

(2019) 08 DEL CK 0042

In the Delhi High Court

Case No : Regular First Appeal No. 1033 Of 2018

M/S Turner International India Pvt Ltd

APPELLANT

Vs

M/S R C Sood & Co Pvt Ltd & Anr

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96

Citation : (2019) 08 DEL CK 0042

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Rakesh Tikku, Dhruv Wahi, P.D.Gupta, Vidhi Goel, Vinod Kapoor

Judgement

Rekha Palli, J

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908, assails the judgment and order dated 22.10.2018 passed by the learned Additional District Judge, Tis Hazari Courts, Delhi in C.S.No.14092/2016, decreeing the respondents/tenants suit for damages/mesne profits.

2. The respondents/plaintiffs had instituted the aforesaid suit seeking a decree for possession and mesne profits @ Rs.1 lakh along with interest @ 24% per annum against the appellant/defendant. However, as the appellant had vacated the premises during the pendency of the suit, only a decree for mesne profits w.e.f. August, 2006 @ Rs.1 lakh per month with interest @ 7% per annum along with proportionate costs was passed by the learned Trial Court.

3. The brief facts emerging from the record are that the respondent no.1, being the owner of office space situated at 'B', Upper Ground Floor, Block F, International Trade Tower, Nehru Place, New Delhi admeasuring 3535 sq ft., had initially let out the same to the respondent w.e.f. 27.06.2001, whereafter the parties entered into a fresh lease deed on 06.09.2003, for an area of 400 sq. ft. out of the total area of 3535 sq. ft. for a period of three years from 01.08.2003 to 31.07.2006. The agreed monthly rent for the said three years' period was

Rs.45/- per sq. ft. i.e., Rs.18,000/-. The lease deed contained clauses for extension and also provided for enhancement in rent after the lease period. Clauses 1(a) to (d) and 2(c) of the lease deed, which are relevant for deciding the present appeal, may be noted at the outset and the same read as under:-

"1. THIS INDENTURE OF LEASE is made at New Delhi on this 6th day of 2003 by and between R.C. SOOD & CO. PVT. LTD., (A Company registered under the Companies Act 1956) having its registered office at S-1 American Plaza, INTERNATIONAL TRADE TOWER, NEHRU PLACE, NEW DELHI-110019(hereinafter called the "LESSOR" when expression wherever the context permits be deemed to include their successors and permitted assigns) through its Director, Mr.Ajay Kumar Sood, S/o Mr.J.R. Sood of the FIRST PART THROUGH HIS SPA MR.S.S. WAHI, S/o SH. G.D. WAHI."

1(a) The lease is initially for a period of three years commencing from 1st August, 2003 to 31st July, 2006 and may be extended at the sole option of the LESSEE for a further term of three years, upto a maximum of six years including the initial three years subject to the escalation of the rent as detailed hereunder. The LESSEE shall give to the LESSOR notice in writing in advance clear six months before the expiry of lease period of its intention to extend the lease period for further term of three years.

(b) The rent shall commence from August 1st 2003.

(c) In consideration for the lease of the demised premises hereunder which is to be used for office purpose only the LESSEE will pay to the LESSOR rent at the rate of Rs.45/- (Rupees forty five only) per sq. ft. per month for the total super area of 400 sq. ft. i.e. Rs.18,000/- (Rupees Eighteen thousand only) per month from the date of commencement of rent i.e. from 1st August, 2003. The LESSEE shall deduct at source all such taxes as are to be deducted under the provision of the Income Tax Act. Any fresh taxes connected with the services covered by this Agreement imposed by any statutory body of Central/State Government, the same shall be borne by the LESSEE from the date of applicability.

(d) In the event of execution of the period of lease, the above said rent will be subject to an increase by 20% (twenty percent) over the last payable rent at the expiry of three years lease period. The first increase will apply for the period from 1st August, 2006 to 31st July, 2009. Accordingly, during the extended term the monthly rent shall be Rs.21,600/- (calculated @ Rs.54/- per sq. ft. for the total area of 400 sq. ft. of the Demised Premises). In the event of extension of the lease then the fresh lease deed shall be executed.

2(c) In the event of the LESSEE failing to handover the possession of the demised premises in accordance with the terms and conditions of the lease after the expiry of the lease or extended lease period or on the earlier termination of the lease, the LESSEE shall be liable to pay the rent at the enhanced rate which

shall be equivalent to the last payable rent plus 50% (fifty percent) thereon to the LESSOR for the first two years of such occupation and amount would be further subject to enhancement at the end of every two years by 50% (fifty percent) of the last total amount payable till such time the premises are actually handed over to the LESSOR.

