
(2010) 07 DEL CK 0075

In the Delhi High Court

Case No : CS (OS) 10 of 2010, I.A. No's. 96 of 2010 and 3863 of 2010

M.M. Chhabra and Sons (HUF)

APPELLANT

Vs

Colour Plus Fashions Ltd. A+

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 22 Rule 6, Order 39 Rule 10

Citation : (2010) 07 DEL CK 0075

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Tanuj Khurana, for the Appellant; Pratap Venugopal, for the Respondent

Judgement

S. Ravindra Bhat, J.

I.A. Nos. 96/2010 (Under O39 R 10) & 3863/2010 (Under O 12 R 6)

1. This order will dispose of an application, under Order XII Rule 6, CPC, preferred by the plaintiff, being IA No. 3863/2010. The present suit was filed by the plaintiff for possession of Shop No. 14E, Connaught Place, New Delhi (hereafter "the suit property") and recovery of damages/ mesne profits @ ` 25 lakhs per month from 01.12.2009 till delivery of possession. The facts of the case are mentioned below.

2. The plaintiff (hereinafter called "M.M. Chhabra") is registered owner of the suit property, acquired through a registered sale deed dated 19.08.2004. The suit property was leased out to the defendant (hereinafter called "Colour Plus") for five years commencing from 22.11.2004 and ending on 21.11.2009, by registered lease deed dated 22.11.2004. The initial rent was ` 8,00,000 per month for the first 3 years with a stipulation for enhancement by 15% over the existing rent after the expiry of 3 years, exclusive of electricity and water charges.

3. The registered lease deed dated 22.11.2004, inter alia, provides that:

1. In consideration of the rent hereinafter reserved and the terms and conditions hereinafter contained to be observed and performed on the part of the lease and the Lessor has agreed to grant to the Lessee a lease in respect of the demised premises for a term of five years at monthly rent of Rs. 8,00,000/- (Rupees Eight Lacs only) for the first three years with a stipulation for enhancement by 15% (fifteen percent) over the existing rent, after the expiry of every three years, exclusive of charges of consumption of water and electricity and subject to the following terms and conditions. The lease shall commence from 22.11.2004 and shall be in existence till 21.11.2009. 1(a) The lease rental will be payable by the Lessee one month after the physical possession of the demised premises is given by the "Lessor" to the Lessee. This period of one month will be utilised by the Lessee for completing the interior decorations and fit outs as may be required by him in the demised premises. As such and during such period of one month no rental is payable by the Lessee to the Lessor.

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5. It is agreed that the Lessee shall have a right for an extension or renewal of lease for a further term not exceeding four years after the first five years term stipulated herein on the very same terms and conditions as contained herein at the option of the Lessee. In the event of the Lessee opting for such renewal the lessor shall be bound to renew the lease in favour of the lessee for a further terms of four years. It is specifically agreed that the enhancement of rent at 15% (fifteen percent) after the expiry of first three years shall be in vogue during the first year of the second term of four years. The next enhancement shall be only after the completion of sixth year and the time of renewal, there shall not be any enhancement of rent. However, any renewal of the lease beyond the said second term will be subject to mutual agreement between the parties and in case the parties are unable to agree for any reason the Lessee shall vacate and hand over possession of the demised premises upon the expiry of the term hereto agreed.

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7. At any time during the terms of the lease after the lock-in period of three years, the lessee shall have the option to terminate the lease by a prior written notice of at least three months.

4. It is contended that the plaintiff used to issue rent bills for the month on 1st day of every English calendar month and ending with the last day of such month. The plaintiff contends that the said practice was requested by Colour Plus. The last rent bill generated was for the month of November, 2009, i.e. 01.11.2009 to 30.11.2009. The plaintiff contends that the lease was not extended, and ended by efflux of time, on 21.11.2009 and that a legal notice dated 03.12.2009 was issued, demanding that Colour Plus should hand over vacant possession of the suit property, stating that the lease deed had expired.

5. It was contended on behalf of the plaintiff that since Color Plus did not exercise its option of renewal of lease deed during the lease period, the lease stood terminated due to efflux of time, and that the tenant (Colour Plus) became a trespasser. The plaintiff relies on two decisions, i.e., Canara Bank Vs. Smt. Shanti Vaish, and Caltex (India) Ltd. Vs. Bhagwan Devi Marodia, . In both these cases, it was held that when option of renewal is not exercised, the lease deed stands terminated.

