
(2002) 11 DEL CK 0014

In the Delhi High Court

Case No : IA 6105/01 in S. No. 1342 of 2002

Mr. Hardeep Kumar

APPELLANT

Vs

Kevin Industries Ltd.

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

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

Citation : (2002) 11 DEL CK 0014

Hon'ble Judges : Shamik Mukherjee, J

Bench : Single Bench

Advocate : Amit Saxena, for the Appellant; V.R. Datar, for the Respondent

Judgement

S. Mukerjee, J.

I.A. No. 6105/2001

1. This is an application under Order 39 Rule 10 CPC, whereby prayer is made for directing the defendant to deposit use and occupation charges at Rs. 1,25,000/- per month, subject to the final adjudication of mesne profits and damages by this Court.

2. The case of the plaintiff/applicant, is that the last monthly rent paid was Rs. 1 lakh commencing from 1.10.87 under a registered lease deed. As per the terms of the said registered lease deed, beyond the initial period of three years, the lease was further renewable with an increase of 25%, for a further period of two years after the expiry of the initial three years period.

3. The contention of the defendant on the other hand, is that even from the last agreed rent of Rs. 1 lakh, there had been an alleged agreement to reduce the rental by 30%, and also it was allegedly agreed that there would not be any further increase of rental at all. The defendant has been as such tendering only Rs. 70,000/- per month.

4. While the general practice of this Court is to direct the payment/deposit of the

last paid rent, under Order 39 Rule 10 CPC, yet the special/peculiar facts of each case have to be kept in mind.

5. At the same time, the existence of a registered lease deed between the parties which stipulates therein the increase payable after the first and initial three year period, is also a factor which ought not to be taken lightly.

6. I also find that in the contemporaneous correspondence exchanged between the parties, and in particular in the reply, to the legal notice sent by the Advocates on behalf of the defendants, there is no serious dispute regarding the aspect that it had been agreed that the rent will stand enhanced to Rs. 01,25,000/- per month. The only objection/defense taken in the reply was that for certain reasons pleaded by the defendant, according to them, the increase as agreed, should be not enforced.

7. Considering the matter in the in the total conspectus and at the stage of prima-facie consideration, as contemplated by Order 39 Rule 10 CPC, I consider the following directions will subserve the interests of Justice and meet the requirements of the said statutory provisions:-

(i) Upon the plaintiff filing within a week affidavit of undertaking for restitution with such interest as may be awarded in the event of final decision going against the plaintiff the defendant will pay to the plaintiff directly the arrears of use and occupation charges at Rs. 1 lakh per month w.e.f. 1.10.2000 less the amount already paid if any. This amount will be paid within 6 weeks subject to the payment of minimum Rs. 4 lakhs per week as first Installment starting with the week commencing from 15.11.2002, provided however that that in case the defendant pays 50% of the amount payable within the said first week itself, thereupon the total period, shall stand extended to three months;

(ii) As regards the period from the current month onwards, the defendant is directed to deposit Rs. 1,25,000/- per month since that was the agreed amount as per the registered lease deed, and the same can appropriately be made applicable atleast prospectively more so since the period of additional two years, is also over, and even according to the signed and registered document, the monthly amount payable would have otherwise become Rs. 1,50,000/- per month, as on date. As such, even by directing Rs. 1,25,000/- to be paid, month by month, during the period November 2002 onwards, by the 15th of every month starting from 15.11.2002, the amount so directed to be paid, would be still less than the amount falling due/payable as per the registered lease deed.

8. It may be mentioned that the stand of the defendant in their two page reply filed to is No. 6105/01, is rather wishy-washy and does not inspire much confidence, atleast at the present stage of proceedings.

9. Needless to say, all amounts paid pursuant to the present orders, shall be subject to the adjustment by way of further orders/final disposal as the case may be.

10. In the event of the defendant failing to comply with these orders/direction, its defense shall be liable to be struck of on that ground, and further appropriate orders/directions are then liable to be passed against the defendant said basis.

11. The application stands disposed of with the above directions but with no order as to costs.