
(2016) 03 DEL CK 0103

In the Delhi High Court

Case No : IA 19582/2013, CS (OS) 1345/2013, IA Nos. 24206/2014 and 10734/2013

Goodwill Apartment Pvt. Ltd.

APPELLANT

Vs

Velvet Apple Hotels Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 1, Order 38 Rule 1, Order 38 Rule 5, Order 39 Rule 1, Order 39 Rule 10, Order 39 Rule 2, Order 8 Rule 10, Section 151
Contract Act, 1872 — Section 62

Citation : (2016) 03 DEL CK 0103

Hon'ble Judges : V. Kameswar Rao, J.

Bench : Single Bench

Advocate : Kirti Uppal, Sr. Adv., L.M. Asthana, Sidhant Asthana and Siddharth Chopra, Advocates, for the Appellant; Mohit Chaudhary, Damini Chawla and Kunal Sachdeva, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—IA 19582/2013

1. By this order, I shall dispose of the application filed by the plaintiff under Order XV-A of the Code of Civil Procedure being I.A No. 19582/2013. Before I narrate some of the relevant facts, I may only note, the relief claimed by the plaintiff, the landlord, in the suit, is primarily for possession of the entire suit property consisting of entire basement, ground floor, and first floor comprising of 17 fully furnished rooms with attached bathrooms, reception area etc. The plaintiff has also sought, a decree, for a sum of Rs. 1,13,46,000/- i.e. recovery of arrears of rent for the period up till 31st January, 2013, along with future rent as Rs. 10,35,000/- till the possession is handed over with interest @24% p.a. The prayers made in the application are as under:-

"(a) Pass an order striking off the defence of the Defendants thereby decreeing the suit of the Plaintiff for a sum of Rs. 1,89,87,909/- in favour of the Plaintiff

and against the Defendants;

(b) Any other relief/order which this Hon"ble Court may deem fit and proper may be passed in favour of the Plaintiff and against the Defendants."

2. The subject matter of the suit is E-82, Greater Kailash, Part-I, New Delhi-110048 consisting of entire basement ground floor and first floor comprising of 17 fully furnished rooms with attached bathrooms, reception area and kitchen along with use of common passage and other usual facilities related to the said premises with fixtures and fittings and the same was leased out to the defendants. The case of the plaintiff is that the suit was listed before this court on July 12, 2013 when this Court had passed an interim order in favour of the plaintiff as per which, the defendants were restrained from creating any third party interest in the suit or transferring or alienating in any manner whatsoever and further from handing over whole or any part of the suit premises to any third party or causing any damages, structural alterations/construction in the suit premises. The defendants were further directed to deposit in Court, the entire arrears of rent up to date by next date of hearing i.e. December 3, 2013 in respect of suit premises.

3. It is averred in the application that the plaintiff/applicant moved an application under Order XXXVIII Rule 1 and 5 read with Section 151 CPC apprehending that defendant No. 2 will abscond from the territorial jurisdiction of this Court in order to frustrate the suit of the plaintiff. The said application was listed on September 9, 2013 and the defendants appeared along with counsel and handed over the keys of the suit premises in the Court and after hearing both the parties, this Court appointed a local commissioner to visit the suit premises and to open the locks and with the direction to hand over the possession to the plaintiff. The plaintiff would state, that he has not received any intimation regarding the deposit of arrears of rent. The plaintiff has also averred that there are arrears of statutory dues unpaid by the defendants like dues towards MCD on account of user charges for the period of 2008-2014; dues towards electricity, water bills etc. The plaintiff would aver that the defendants have been in constant breach of the various terms of the lease deed and have been in arrears of rents during the period of the lease deed. In para 10 of the application, the plaintiff has averred that the defendants have been directed by this Court to deposit in Court, up to date arrears of rent vide order dated July 12, 2013. The defendants are in arrears of Rs. 1,89,87,909/- and the said order is a condition precedent for the defendants, in order to proceed with their defence. In the light of the defendants handing over the keys before this Court in terms of order dated September 09, 2013, the defendants have admittedly been in possession till September 09, 2013 and are therefore, liable to pay the rents in court which is an incontestable legal obligation of the defendants.

