(2014) 12 BOM CK 0220

In the Bombay High Court

Case No : Summons for Judgment No. 316 of 2010 in Summary Suit No. 411 of 2009

Mangla International Pvt. Ltd. and Others APPELLANT

Vs

Next Media Works Ltd. RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2, Order 37 Rule 37
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2014) 12 BOM CK 0220

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : A. Chandrachud and Shah instructed by Shah Legal, Advocates for the Appellant; Amit Vyas instructed by Madhur R. Baya, Advocates for the Respondent

Judgement

S.J. Kathawalla, J.—The above Suit is filed by the Plaintiffs as a Summary Suit under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908, for an order and decree against the Defendants to pay to the Plaintiffs a sum of Rs. 4,78,73,030/- (Rupees Four Crores, Seventy Eight Lacs, Seventy Three Thousand and Thirty only) together with interest thereon at the rate of 24 per cent per annum from the date of filing of the suit till realisation.

2. Since the Defendants through their Advocate filed an appearance in the above Summary Suit, the Plaintiffs have taken out the above Summons for Judgment No./ 316 of 2010 seeking a decree in the suit in favour of the Plaintiffs and against the Defendants for a sum of Rs. 4,78,73,030/-as per the particulars of claim being Exhibit -Y to the Plaint together with interest thereon at the rate of 24 per cent per annum or at such other rate as this Court may deem fit and proper from the date of filing of the suit till payment and/or realization thereof and costs of the Suit.

3. The facts as narrated by the Plaintiffs in the above Summary Suit are briefly

set out hereunder:

3.1. The Plaintiff Nos. 1 to 5 are Private Limited Companies incorporated and registered under the Indian Companies Act, 1956. The Defendant Company Next Media Works Ltd. was formerly known as Mid Day Publications Limited.

3.2. One M/s. Saidpur Jute Co. Pvt. Ltd. was the owner of the premises situated at 63, Sitaram Mills Compound, N.M. Joshi Marg, Delisle Road, Ground Floor, Mumbai-400013 ("the suit premises"). The said owner by an Agreement made and entered into on 2nd July, 1975, with M/s. MBK Enterprises gave the suit premises on lease for a period of 60 years to the said M/s. MBK Enterprises. Thereafter the said M/s. MBK Enterprises gave the suit premises on lease for a period of 9 1/2 years to Plaintiffs with effect from 15th July, 1995. The Plaintiffs are therefore the sub-lessees of the suit premises.

3.3. The Plaintiffs entered into a Memorandum of Understanding dated 18th July, 1995, which was then formalized into a Leave and License Agreement dated 19th December, 1995, with the Defendants whereby the Defendants were given the license to use and occupy the said premises for a period of three years from 16th August, 1995, with an option to the Defendants to extend the term twice for a period of three years at a time. However, it was clarified that no extension of the license period would be granted after the expiry of nine years. It was further provided that at the time of extensions after the third year and the sixth year, there would be an escalation of 20 per cent with regard to the license fee payable by the Defendants to the Plaintiffs. In the said Leave and License Agreement dated 19th December, 1995, the parties by mutual consent had incorporated certain changes which were recorded in an Agreement dated 1st August, 1998. Clause 10 of the Leave and License Agreement dated 19th December, 1995, provided that the Defendants/Licensees will place an interest free deposit of Rs. 64,67,895/-.

3.4. It was provided in Clause 17 of the Leave and License Agreement that; "the Licensee shall have an option during the currency of the license period to terminate the Leave and License at any time by paying compensation equal to 3 months license fee in addition to the normal license fee and a notice to that effect in writing. The deposit amount will be returned by the Licensors immediately on the Licensee vacating the premises, after adjustment of any dues under the Agreement". It was provided in Clause 18 of the Leave and License Agreement that; "For each day that the Licensee, or its agents or servants stays in the suit premises after the expiry or termination of this Agreement, the Licensee shall pay an amount of Rs. 1,00,000/-(Rupees One Lakh only) per day to the Licensors with a grace period of 60 days maximum."