6. Color Plus contends in its written statement and reply to the application under Order XXII Rule 6, CPC, that, according to the lease deed, they are entitled to continue to retain and occupy the premises on the rent and terms and conditions set out in the lease deed dated 22.11.2004 for a period of 9 years after which it could be renewed subject to mutual agreement. It is submitted that the Court should notice the fact that the acceptance of rent for the entire period ending November, 2009 means that the lease period had been extended, to which the plaintiff acquiesced, by encashing the relevant cheque.

7. The defendants rely on the reply to the plaintiffs' legal notice, dated 14.12.2009, which inter alia, reads as follows:

2. Your clients are well aware that the letting arrangement as per the terms of the lease Deed dated 2nd November, 2004 are to continue for a further period of four years after the initial five years term at the sole option of our clients, the lessee, on the same terms and conditions as are contained in the lease deed of 2nd November, 2004. Further, our clients had made known to your clients the continuation of the letting Arrangement for further four years period as per their right in terms of para 5 of the Lease Deed.

Pursuant to the aforesaid our clients had duly paid rent for the month of November, 2009 as per the bill submitted by your clients. Further as per the contractual obligation regarding payment of rent our clients have also remitted payment of rent for the month of December, 2009.

3. As per the terms of the Lease Deed of 2nd November, 2004 your clients are obliged to formalize continuation/ extension and renewal of the Lease Deed for a further four years term on same terms and conditions as are contained in the Lease Deed of 2nd November, 2004.

4. We have been instructed to deny the various averments, assertions, assumptions, inferences/ conjectures contained in your Notice. No question about expiry of Lease by efflux of time of forfeiture or loss of our clients rights and option of extension and renewal of lease, as alleged or at all has or can arise. The notice under reference appears to have been caused to be issued with ulterior motives and is wrongful, invalid, illegal and ineffectual.

5. We have been instructed to state that our clients are in lawful occupation of the shop premises 14-E, Connaught Place, New Delhi and all assertions in your notice to the contrary are wrongful, motivated and untenable and are refuted.

6. We have been instructed to state that our clients are continuing in lawful occupation of the said shop premises as per terms and conditions of lease deed dated 2nd November, 2004 and your clients have no right, basis or justification to demand delivery of possession or payment of alleged/imagined damages.

8. The defendant submits that the lease period was extended, in terms of Clause 5, when the enhanced rent was paid, after expiry of three years. It is also argued that in these circumstances, it is entitled to continue in the suit premises, till expiry of the entire nine year period. Counsel urged, in addition, that apart from other pleas, the Court has to permit parties to lead evidence on the issue as to whether there was an understanding between the parties that the lease period would be extended, and had been extended, as alleged in Paras 9-10 of the written statement. It is therefore, claimed that in these circumstances, the Court cannot infer an unambiguous admission such as to entitle it to draw a decree, according to provisions of Order XXII Rule 6, CPC.

9. The discussion in the preceding paragraphs would reveal that the parties do not dispute the basic facts, pertaining to the creation of the lease, on 22.11.2004; that it was for a period of five years, as well as its terms. Clause 5 entitles the lessee to continue in the premises, and for the purpose, exercise its option, for a further 4 year term. The defendant's argument here is twofold. One, it submits that the tendering of enhanced rent and the acceptance of the same at the time of expiration of the first three year period meant that the lease had been extended. Color Plus's counsel laid stress on the fact that the plaintiff had been accepting without demur, such enhanced rent, after the expiry of the first three year term and, therefore, the plea of termination of lease by efflux of time cannot be entertained.

10. The relevant stipulation in Clause 1, pertaining to the lease period, reads as follows:

Lessor has agreed to grant to the Lessee a lease in respect of the demised premises for a term of five years at monthly rent of Rs. 8,00,000/- (Rupees Eight Lacs only) for the first three years with a stipulation for enhancement by 15% (fifteen percent) over the existing rent, after the expiry of every three years, exclusive of charges of consumption of water and electricity and subject to the following terms and conditions. The lease shall commence from 22.11.2004 and shall be in existence till 21.11.2009.

Clause 5, to the extent it is relevant for the purpose of this order, reads as follows:

5. It is agreed that the Lessee shall have a right for an extension or renewal of lease for a further term not exceeding four years after the first five years term stipulated herein on the very same terms and conditions as contained herein at the option of the Lessee. In the event of the Lessee opting for such renewal the lessor shall be bound to renew the lease in favour of the lessee for a further terms of four years. It is specifically agreed that the enhancement of rent at 15%

(fifteen percent) after the expiry of first three years shall be in vogue during the first year of the second term of four years. The next enhancement shall be only after the completion of sixth year and the time of renewal, there shall not be any enhancement of rent.