4. The defendants have not filed any reply to this application except, learned counsel for the defendants, during the hearing on July 31, 2014 stated that the reply is not necessary to this I.A and the written statement filed, may be treated

as his reply to the application as well. In the written statement, it is the case of the defendants that the plaintiff approached the defendants with the property located at E-82, GK-I, New Delhi, giving a very rosy image of its location and construction. The plaintiff gave false image to the extent that the entire building occupant pays the maintenance charges and the building is well maintained. The defendants had stated that a lease deed dated December 26, 2008 was executed between the plaintiff and the defendants, for a period of three years, pursuant to which, the defendants were put into occupation of 17 rooms. According to the defendants, at the time of execution of the original lease deed, the defendants handed over to the plaintiff, 24 post dated cheques (PDCs) bearing numbers 038926 to 038950 each for an amount of Rs. 6,96,060/-, which constituted advance rent for the period from January, 2009 to January, 2011.

5. The defendants' case is that, the figure of Rs. 6,96,060/- was arrived at after deducting TDS at the rate of 22.66% of the agreed lease of Rs. 9,00,000/- under the original lease agreement. From January, 2009 till August, 2009 the cheques from same series were presented and were honoured towards the liability of rent. Thus, 8 cheques bearing No. 38926 and 38933 were honoured. In the month of September, 2009 the parties re-negotiated the rent amount and reduced it from Rs. 9,00,000/- to Rs. 7 lakhs. The factum of reduction in rent after negotiation is admitted by the plaintiff in para No. 6. The defendants denied the stand of the plaintiff that reduction was only for a particular year. According to the defendants, it is in this background, that amounts of Rs. 7 lakhs less TDS at the rate of 10.3% was being paid by defendants to the plaintiff. As, now the cheques were given from time to time for the amount of Rs. 7 lakhs less TDS, the earlier cheques No. 38934 - 38950 remained in the hands of plaintiff, which are being misused by it. It is the case of the defendants that any claim of arrears of rent for any period within the tenure of the original lease period is disputed and denied, as with the plaintiff's consent altered the original lease deed as far as monthly rent is concerned. The plaintiff accepted the defendants payment of reduced monthly rent at the rate of Rs. 7 lakhs per month without any protest and demur. The original lease deed is statutorily barred under Section 62 of the Indian Contract Act.

6. The defendants in their written statement has also sought dismissal of the suit on the ground of concealment of vital facts with regard to adjustment of Rs. 36 lakhs, which was admittedly lying with the plaintiff as security amount. According to the defendants, as per clause 2(xi) of the lease deed dated December 26, 2008, a sum of Rs. 36 lakhs was given by the defendants to the plaintiff, as security deposit. That with the ending of financial year March 31, 2013, a joint meeting was undertaken by defendant No. 2 with Mr. G.S. Jolly of the plaintiff company, wherein it was decided that the security amount of Rs. 36 lakhs would be adjusted towards the future rents i.e. for four months. At that stage, defendant No. 2 made it clear that due to booking in hands, it is not possible for him to vacate the premises before September, 13, 2013. Thus, it was agreed that the security amount would be adjusted between the parties, wherein for an

intervening month i.e. for the month of June, 2013 defendants would pay the entire rental and thereafter security amount will be adjusted towards rental of July and August 2013. In other words, the agreement for that period of four months would be split in April and May in one batch, thereafter for June defendants would pay the rent and again July and August would be another batch of two months, for which security amount would be utilized for the purpose of rentals. It is averred that out of the security deposit of Rs. 36 lakhs, the rent for only four months i.e. Rs. 30,80,000 (Rs. 7,70,000 x 4) has been adjusted. Rest of the amount is still lying with the plaintiff.

7. The defendants had also referred to quid-pro quo arrangement between plaintiff and the defendant relating to the use and occupation of the hotel by its guests and adjustments against monthly rent payable. As aforesaid, the plaintiff, every now and then made its guests occupy the rooms of the hotel, who will leave without even paying basic tariff for use and occupation. Not a single penny for consumables was paid. As this according to the defendants, was on a constant rise, the defendants protested against it somewhere in May 2011 upon which it was agreed between the plaintiff and the defendants that the plaintiff would use the defendant's guest house for its guests and the expenses incurred towards the stay of plaintiff's guests would be set off towards the part/full monthly rent of Rs. 7 lakhs payable by the defendants. According to the defendants, in their written statement, they have given a chart of true position of the accounts, which is reproduced as under:-

"II. True position of accounts:

a. In view of the facts mentioned hereinabove, the true position of payments made by the defendants is as under:-

b. As evident from the above payments, in the month of May, 2011, no rent was paid by the Defendant No. 2 to Plaintiff, in view of the fact that the Plaintiff had taken services of boarding and lodging of its clients, with the defendants the bill show generated was mutually set off between the parties.