3.5. M/s. Saidpur Jute Co. Pvt. Ltd., the owners/landlords of the suit premises, filed a Suit being RAE Suit No. 147A/306 of 1996 in the Court of Small Causes, Bombay, against M/s. MBK Enterprises Lessors of the Plaintiffs, and the Defendants inter alia for an order that the Defendants therein be ordered and decreed to vacate and hand over quiet, vacant and peaceful possession of the suit premises on the ground that the Defendants had allegedly made additions and alterations of a structural nature in the suit premises. The said suit is pending in the Court of Small Causes, Mumbai and the Plaintiffs herein have now been impleaded as party Defendants in the said Suit. It will not be out of place to mention here that M/s. MBK Enterprises, the Lessors of the Plaintiffs as well as the Plaintiffs, have denied and disputed the allegation made by the Owners/ landlords that any additions or alterations of a structural nature are carried out in the suit premises which would entitle the owners/landlords of the suit premises to obtain an order and decree to vacate and hand over possession of the suit premises to the said owners/landlords.

3.6. The Defendants continued to use the suit premises for a period of 9 years as agreed. Thereafter the Plaintiff No. 1 by its letter dated 6th August, 2004, inter alia informed the Defendants that the license period would get over on 15th August, 2004 and asked the Defendants to make arrangements to hand over vacant possession of the suit premises. The Defendants by their Advocates'' letter dated 13th August, 2004, recorded their desire to surrender the premises and hand over possession of the same to the Plaintiffs and requested the Plaintiffs to inter alia communicate at the earliest their confirmation of the return of the deposit amount to the Defendants after deduction of the lease rental for the months of July and August, 2004. The Plaintiffs by their letter dated 13th August, 2004, addressed to the Advocates for the Defendants fixed 17th August, 2004, as the day for handing over possession of the suit premises, but expressed their inability to return the security deposit to the Defendants on the ground that the owners/landlords of the suit premises have filed a Suit against M/s. MBK Enterprises and the Defendants herein and stated that the said security deposit could not be returned till the said suit is finally disposed off with no adverse order being passed against the said M/s. MBK Enterprises. However, the Plaintiffs offered to deposit the security deposit in escrow with a mutually accepted person on mutually agreed terms. The Plaintiffs also stated in their said letter that if possession of the suit premises is not granted to the Plaintiffs by 15th August, 2004, the Plaintiffs would be entitled to claim Rs. 1,00,000/-per day under the terms and conditions of the said Leave and License Agreement.

3.7. The Defendants by their Advocates'' letter dated 16th August, 2004, addressed to the Plaintiff No. 1 stated that under Clause 17 of the Leave and License Agreement, the Plaintiffs were obliged to refund the security deposit and that the return of the said security deposit had nothing to do with the suit filed by the owners/landlords against M/s. MBK Enterprises and the Defendants herein. The Plaintiffs by their letter dated 18th August, 2004, addressed to the Advocates for the Defendants inter alia stating that the Defendants were alone responsible for carrying out work in the suit premises and the security deposit was meant to safeguard the interest of the Licensors against any eventualities which the Licensors may have to suffer due to the acts of the Licensee. The Plaintiffs by the said letter further added that if the Court held that the alterations and additions carried out by the Defendants were illegal, the Plaintiffs could be held liable by M/s. MBK Enterprises to compensate them for the loss caused to them. After exchange of several letters by and between the Plaintiffs and the Defendants, wherein the Plaintiffs reiterated that they are entitled to retain the amount deposited with them by the Defendants towards security deposit and the Defendants denying and disputing the said assertion, the Defendants by their Advocates'' letter of 2nd March, 2005, addressed to the Plaintiffs, offered to hand over possession of the suit premises in accordance with the Leave and License Agreement. By the said letter, the Defendants stated that after adjusting the security deposit of Rs. 64,67,895/-, towards monthly compensation upto 3rd March, 2005, a sum of Rs. 3,89,233/-was due and payable to the Defendants and offered to hand over possession of the suit premises at 5.30 p.m. on 3rd March, 2005. The Defendants requested the Plaintiffs to call Mr. Aziz Khatri and indicate the time of their convenience with one hour notice to enable the Defendants to arrange for and be present with the keys at the suit premises. The Defendants also recorded that beyond 3rd March, 2005, the Defendants will not be liable to pay any compensation for the said occupation.

