
(2012) 05 DEL CK 0291
In the Delhi High Court
Case No : CS (OS) 2953 of 2011

K.K. Aggarwal and Others

APPELLANT

Vs

Avanta Management Services (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10

Citation : (2012) 05 DEL CK 0291

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Arun Batta, for the Appellant;

Judgement

G.S. Sistani, J.—Plaintiffs have filed the present suit for recovery of possession, arrears of rent, damages and mesne profits. Summons in the suit were issued on 28.11.2011. Counsel for the defendant entered appearance on 27.1.2012, when four weeks' time was granted to the defendant to file written statement. Neither written statement nor Vakalatnama has been filed on record till date. None appeared on behalf of defendant on 30.3.2012. None is present on behalf of defendant even today. Counsel for the plaintiff prays for a decree under Order 8 Rule 10 CPC.

2. The necessary facts, as per the plaint, to be noticed for disposal of the present suit, are that the plaintiffs are the owners/landlords of commercial premises bearing no.807, ad measuring 442 sq. ft. super area, situated at Wing "B", Statesman House, B-148, Barakhamba Road, New Delhi (hereinafter referred to as "the said premises"). Vide registered Lease Deed dated 20.3.2008 the said premises were given on rent by the plaintiffs to the defendant initially for a period of three years commencing from 1.4.2008 till 31.3.2011. As per the terms of the Lease Deed dated 20.3.2008 the lease could be extended for a further period of three years at the option of the lessee and after the expiry of the extended period of three years the same could be renewed for a further period of three years with the consent of both the parties. A certified copy of the

registered Lease Deed has been placed on record.

3. Further, as per the terms and conditions of the said Lease Deed the defendant agreed to pay to the plaintiffs rent @Rs.290/-, per sq. ft., per month, amounting to Rs.1,28,180/-, per month, plus applicable service tax for the initial term of three years and for the extended term of three years i.e. fourth to sixth year the defendant was liable to pay rent @Rs.348/-, per sq. ft., per month, amounting to Rs.1,53,816/-, per month, plus applicable service tax. In addition to the rent, defendant also agreed to pay interest free refundable security deposit equivalent to six months rental in advance as a security for due performance and observance of the terms and conditions of the said Lease Deed. Further as per the plaint, after the execution of the Lease Deed the defendant informed the plaintiffs that defendant was facing some financial constraints and at the request of the defendant it was agreed by the parties that for the period November, 2009, to October, 2010, defendant will pay rent of the said premises @Rs.200/-, per sq. ft., per month, instead of agreed amount of Rs.290/-, per sq. ft., per month. It was further agreed that after October, 2010, rent would be restored to Rs.290/-, per sq. ft., per month. It was also specifically agreed that reduction of rent for the said period of twelve months shall in no way alter the terms of the said Lease Deed and rent would be increased at the time of renewal. Parties also agreed that the plaintiffs would be entitled to retain or adjust two months security amount out of the six months security paid by the defendant to the plaintiffs at the time of signing of the Lease Deed. Original letter dated 15.12.2009, addressed by defendant to the plaintiff, has been placed on record.

4. As per the plaint, after a period of three years, defendant was liable to pay plaintiff rent @Rs.348/-, per sq. ft., per month, plus applicable service tax w.e.f. 1.4.2011 which amounted to Rs.1,53,816/-plus service tax and other charges as applicable. Contrary to the terms of the Lease Deed, the defendant only paid rent @Rs.290/-, per sq. ft., per month, from 1.4.2011 to the plaintiffs. Subsequently, defendant unilaterally reduced the rent to Rs.250/-, per sq. ft., per month, w.e.f. May, 2011, and started paying Rs.1,15,345/-, per month, to the plaintiffs. The security deposit was not enhanced as per the terms of the agreement. Vide letter dated 14.4.2011 plaintiffs brought to the notice of the defendant the aforesaid breaches of the terms and conditions of the registered Lease Deed and called upon the defendant to remedy the same. Copy of the communication dated 14.4.2011 along with postal receipt and AD card has been placed on record. Subsequently, a legal notice dated 21.6.2011 was issued by the plaintiff to the defendant by which the plaintiffs called upon the defendant to pay rent @Rs.348/-, per sq. ft., per month w.e.f. 1.4.2011. The said legal notice was duly received by the defendant. Postal receipts have been placed on record. Since no response was received from the defendant, the plaintiffs issued another legal notice dated 11.8.2011 to the defendant, by which the tenancy of the defendant was terminated on account of the breaches committed by the defendant and the defendant was also called upon to hand over possession and also to pay arrears of rent. Original postal receipts have been placed on record.