c. By quid pro quo arrangement, Mr. G S Jolly started acting like the owner of the guest house and has several times booked the room and party halls for his personal parties. It was agreed that the expenses of these parties would be set off in lieu of the rents, however, several times, Mr. G.S. Jolly used to cancel the bookings at last minute. One of these incidents took place in October, 2011 when rooms were booked but cancelled at the last minute. The Defendant Company initially adjusted the rent, however, when the booking was cancelled by Mr. G.S. Jolly, the Defendant Company paid the balance amount in the month of November. Though as per the guest house's policy, initially the Defendant Company deducted the booking charges @ Rs. 2,00,000, but later on when the Plaintiff Company did not agree to it, the Defendant Company ended up paying the balance amount of Rs. 2,00,000/- to the Plaintiff Company. The last minute cancellation by Mr. G.S. Jolly resulted into huge revenue losses to the Defendant

Company.

d. Similar position happened with regard to the period of July and August, 2011. Thereafter, the payment was made in September, 2011.

e. In October, 2011, the bill so generated upon the plaintiff and the said sum was again set off and balance amount of Rs. 4,27,000/- was paid and accepted by the plaintiff as rent.

Position in regard to January, September, 2012 and January, 2013 is similar to the earlier months.

III. Recovery of arrears of rent: As far as arrears of rent are concerned, the Plaintiff has sought the following arrears in rent:

A. From the period commencing from September 2010- October, 2011 @ Rs. 2 lacs /month.

The original Lease Deed dated 26.12.2008 so far as the monthly lease amount of Rs. 9 Lacs is considered was partially altered by the free consent of both and a revised monthly lease of Rs. 7 lacs was agreed upon to be effective for the entire duration of the original lease.

B. From the period commencing from November, 2011 to April, 2012: @ Rs. 9 Lacs * 15% increment / month " Rs. 10.35 Lacs/month.

It is relevant to mention here that as the rent was modified to Rs. 7 lacs, the clause I (ii) was also altered and it was agreed that instead of 15% increment, 10% of rent would be increased. The same is corroborated with the fact that the Plaintiff since December, 2011, the Plaintiff has accepted the rent of Rs. 693000 (Rs. 770000- TDS from the Defendants).

C. From the period commencing May 2012-January, 2013: @ Rs. 9 lacs*15% increment/month Rs. 10.35 lacs/month

It is relevant to mention here that as the rent was modified to Rs. 7 lacs, the clause I (ii) was also altered and it was agreed that instead of 15% increment, 10% of rent would be increased. The same is corroborated with the fact that the Plaintiff since December, 2011, the Plaintiff has accepted the rent of Rs. 693000 (Rs. 770000- TDS from the Defendants).

Suffice to state, that the defendants had made a counter claim CC No. 27/2014 wherein the defendants had made the following prayers:-

"PRAYER TO COUNTER CLAIM

In view of the above, the Defendants Company prefers a counter claim of Rs. 1 Crore against the Plaintiff in the nature of damages towards mental harassment and agony and losses caused to the Defendants and Defendant Company's officials.

In view of the above mentioned grounds, the present suit deserves to be dismissed with exemplary costs and the counter claim preferred by the Defendant should be allowed."

8. In the replication, the plaintiff has denied contents of the written statement. Admitting the execution of the lease deed dated December 26, 2008, for a period of three years, the plaintiff denied the fact that the defendants had handed over 24 post dated cheques to the plaintiff. The defendants had given complete authority to the plaintiff to fill in the dates for monthly rental as and when the same became due, but just after the completion of one year from the date of the lease period, the defendant No. 2 on October 10, 2009, being the representative of defendant No. 1 company, approached the plaintiff's director Sh. G.S. Jolly and requested that due to recession and other financial difficulties faced by defendants, requested the plaintiff to reduce the monthly rental from Rs. 9 lakhs per month to Rs. 7 lakhs per month for a period of one year beginning on September 01, 2009 till August 31, 2010. The plaintiff, considering the request of the defendants, reduced the rent for a period of one year with effect from September 01, 2009 till August 31, 2010. The defendants taking advantage of the good gesture of the plaintiff continued to pay rent of Rs. 7 lakhs per month even after the expiry of the above mentioned period on August, 31, 2010. Plaintiff thereby wrote a letter dated December 08, 2011 notifying the defendants that the rent will be restored back to Rs. 9 lakhs per month with effect from September 01, 2010. The said letter was duly received by the defendants on December 09, 2011 and was endorsed with their company seal and signatures. It is plaintiff's case in the replication that a legal notice dated February 04, 2013 was sent to the defendants for arrears of rent as also the possession of the property. The defendants contacted the plaintiff and held various meetings with the plaintiff and during the said meetings asked for return of the cheques lying with them stating that dates will be filled by them. The officers of the defendants thereafter filled the dates on the cheques and along with these cheques also issued three other cheques towards part payment. Those three cheques drawn on United Bank of India when presented were dishonoured. The plaintiff has also denied the plea of quid-pro quo arrangement between the plaintiff and the defendant and finally it is the case of the plaintiff that the total arrears of rent is Rs. 1,89,87,909/- and the suit be decreed for that amount.