3.8. Thereafter the Plaintiff No. 1 by its letter dated 3rd March, 2005, addressed to the Defendants'' Advocates, recorded that Mr. Khatri of the Defendants had been contacted at 3.00 p.m. on that day, however, he stated that the premises were not vacant and would be available after 15th March, 2005. It was further recorded that the Defendants had not permitted inspection of the suit premises inspite of repeated requests and therefore the Plaintiffs were not aware of the actual condition of the said premises and requested the Defendants to give inspection and allow the Plaintiffs to take photographs of the suit premises. In response, the Defendants by their Advocates'' letter dated 3rd March, 2005, inter alia recorded that an amount of Rs. 72,000/- was paid to the BEST and an amount of Rs. 8,32,884/- was paid to M/s. MBK Enterprises. By the said letter, the Defendants denied that Mr. Khatri informed the Plaintiffs that the premises would be available only after 15th March, 2005. The Defendants recorded that they were willing to hand over free and vacant possession of the suit premises, but since the Plaintiffs require the proof of payment for water and electricity as well as proof of payments to BEST, the same would be provided on 7th March, 2005, when the Defendants will arrange to remain present with the keys. By the said letter, the Advocates for the Defendants once again clarified that beyond 3rd March, 2005, the Defendants will not be liable to pay any compensation for the said occupation.

3.9. The Plaintiffs by their letter dated 5th March, 2005, reiterated that the Defendants'' representative Mr. Khatri did say that the premises will not be available. It was recorded that the Contractors of the Defendants are continuing to remove the furniture from the premises even on 5th March, 2005 and that the Plaintiffs have evidence of the same. It was further alleged that the contractors of the Defendants have damaged the plaster of the inner walls, which needs to be put back in its original condition. It was therefore alleged that the Defendants have not put the premises in the condition in which it was given to them. The Plaintiffs have further recorded by their said letter that the Defendants may depute their responsible/authorised persons to carry out joint inspection of the suit premises to understand the ground realities.

3.10. The Plaintiffs issued a statutory notice to the Defendants on 23rd May, 2005, alleging that an amount of Rs. 65,15,877/-is due and payable by the Defendants to the Plaintiffs as per Clause 16 of the Leave and License Agreement dated 19th December, 1995. The Plaintiffs by their letters dated 31st May, 2005, 8th June, 2005, and 30th June, 2005, called upon the Defendants to depute their representatives for joint inspection of the suit premises for the purpose of assessing the condition of the suit premises.

3.11. The Defendants by their letter dated 25th November, 2005, informed the Plaintiffs that the Defendants have vacated the premises on 3rd March, 2005 and the Plaintiffs have posted security guards at the suit premises since then. The Defendants also enclosed the keys of the suit premises along with the said letter to the Plaintiffs. The Defendants also recorded that from 26th November, 2005, they will be withdrawing their personnel maintained at the suit premises for additional safety purpose.

3.12. The Plaintiffs by their letter dated 29th November 2005, addressed to the Defendants denied that they had vacated the premises on 3rd March, 2005, or that the Plaintiffs had posted security guards inside the premises. The Defendants were once again requested to depute a senior representative along with an Architect to have a joint inspection of the premises at the earliest. The Defendants were also informed that water connection had been cut off by the Mumbai Municipal Corporation; the water and electricity bills have not been paid; the external/internal walls of the premises have been damaged; the ceiling had been damaged; the lift had been damaged; and the floor had been ripped open; and the changes made by the Defendants have resulted in water seeping into the premises and flooding the same.