5. Learned counsel for the plaintiffs submits that defendant has not denied the landlord-tenant relationship, which is evident from the communication dated 15.12.2009 issued by the defendant to the plaintiffs and also registered lease deed, in view of the fact that defendant has been paying rent to the plaintiffs. The rent of the premises is over Rs.3500/-and further defendants were called upon by a communication dated 11.8.2011 to hand over the possession of the said premises, which the defendant has failed and neglected to do. Even otherwise, the defendant has not paid rent to the plaintiffs and, thus, violated the terms and conditions of the said Lease Deed. Counsel for the plaintiffs have strongly urged before this Court that a decree be passed in terms of Order VIII Rule 10 CPC. Counsel next submits that the plaintiffs give up relief for mesne profits at the market rate and prays that the mesne profit may be awarded to the plaintiffs at the last paid rent as per the Lease Deed, which is Rs.1,58,316/-. Plaintiff also prays for a decree with regard to arrears of rent.

6. I have heard learned counsel for the plaintiff and also perused the present plaint, which is duly supported by the affidavit of the plaintiff, and the documents filed along with the plaint including certified copy of Lease Agreement dated 20.3.2008 executed between the parties; the communication dated 15.12.2009 issued by defendants to the plaintiffs whereby the defendant accepts the landlord-tenant relationship; the communication dated 14.4.2011 issued by plaintiffs to the defendant bringing to the notice of the defendant the breaches committed by the defendant; legal notice dated 21.6.2011 issued by plaintiffs to the defendant calling upon the defendant to pay rent @Rs.348/-, per sq. ft., per month w.e.f. 1.4.2011 to the plaintiffs; and legal notice dated 11.8.2011 issued by plaintiffs to the defendants calling upon them to hand over the possession of the said premises and pay arrears of rent. As per the service report, the defendant has been duly served at the Delhi address, which bears the stamp of defendant. Certified copy of the registered Lease Deed dated 20.3.2008 clearly shows that the said premises were given on rent by the plaintiffs to the defendant initially for a period of three years commencing from 1.4.2008 till 31.3.2011, which period was to be extended by another period of three years at the option of the defendant. Further, the defendant agreed to pay to the plaintiffs rent @Rs.290/-, per sq. ft., per month, amounting to Rs.1,28,180/-, per month, plus applicable service tax for the initial term of three years and for the extended term of three years @Rs.348/-, per sq. ft., per month, amounting to Rs.1,53,816/-, per month, plus applicable service tax. defendant also agreed to pay interest free refundable security deposit equivalent to six months rental in advance as a security for due performance and observance of the terms and conditions of the said Lease Deed. No rent has been paid by defendant from 1.12.2011 onwards and even otherwise defendant is in arrears of rent for the period from 1.4.2011 till the date of filing of the present suit. Accordingly, having regard to the submissions made by learned counsel for the plaintiff, the documents placed on record and taking into consideration the admission of relationship of landlord and tenant by the defendant; a valid legal notice having

been issued by the plaintiffs to the defendant terminating the tenancy which was duly received by the appellant; the rate of rent being more than Rs.3500/-per month and also that despite opportunity having been granted to the defendant to file written statement, no written statement has been filed and none is present on behalf of the defendant, I am satisfied that it is a fit case of passing a decree under Order VIII Rule 10 CPC. Accordingly, present suit is decreed in favour of the plaintiff and against the defendant. Plaintiffs would be entitled to recover possession of the commercial premises, bearing no.807, Wing B Statesman House, B-148, Barakhamba Road, New Delhi. Plaintiff would also be entitled to a decree in the sum of Rs.4,06,312/-, being arrears of rent/damages and other charges, service tax and penalty as per the terms of the agreement along with interest @12%, per annum. Plaintiff would also be entitled to pendente lite and future mesne profits @Rs.1,58,316/-, per month, along with applicable service tax from the date of filing of the present suit till the date defendant hands over the actual vacant peaceful possession of the said premises along with interest @12%, per annum. Plaintiff would also be entitled to costs. Let a decree sheet be drawn up accordingly.