9. Mr. Kirti Uppal, learned Senior Counsel appearing for the plaintiff has drawn my attention to the provisions of lease deed to highlight that the rent of the property in question was Rs. 9 lakhs per month. He would concede to the fact that for a period of one year, the rent was reduced from Rs. 9 lakhs to Rs. 7 lakhs. He also states, that after a period of one year, the rent was to be reverted to the original amount of Rs. 9 lakhs. According to him, it is a settled position of law, a rent, which has been settled by way of a registered lease deed, could not have been reduced by an oral understanding or an unregistered document. He would deny the quid-pro quo arrangement between the plaintiff and the defendants. He states, that it is a plea now advanced by the defendants to avoid

the liability of paying arrears of rent. He would state, the defendants having disregarded the order of this Court for deposit of the arrears of rent by December 3, 2013, would itself is enough for this Court to allow this application under Order XV-A of Code of Civil Procedure, 1908 and strike off the defence of the defendants and grant a decree in favour of the plaintiff. He would rely upon the judgments of this Court in Pyare Lal Taheem vs. Mohan Murti Shandilya , 2013 (202) DLT 365; Mohan Murti Shandilya vs. Pyare Lal Taheem and another RFA (OS) 15/2014 decided on February 7, 2014; Prem Lata vs. Raghubir Rai , 2014(141) DRJ 195; Raghubir Rai vs. Prem Lata 2014(211) DLT 565 DB in support of his prayer of striking off the defence of the defendants and thereafter, pass a decree for arrears of rent in terms of order XV-A CPC.

10. On the other hand, Mr. Mohit Chaudhary, learned counsel appearing for the defendants would vehemently opposes the maintainability of the application under Order XV-A CPC on the ground that the defendants have already handed over the possession of the premises to the plaintiff. Even otherwise, it is his submission that the arrears of rent are not payable by the defendants. According to him, it is the defendants, who have to recover from the plaintiff. He has drawn my attention to the written statement filed by the defendants in support of his plea, wherein the defendants have taken a plea of quid-pro quo arrangement between the parties. He would also justify the reduction of rent from Rs. 9 lakhs to Rs. 7 lakhs per month. He would state, that the present application needs to be rejected.

11. Having heard the learned counsel for the parties and considering the pleadings and the documents on record and noting the order passed by this Court on July 12, 2013, there is no dispute to the fact that this Court had directed the defendants to deposit in this Court by the next date of hearing, the up to date arrears of rent in respect of the suit premises, and the fact that the plaintiff was in occupation of the suit premises, the first requirement of Order XVA Rule 2 CPC has been met.

The justification of the defendants as noted from the pleadings is primarily the following:

- (i) quid pro quo arrangement
- (ii) reduction of rent from Rs. 9 lakhs to Rs. 7 lakhs
- (iii) increase in rent was reduced from 15% to 10%.

According to the defendants, it is in view of the above, the defendants were paying an amount of Rs. 6,93,000/- after deducting the TDS from 7,70,000/- and adjusted, the rent against, quid pro quo arrangement. In other words, nothing is due as arrears of rent. It is clear from the registered lease deed dated December 26, 2008 that the total rent for the premises was Rs. 9 lakhs per month. It is the plaintiff's case that the rent was reduced for a period of one year to Rs. 7 lakhs. The plaintiff has taken a specific plea that the plaintiff wrote

a letter dated December 8, 2011 informing the defendants that the rent will be restored back to Rs. 9 lakhs per month with effect from September 1, 2010. No reply was given to the legal notice. In other words, the same remains, uncontroverted, despite receipt of the same. There is also no dispute, that in terms of the original lease deed, the rent was Rs. 9 lakhs and was to be increased @15% after the initial three years and further by another 15% for a further period of three years. These terms were settled through a registered deed. The learned counsel for defendants has not pointed out any document with regard to quid pro quo arrangement; reduction in rent from Rs. 9 lakhs to Rs. 7 lakhs even after one year w.e.f. October 1, 2010, i.e. for the lease period, so also the reduction in increase of rent from 15% to 10% after 2011. The plaintiff has also referred to the issuance of the earlier cheques by filling the dates and also three other cheques drawn on United Bank of India towards part payments and the order dated July 12, 2013, remained unchallenged by the defendants and the prayer made in the counter claim is not for recovery but for damages, for mental harassment and in the plaint, the arrears of rent has been sought on the following details:-

Payment what defendants were supposed to make.