4. The Plaintiffs filed the present suit on 14th November, 2008, claiming arrears of Rs. 11,73,030/-from 1st July, 2004, to 15th August, 2004 and Rs. 4,67,00,000/- under Clause 18 of the Leave and License Agreement at the rate of Rs. 1,00,000/-per day from 16th August, 2004 to 25th November, 2005, aggregating to Rs. 4,78,73,030/-.

5. The Defendants have filed their affidavit-in-reply dated 11th January, 2012, wherein they have submitted that the documents disclosed in the plaint itself evidence the fact that triable issues have arisen in the facts and circumstances of the present case which are not capable of being adjudicated under Order XXXVII of the Code of Civil Procedure, 1908. It is submitted that in terms of Article 17 of the Agreement, the Plaintiffs were required to refund the security deposit paid by the Defendants simultaneously with the Defendants vacating the suit premises

and that the security deposit was never refunded by the Plaintiffs. It is further contended that the Defendants had repeatedly offered to hand over the vacant and peaceful possession of the suit premises subject to return of the security deposit but the Plaintiffs failed and/or neglected and/or refused to return the security deposit. It is also contended that the Plaintiffs themselves admit to disputes in various letters, including those placed as Exhibits-C and G to the Plaint. The said correspondence disclose substantial disputes between the parties which remain to be resolved. The Defendants further contended that vacant and peaceful possession of the suit premises was handed over to the Plaintiffs on 3rd March, 2005, but the Plaintiffs have failed and/or refused to take possession of the same initially by refusing to refund the security deposit and thereafter upon adjustment of the entire security deposit, by refusing to take possession of the keys to the suit premises until 25th November, 2005. It is submitted that the Plaintiffs are therefore not entitled to any claim whatsoever. It is also submitted that the claim of the Plaintiffs in the present suit is in the nature of a penalty inasmuch as against the monthly license fee of Rs. 10,34,863/-per mensem at the expiry of the Agreement, the Plaintiffs claim a sum of Rs. 1,00,000/-per day for the entire period from 16th August, 2004 until 25th November, 2005, without establishing the loss suffered by the Plaintiffs. It is submitted that the Plaintiffs have withheld the refund of the deposit not on the ground of any alleged breach of the Agreement but only on the ground of possible materialization of a future contingent liability which may or may not crystallize for which there is no provision in the Leave and License Agreement. It is also pointed out by the Defendants in the affidavit-in-reply that the Company Petition No. 539 of 2005 filed by the Plaintiffs seeking winding up of the Defendants on the ground that it is unable to pay its debts has been dismissed on the ground that there are bona fide disputes between the parties. The Appeal filed therefrom has been admitted. It is therefore submitted on behalf of the Defendants that unconditional leave be granted to them to defend the suit.

6. The Plaintiffs have not filed any rejoinder to the said affidavit-in-reply.

7. The Learned Advocate appearing for the Plaintiffs has submitted that the Plaintiffs were justified in not returning the security deposit to the Defendants since the owner of the suit premises has filed a Suit in the Small Causes Court, Mumbai, against M/s. MBK Enterprises as well as the Defendants on the ground that structural alterations/damages have been carried out in the suit premises and has sought eviction of M/s. MBK Enterprises from the suit premises on the said ground. The Learned Advocate appearing for the Plaintiffs has relied on a decision of a Learned Single Judge of the Delhi High Court in the case of Uberoisons (Machines) Ltd. Vs. Samtel Color Ltd., wherein it is held that a tenant cannot retain possession of premises without paying the rent thereof on account of non-refund of security amount. The tenant has an independent remedy to recover the security but in no way can retain the possession of the premises on the plea that until and unless security is refunded, possession will not be handed over. Such a possession by the tenant is a possession for which he has to pay the