11. A combined reading of the two conditions, i.e. Clauses 1 and 5, conveys the idea that while the lessee had the right to seek extension of the lease period, it was to be after the "first three years". This in turn, meant that the enhancement (of 15% over the initial rent) was payable, as a condition of the lease, and not linked with the question of extension of lease term. This construction is strengthened by the later stipulation that the enhancement of 15% after the first three years "shall be in vogue during the first year of the second term of four years.." Thus, payment of enhanced rent had no co-relation with whether the lessee opted for renewal beyond the five year term.

12. While the defendant Color Plus is right in contending that whether the lease term was extended or not is a question of fact, the Court is unpersuaded with its submission that in the circumstances of this case, the lease had, as a matter of fact, been extended. In support of this contention, Color Plus has not been able to place any document on the record, save the reply to the plaintiff's notice, dated 14th December, 2009, after the period of lease. The plaintiff asserts that the lease had not been extended, and that the parties had agreed that the rent would be paid till the end of each calendar month. While the defendant disputes the latter statement, the reality that the lease period was to end on 21st November, 2009, is undeniable. In these circumstances, it was incumbent on the defendant to, in support of its case, place more overt material to show that it opted for renewal, and not rely merely on the circumstance that rent for the period upto 30th November, 2009 had been accepted.

13. In the judgment relied on, i.e. the Caltex case (supra), the Supreme Court emphasized the need to seek renewal of lease within the time, in the following terms:

At common law stipulations as to time in a contract giving an option for renewal of a lease of land were considered to be of the essence of the contract even if they were not expressed to be so and were construed as conditions precedent. Equity followed the common law rule in respect of such contracts and did not regard the stipulation as to time as not of the essence of the bargain. As stated in Halsbury's Laws of England, 3rd ed., vol. 3, Article 281, p. 165 "An option for the renewal of a lease, or for the purchase or re-purchase of property, must in all cases be exercised strictly within the time limited for the purpose, otherwise it will lapse." This passage was quoted with approval by Danckwerts L.J. in *Hare v. Nicoll* (1966) 2 Q.B. 131.. A similar statement of law is to be found in Foa's General Law of Landlord and Tenant, 8th Article 453, p. 310, and in Hill and Redman's Law of Landlord and Tenant, 14th ed., p. 54. The reason is that a renewal of a lease is a privilege and if the tenant wishes to claim the privilege he must do so strictly within the time limited for the purpose.

In this case, there is no material placed on record by the defendant to support the plea that the lease period was extended during the subsistence of the first term. The mere dispute and mention of a vague arrangement, or oral agreement, is insufficient, having regard to the fact that Color Plus is a company. Such vague averments cannot detain the Court, from exercising its powers under Order XXII Rule 6, and have to be discarded.

14. In the light of the above discussion, the Court is of the opinion that IA 3963/2010 has to succeed; the same is accordingly allowed.

I.A. No. 96/2010

15. This application is under Order XXXIX Rule 10. The plaintiff urges that the lease money, in the form of cheques, received from the defendant has not been en-cashed, in view of the suit claim. The Court had, on 08.01.2010 permitted the plaintiff to en-cash such of the cheques it had in its possession till that time. In view of the order made today in IA 3863/2010, the plaintiff is permitted to en-cash any further cheques. The defendant is directed to deposit the equivalent of ` 9,20,000/- each month, till the time granted to it to vacate the premises, i.e. 31.08.2010, in respect of the months for which it did not pay the rents. IA 96/2010 is allowed in these terms.

CS (OS) 10/2010

16. In the light of the findings recorded by this Court, in the preceding paragraphs, and the fact that IA 3963/2010 stands allowed, the suit, in so far as it seeks a decree for possession, is entitled to succeed. It is accordingly decreed, in respect of relief claimed in Para 19 (a) of the suit. The defendant is granted time up to 31st August, 2010 to vacate the premises, failing which it is open to the plaintiff to execute the decree.

17. List the suit for further directions, before the Joint Registrar on 23rd August, 2010 to admit or deny the document. List the suit, for further proceedings, and for framing issues, on 13th September, 2010.