circumstances, the Court made the following order:

Learned Counsel for the defendants states that the plaintiff have not handed-over possession of the suit property, notwithstanding an order of the Addl. District Judge. However, no copy of such order or even the date of such order has been brought to the Court. Learned Counsel for the plaintiff disputes any such order was made and that possession is no longer with the plaintiff since

01.08.2009, as mentioned in the suit, and that this may be duly ascertained by the appointment of a Local Commissioner.

In the circumstances, the Court is of the opinion that to verify the correct position, a Local Commissioner should visit the premises - B-20, Mayfair Garden, (Ground Floor), August Kranti Marg, New Delhi. Accordingly, Ms. Prabhsahay Kaur, Advocate (C-253, Defence Colony, New Delhi; Mob. No. 9810158581) is appointed as Local Commissioner to visit the premises and report to the Court as to who is in possession of the said premises. It is submitted by the plaintiff's counsel that the premises have been vacated and the keys are with the plaintiff since the defendants have been evading accepting the keys.

List on 23.11.2009, for further proceedings; the Local Commissioner shall file report before the next date of hearing; the Commissioner's fee is fixed at Rs. 20,000/-.

Order dasti under signatures of Court Master.

6. Pursuant to this Court's order, the Local Commissioner filed his report on 13.11.2009. The site inspection and observations recorded by the Commissioner disclose that there were hardly any furniture in the premises and that both the parties had confirmed that the electricity had been disconnected earlier.

7. The plaintiff submits that since the defendant has not chosen to contest the proceedings, and the relevant documents have been exhibited, the Court may decree the suit as it was put to considerable loss. It is submitted that in terms of the three contracts i.e. Ex-PW-1/2, Ex-PW-1/3 & Ex-PW-1/4, the sum of Rs. 18,00,000/- which was deposited with the owners, is refundable and that the plaintiff had in fact, in compliance with the stipulations adjusted the balance of 50% lying as advance with the owners, by paying only a proportion amount of rent for the month of July, 2009. It is submitted that the plaintiff is entitled to the sum of Rs. 20,00,000/- as damages and costs of the proceedings since its business was greatly affected. It is claimed that the plaintiff is engaged in multi level direct marketing and receives considerable personal queries which necessitates of its customers and agents. The counsel submitted that owners' attitude in disconnecting the electricity and virtually paralyzing the plaintiff's business led to monetary loss. It is alleged that in these circumstances, the Court should abide the damages claim.

8. On a plain reading of Ex-PW-1/2, Ex-PW-1/3 & Ex-PW-1/4, it is apparent that the plaintiff had furnished refundable security and additional refundable security (recorded in all the three agreements; Clause 2 & 3 on Ex-PW-1/2 & Ex-PW1/3; Clause 1 of Ex-PW-1/4). The material on record in the form of legal notice dated 14.07.2009 along with the receipts would indicate that the plaintiff had given a notice in accordance with Section 107 of the Transfer of the Property Act since the inter se arrangement between the parties was a monthly tenancy and not a three years lease period on account of the document being unregistered. In these circumstances, the Court is of the opinion that the plaintiff has established

its claim for Rs. 18,00,000/-, deposited with the owners as refundable and additional refundable security.

9. So far as damages are concerned, the materials on record undoubtedly establish that immediately upon receipt of the notices Ex-PW1/5 to Ex-PW-1/7 (all dated 29.05.2009), the defendant disconnected the electricity supply and caused inconvenience to the plaintiff. The plaintiff had to approach the trial court through a suit for injunction which ultimately led to the interim order directing restoration of electricity on 16.07.2009. The costs of such legal proceedings is also a matter which the Court cannot lose sight of. Since the plaintiff has not produced any other material evidence to substantiate Ex-PW-1/14 collectively (which are in the form of affidavits of persons claiming to be its clients or involved with it), it would not be prudent for the Court to entirely accept the claim for damages of Rs. 20,00,000/-. In the circumstances, this Court is of the opinion that the plaintiff cannot claim anything more than reasonable damages which in the conspectus of facts here would be in the range of Rs. 5,00,000/-.

10. In view of the above conclusions, the plaintiff is entitled to a decree for Rs. 18,00,000/-. Since the premises were used for commercial purposes, this Court is of the opinion that the plaintiff is entitled to interest on the said amount of Rs. 18,00,000/- at 10% p.a for the period w.e.f. 31.07./2009 till the date of payment including pendente lite and future interest. However, no interest can be granted on the damages directed by the Court.

11. The suit is, therefore, decreed to the extent that the plaintiff is entitled to Rs. 18,00,000/- along with interest @10% p.a. from 01.08.2009 with pendente lite and future interest, against the defendants. The plaintiff is also entitled to a decree for Rs. 5,00,000/- as damages along with costs of these proceedings against the defendants. The suit is decreed in the above terms.