rent as the premises could not have been put in use by the landlord nor have been let out by the Plaintiffs. The Learned Advocate appearing for the Plaintiffs has also relied on the decision of a Division Bench of this Court in the case of Sumikin Bussan (Hong Kong) International Limited Vs. Manharlal Trikamdas Mody and ING Bank, N.V., wherein the Division Bench has held that a leave and license agreement does not create a mortgage or charge or a security in respect of the licensed premises to secure the repayment of the security deposit and interest thereon. The Learned Advocate appearing for the plaintiff has also relied on an unreported decision of a Learned Single Judge of this Court in the case of Motabhai Paras Pvt. Ltd. vs. Western Paper & Yarn Pvt. Ltd. Order dated 20th October, 2012 passed in Arbitration Petition No. 564 of 2009 wherein the Learned Judge has held that the fact of possession of the premises and duplicate keys itself means access to the premises at any point of time. Therefore, merely because the time was fixed/mentioned in the agreement would not be sufficient to accept the case of the Respondent that the use was only temporary for the business purpose as agreed.

8. Dealing with the contention of the Defendants that the amount of Rs. 1,00,000/- charged per day by the Plaintiffs is in the nature of penalty and the same cannot be claimed unless the damage/loss caused to the Plaintiff is proved/ established, the Learned Advocate appearing for the Plaintiffs has relied on the decision of a Learned Single Judge of this Court in the case of Dena Bank Vs. K. Motiram Vakil and Others, wherein it is held that where the parties agree that a sum stated shall be paid, such sum is a liquidated sum. The Learned Advocate appearing for the Plaintiffs has therefore submitted that the Summons for Judgement be allowed with costs.

9. The learned Advocate appearing for the Defendants has repeated and reiterated the submissions set out in the affidavit-in-reply and recorded in paragraph 5 hereinabove. In addition, he has also submitted that the claim of the Plaintiffs is hopelessly time barred. In response to the submission made on behalf of the Plaintiffs that the Defendants have not raised this contention in their affidavit-in-reply, the Learned Advocate appearing for the Defendants has relied on the decision of the Hon''ble Apex Court in the case of Noharlal Verma Vs. District Co-Operative Central Bank Limited, Jagdalpur, wherein the Hon''ble Supreme Court has held that the Court has an independent duty to look into the aspect of limitation even though limitation has not been set up as a defence.

10. I have considered the submissions advanced on behalf of the Plaintiffs as well as the Defendants. The particulars of claim in the plaint are annexed and marked as Exhibit-Y to the Plaint and reproduced hereunder:

11. The Suit is filed on 14th November, 2008. In view thereof, the claim of the Plaintiffs amounting to Rs. 4,78,73,030/-is prima facie barred by the law of limitation to the extent of Rs. 4,66,73,030/-.

The Plaintiffs have submitted in paragraph 32 of the Plaint as under:

"32. The Plaintiffs say that no part of the Suit claim is barred by the Law of Limitation. The Defendants in the course of correspondence between the parties from time to time admitted the relationship of debtor and creditor under the said agreement between the Plaintiffs and the Defendants".

The correspondence annexed to the Plaint does not show any admission on the part of Defendants that the Defendants are debtors of the Plaintiffs and the Plaintiffs are its creditors. The Learned Advocate for the Plaintiff is unable to explain the basis on which it is contended in the Plaint that no part of the suit claim is barred by the Law of Limitation. The only submission made on behalf of the Plaintiffs is that the Defendants have in their affidavit-in-reply not contended that the claim of the Plaintiffs is barred by the Law of Limitation. The Defendants have correctly relied on the decision of the Hon''ble Supreme Court in the case of Noharlal Verma (supra) where the Hon''ble Supreme Court has in paragraphs 32 and 33 held as under:

"32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under:

"3. Bar of limitation.- (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence".

Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the court or authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation."

I am therefore of the view that on this ground alone the Defendants need to be granted unconditional leave to defend the suit.

