

(2009) 02 DEL CK 0116

In the Delhi High Court

Case No : I.A. No. 1432 of 2009 in C.S. (OS) 2324 of 2008

Mr. Subhash Chander Gupta

APPELLANT

Vs

Thanigai Murugan Restaurants (P) Ltd.

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

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

Citation : (2009) 02 DEL CK 0116

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Ajay Kumar Tandon and D. Hussain, for the Appellant; D.D. Singh, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This application has been made by the plaintiff under Order 12 Rule 6 CPC for passing a decree of possession of suit property on the basis of admissions made by the defendant in the pleadings and through documents.

2. The brief facts relevant for purpose of deciding this application are that the plaintiff had leased out premises No. P-15, Connaught Place, New Delhi to the defendant vide a registered lease deed dated 10th December, 2004. As per the lease deed, the lease of premises in favour of the defendant started on 1st October, 2003 for a period of 5 years and lease expired on 30th September, 2008. The rent of the premises is undoubtedly above Rs. 3500/- per month therefore, the tenancy was not covered under Delhi Rent Control Act. As per terms of lease, the lease could be further renewed after expiry of initial period of 5 years with mutual consent in writing. The relevant paragraph which provides for renewal of the lease reads as under:

4. That the Lease will be initially for a period of five years from 1st October, 2003 to 30th September, 2008 and the Lessee shall request in writing for further

extension if so desired. The Lease period shall be further extended on terms and conditions with mutual consent between Lessor and the Lessee. It has been mutually agreed that there shall be no further extension of the Lease, if no request in writing is received three months prior to the expiry of the lease period, the Lease shall stand expired and terminated on 30th September, 2008.

3. The plaintiff submitted that no extension of lease could be mutually agreed upon between the parties. Thus, the lease expired by efflux of time on 30th September, 2008. The premises was not vacated after expiry of lease. The defendants had also not approached the plaintiff in terms of above clause for extension of lease at least 3 months before the expiry of lease period. However, in order to circumvent this clause the defendant handed over to the plaintiff a letter on 11th August, 2008 bearing date of 1st July, 2008 expressing its wish to extend the lease period. The plaintiff immediately, i.e., on 18th August, 2008 replied the letter stating that it has been back-dated and the request for further extension was not acceded to. However, the defendant did not hand over the vacant possession. The plaintiff thereafter, as a matter of abundant caution, served a notice dated 18.10.2008 terminating the tenancy and calling upon the defendant to hand over the possession. The defendant continued to keep the possession. The rent cheques sent by the defendant for the months of October and November were not presented by the plaintiff to avoid any controversy and plaintiff after filing of the suit would be presenting the cheques, without prejudice to his rights.

4. In the WS, the execution of lease, the period of lease etc. are not denied. However, the defendant has taken the stand that letter dated 1st July, 2008 to the plaintiff seeking extension of lease was posted to the plaintiff on 1st July, 2008 itself and was personally handed over to the plaintiff on 1st July, 2008. The representative of defendant-company, Mr. S.V. Ganapathy was in regular touch with the plaintiff for execution of fresh lease deed. The plaintiff had assured execution of fresh lease deed for a further period of 5 years on enhancement of rent by 30%. It was agreed that until the fresh lease deed was executed in writing, the rent be paid by defendant on old rate and the arrears of rent on increased rate would be payable after signing of fresh lease deed. However, the plaintiff did not come forward for signing fresh lease deed.

5. The defendant not only denied the right of the plaintiff to get the premises vacated but also filed a counter claim for specific performance of the oral agreement between the parties for further lease of 5 years on increased rent of 30%.

6. It is undisputed fact that the lease signed between the parties had come to an end on 30th September, 2008. It is also undisputed fact that parties could not arrive at an agreement and no lease deed could be executed and registered between the parties thereafter. While counsel for the defendant stated that the plaintiff had orally agreed for extension of lease with increased rent @ 30% over the previous rent. The counsel for the plaintiff refuted that any such agreement

was arrived at and stated that the premises in question had high rental value as it was situated next to the Metro Station on the airport line. The commercial value of the premises had enhanced sharply and the parties could not come to an agreement regarding future rental. The plaintiff has prayed for passing a decree under Order 12 Rule 6 CPC on the basis of admissions as reflected in the admitted documents.

7. The defendant has admitted that the lease executed between the parties on 10th December, 2004, expired on 30th September, 2008. It is not denied that no fresh lease has been executed between the parties and the parties have not been able to come to an agreement on monthly rent payable for the premises for a further lease. Clause 4 of the lease dated 10th December, 2004 categorically provided that the lease could be extended on terms and conditions mutually agreed between the lessor and the lessee and in case there is no extension of lease between the parties by mutual agreement, the lease shall stand expired and terminated on 30th September, 2008. This categorical clause in the lease deed executed between the parties amounts to admission of the facts on part of defendant. An admission can be inferred on part of the defendant either from the pleadings or admitted documents. There is no dispute about the correctness of the lease deed and expiry of the lease deed as per Clause 4. A plea of oral agreement of the plaintiff about executing the lease deed has to be given no weightage because of the express provision in the lease deed that the further lease has to be in writing. If the parties could have come to an agreement for execution of lease for further period, they would have executed a lease deed. Since no lease deed has been executed, no amount of allegations regarding oral agreement can be considered. Thus, the lease of the defendant expired by efflux of time on 30.9.2008. As an abundant caution, lease was also terminated by the plaintiff by a notice. I consider that the plaintiff is entitled to a decree under Order 12 Rule 6 CPC in respect of possession of the premises. I therefore, allow this application of the plaintiff under Order 12 Rule 6 CPC and a decree of possession in respect of suit premises No. P- 15, Connaught Place, New Delhi is hereby passed. The suit shall proceed in respect of the remaining reliefs of mesne profits/damages etc. in respect of the premises.

8. Decree sheet be prepared accordingly.

9. List this matter now for framing of issues for remaining reliefs on 17th July, 2009.