TOTAL TO BE PAID AS PER THE LEASE DEED RS.4,37,25,000/- (Four Crore Thirty Seven Lacs Twenty Five Thousand only)

The actual payment made by defendants:

12. Pursuant to issuance of legal notice dated 4th February, 2013 which was duly received by the Defendants. The Defendants made part payments towards arrears of rent which is as under:-

All drawn on United Bank of India.

The above mentioned payments were made by the Defendants which were honoured. In addition to the above mentioned part payments, the Defendants also issued 12 Post Dated Cheques in favour of the Plaintiff on account of part payment, most of the cheques have been presented by the Plaintiff through its banker and have been returned unpaid with remarks "FUNDS INSUFFICIENT". Such has been the conduct of the Defendants which in itself shows that the Defendants intend to continue holding the suit property illegally. Therefore the arrears which were pending against the Defendants after the above part payment are as under and further Defendants are liable to pay further rent / arrears:-

12. There is no manner of doubt that the defendant has failed to comply with the order passed by this Court on the said date requiring him to pay the arrears of rent.

13. Insofar as the first plea, advanced by Mr. Chaudhary, that the defendants having given the possession of the suit premises to the plaintiff, the application under Order XVA Rule 2 CPC would not be maintainable is concerned, the same is without any merit and in similar facts, this Court had allowed the application

filed by the plaintiff under Order XVA Rule 2 CPC wherein, the defendants in the said case, had vacated the premises in question. In other words, vacation of premises in question would have no bearing on the application under Order XVA Rule 2 CPC. Suffice to state, in Raghubir Rai (supra), the Division Bench of this Court had considered the purpose behind inserting Order XVA to the statute book. In Pyara Lal Teheem & Anr. (supra), this Court in para 19 has held as under:-

"19. Order 15A of the CPC, being a Delhi amendment, is unambiguous in its terms that where a defendant who is required to deposit rent as per the directions of Court, fails to do so his defence is liable to be struck off. It gives statutory expression to the law earlier explained in several decisions. In M/s. Jwala Pershad Ashok Kumar Chopra HUF v. M/s. Nath Tubes Pvt. Ltd., , AIR 1994 Del 317, the Court held that it can, in a case of this kind, in fair exercise of its judicial discretion, order for deposit of money pending the decision of the suit. In Erum Travels v. Kanwar Rani, , 69 (1997) DLT 567, the Court considered the permissibility of striking off the defence for non-payment of rent/damages under Section 151 and Order XXXIX Rule 10 CPC. The Court held "The combined effect of Order XII Rule 1 and Order XXXIX Rule 10 of the Code of Civil Procedure is that a Court can, in a case of this kind, in fair exercise of its judicial discretion order for deposit of money pending decision of a suit. Surely, the provisions of Section 151 of the Code of Civil Procedure can be invited in aid to cover all such cases as are analogous to these principles. "

14. As noted above, the direction of the Court was only to deposit the money in the Court pending decision of a suit, the defendants having failed to deposit the amount as directed and it is not the case of the defendants that they are ready to deposit the arrears of rent, the present application needs to be allowed and the defence of the defendants is struck off. Having said that, the consequence being, on the analogy of Order 8 Rule 10, the prayer, made in the plaint need to be granted. The prayer at (a) para 20 does not survive as possession has been handed back to the plaintiff of the suit premises.

CS(OS) 1345/2013

A decree is passed in favour of the plaintiffs against the defendants for arrears of rent of Rs. 1,13,46,000/- as on January 31, 2013, with further rent of Rs. 10,35,000/- per month w.e.f. February 1, 2013 till September 9, 2013, after adjustment of the security deposit of Rs. 36,00,000/- against the defendants. The said amount shall be paid by the defendants to the plaintiff within 8 weeks from today failing which, it would carry simple interest of 9% per annum till the actual date of payment. The suit is decreed in the above terms with no order as to costs. The connected application being IA No. 10734/2013 (under Order 39 Rules 1 & 2 CPC) is disposed of as infructuous.

IA No. 24206/2014 (filed by defendant Nos. 1 & 2)

In view of the order passed in the suit, the present application is dismissed as

infructuous.

Counter Claim No. 27/2014 & CCP (O) Nos. 91/2013,101/2013

List on September 20, 2016.