12. The Learned Advocate appearing for the Plaintiffs has, relying on the decision of the Learned Judge of the Delhi High Court in Uberoisons (Machines) Ltd. (supra), submitted that the Defendants have an independent remedy to recover the security but in no way can retain the possession of the premises on the plea that until and unless security is refunded, possession will not be handed over. In that case the question which arose before the Court was whether the tenant could retain the possession of the premises without paying the rent thereof on account of non-refund of security amount by the Plaintiff. The Court came to a finding that the suit of the Plaintiff has to be decreed in respect of recovery of

arrears of rent upto the period the possession was retained by the Defendants. As a result the Court ordered that the suit is decreed for Rs. 4,79,892/- after the security amount retained by the Plaintiff has been adjusted towards arrears of rent. In the instant case, the Defendants-Licensees have themselves written a letter to the Plaintiffs-Licensors stating that they have overstayed in the premises only because the Plaintiffs refused to return the security deposit as provided in Clause 17 of the Agreement. However, the Licensees have vacated the premises from 3rd March, 2004 and the Plaintiffs Licensors should adjust the license fee for the period upto 3rd March, 2004 from the security deposit retained by them. In fact, this was exactly what was ordered by the Delhi High Court in the case of Uberoisons (Machines) Ltd. (supra).

13. The Learned Advocate appearing for the Plaintiffs has also submitted that since the Defendants have not vacated the suit premises upon termination of the agreement, the Plaintiffs are entitled to receive an amount of Rs. 1,00,000/-per day from the Defendants. Relying on the decision of a Learned Single Judge of this Court in Dena Bank (supra), it is submitted that the amount of Rs. 1,00,000/- per day agreed to be paid under the Agreement is a liquidated sum and therefore the question of the Plaintiffs being required to prove any loss or damage caused to the Plaintiffs as alleged by the Defendants does not arise. As set out in Clause 17 of the Agreement, the Plaintiffs were required to return the security deposit to the Defendants immediately upon the Defendants vacating the premises after adjustment of any dues under the agreement. The Defendants by their letter dated 13th August, 2004, agreed to hand over possession of the suit premises upon termination of the agreement and called upon the Plaintiffs to simultaneously return the security deposit. The Plaintiffs refused to do so on the ground that a suit has been filed in the year 1996 by the original landlord against M/s. MBK Enterprises and the Defendants seeking vacation of the suit premises on the ground that certain additions and alterations have been carried out in the suit premises. Neither M/s. MBK Enterprises nor the Plaintiffs have till date alleged in the pleadings filed before the Small Causes Court, Mumbai, or before this Court asserting the fact that the Defendants have indeed carried out structural changes in the suit premises. Therefore, the Plaintiffs have refused to return the security deposit to the Defendants only because the landlords have alleged that there were certain structural changes carried out in the suit premises. As set out earlier, the Defendants have allowed the Plaintiffs to adjust the security deposit towards the rent/compensation payable by them to the Plaintiffs upto 3rd March, 2005. The issues therefore as to whether the Plaintiffs were correct in retaining the security deposit on the pretext that some liability may arise in future which would entitle the Plaintiffs to forfeit the security deposit and whether the Plaintiffs having refused to return the security deposit to the Defendants on such ground is entitled to claim a sum of Rs. 1,00,000/-per day from the Defendants are triable issues which needs to be decided by the Court after leading evidence.

14. There is also a serious dispute between the parties on the issue pertaining to

the Defendants having expressly requested whether the Defendants had vacated the suit premises on 3rd March, 2005, and had made a genuine request to the Plaintiffs to take possession of the same on 3rd March, 2005, which the Plaintiffs refused to take on one pretext or the other. The correspondence annexed to the plaint shows that the Defendants through their Advocates'' letter dated 2nd March, 2005, had informed the Plaintiffs to adjust a sum of Rs. 64,00,662/-from the security deposit and to take possession of the suit premises upto 5.30 p.m. on 3rd March, 2005, by giving one hour prior notice to Mr. Aziz Khatri to enable the Defendants to be present at the suit premises with the keys. The contents of the letter therefore indicate that the suit premises were vacated by the Defendants and they had called upon the Plaintiffs to come and collect the keys on 3rd March, 2005 before 5.30 p.m. after giving an hour''s notice to Mr. Khatri of the Defendants. By the said letter, the Defendants also categorically recorded that notwithstanding the failure of the Plaintiffs to take possession, the Defendants will no longer be liable for any compensation for the premises as they have repeatedly been offering free and vacant possession from August, 2004 onwards. The Plaintiffs have by their letter dated 3rd March, 2005, informed the Advocates for the Defendants that Mr. Khatri was contacted at 3.00 p.m. when he informed the Plaintiffs that the premises are not vacant and the same would be made available to the Plaintiffs only after 15th March, 2005. By the said letter the Plaintiffs inter alia recorded that the Defendants will have to bear the electricity, water and other charges and therefore should produce proof of payments made by them till the date of giving vacant possession. It is also recorded that the Defendants'' contractors have damaged the plaster on the wall in their enthusiasm to remove the ply embedded on the walls. The Advocates for the Defendants by their letter dated 3rd March, 2005, have denied that Mr. Khatri stated that the premises would be made available only after 15th March, 2005. The Defendants recorded that though they are ready and willing to tender free and vacant possession of the suit premises, since the Plaintiffs require proof of payments for water and electricity charges, the same could be provided only on Monday, 7th March, 2005. The Plaintiffs were again requested to give two hours prior notice to the Defendants to enable them to remain present at the suit premises with the keys. The Defendants once again recorded in the letter that notwithstanding the failure on the part of the Plaintiffs to take possession of the suit premises, the Defendants will no longer be liable for any compensation for the premises beyond 3rd March, 2005. The parties kept on exchanging similar correspondence, each contradicting the stand taken by the other and finally the Defendants enclosed the keys of the suit premises under cover of their letter dated 25th November, 2005, and forwarded the same to the Plaintiffs. In the said letter, the Defendants have also alleged that since 3rd March, 2005, the Plaintiffs have posted security guards at the premises and the Defendants have also maintained personnel at the suit premises for additional safety purposes. This allegation is also denied by the Plaintiffs. In view thereof, the issue as to whether the Defendants were ready to hand over possession of the suit premises on 3rd March, 2005 and the Plaintiffs failed to take possession of the same on the ground that the Plaintiffs should give proof of payment for water and electricity, etc. and should restore the suit premises to its original position is a triable issue which will have to be decided only after the parties are allowed to lead evidence in the matter. In fact, in response to the letter written by the Advocates for the Defendants to the Plaintiffs recording that they are ready to hand over possession on 3rd March, 2005, the Defendants have by their letter dated 5th March, 2005, recorded that the Contractors of the Defendants are still continuing to remove furniture from the suit premises, even when the said letter was being written by the Plaintiffs to the Defendants and that they have evidence of the same. However, no evidence alleged to be in possession of the Plaintiffs is produced by the Plaintiffs. In view of the stand taken by the Defendants that they were ready to hand over the keys of the suit premises on 3rd March, 2005 and that the Plaintiffs failed to collect the keys from the Defendants on one pretext or the other and the Defendants refuting this stand of the Plaintiffs, the observation made by the Learned Single Judge of this Court in the facts of the case in Motabhai Paras Pvt. Ltd. vs. Western Paper & Yarn Pvt. Ltd. (supra), will not be of any assistance to the Plaintiffs in the present matter which is at the Summons for Judgment stage.

15. Under the circumstances, apart from the fact that almost the entire claim of the Plaintiffs is prima facie hopelessly barred by the Law of Limitation, as set out hereinabove, there are several triable issues in the above matter which need to be determined by the Court after allowing the parties to lead evidence. Hence the following order:

(i) Unconditional leave is granted to the Defendants to defend the above suit;

(ii) The suit is transferred to the list of commercial causes and the Defendants are directed to file their written statement within a period of two weeks from today.

(iii) Since the suit is filed on 14th November 2008, and is pending since the last more than six years, the hearing of the suit is expedited and the Court will endeavour to dispose of the suit within a period of one year from the date of this order.

(iii) Place the suit for framing of issues on 2nd March, 2015.

The Summons for Judgement is accordingly disposed of.