The payment of the said enhanced rent shall be without prejudice to the right of the LESSOR to take steps to recover the possession of the Demised Premises from the LESSEE or to enter upon the said premises.

The LESSOR however will refund the outstanding advance rent and all other amounts simultaneously upon the tenant handing over vacant possession of the Demised Premises to the LESSOR."

4. As is evident from clause 1(a), the lease period was set to expire on 31.07.2006 and in case the appellant/tenant desired any extension thereof, it was required to provide the respondents with a notice in writing at least six months prior to the expiry of the lease period. The respondent no.1, claiming that it had not received any notice seeking extension, issued a legal notice dated 02.08.2006 to the appellant requiring it to hand over vacant possession of the premises on the ground that the appellant was an unauthorised occupant owing to the termination of the lease, on 31.07.2006, by efflux of time. The appellant replied to the said notice vide its letter dated 18.08.2006 claiming therein that it had exercised its option to renew the lease vide letter dated 16.01.2006. Reiterating that no such extension letter had ever been received by it, the respondent no.1 along with respondent no.2 filed the instant suit for possession and damages.

5. Before the trial Court, the appellant opposed the respondent's claim that the lease stood terminated by efflux of time by pleading in its written statement that a letter seeking extension of the lease deed was duly sent to the respondent on 16.01.2006. It was further contended that, in any event, the lease deed itself provided for the enhanced rate of rent after the termination of the lease period and, therefore, the respondent could claim mesne profits/damages only at the rate stipulated in clause 2(c) of the lease deed. At this stage, it may be appropriate to refer to paragraphs 14 and 15 of this written statement wherein the plea regarding the rent payable after the termination of the lease was taken and the same reads as under:-

"14 & 15 The contents of paragraph 14 & 15 of the plaint are false and vehemently denied. As aforementioned, the Lease has not expired and the Defendant has full legal right to continue its occupation of the demised premises as a Lessee. Therefore, there is no question of the Defendant paying the Plaintiffs any damages/mesne profits at the alleged rate of Rs.250/- per sq.ft. or at any other rate as allegedly claimed. The same is without prejudice to the plea that the Lease stands renewed for a further period of three years. Without prejudice to the rights and plea of the Defendant that the Lease stands renewed

for a further period of three years it is most humbly submitted that presuming for the sake of arguments though not admitting that the Lease had expired, Clause 2(c) of the Lease Agreement provides that if the Lessee fails to handover the demised premises after the expiry" of the lease then "the LESSEE shall be liable to pay rent at the enhanced rate which shall be equivalent to the last payable rent plus 50% thereon to the LESSOR for the first two years of such occupation". Hence, in any view of the matter, the claim of Rs 1,00,000 (Rupees One Lac only) @Rs.250/- per. sq. ft. as damages for the period of 1st August 2006 to 31st August 2006 is baseless and highly exaggerated and liable to be rejected. The Plaintiffs are only entitled to receive the enhanced rent from the Defendants."

6. Based on the pleadings of the parties, the trial Court framed the following issues on 30.10.2007:-

"1. Whether the plaint has been signed, verified and instituted by the duly authorized and competent person? OPP

2. Whether the plaintiff no. 2 is the landlord of the premises in question and has stepped into the shoes of plaintiff no-1? OPP

3. Whether the suit is bad for mis-joinder of parties ? OPD

4. Whether the plaintiff is entitled to a decree of possession of the suit property as shown red in the site plan? OPP

5. Whether the lease in respect of the property in question has come to end by efflux of time and that the plaintiff is entitled for damages w.e.f. 01.08.2006, if so at what rate?

6. Whether the plaintiff is entitled for pendentelite future interest, if so at what rate and for what period? OPP

7. Whether the defendant/counter claimant had given renewal letter dated 16.01.2006 for renewal of lease dated 06.09.2003 and the lease stands duly and properly renewed/extended for a further period of three years? OPD

8. Whether the plaintiff is liable to execute a fresh lease deed dated 06.09.2003 in favour of the defendant/counter claimant? OPD"

9. Relief.

7. Thereafter, on 29.05.2010, the trial Court framed the following additional issues:-

"1)Whether the plaintiff served any valid legal notice upon the defendant before filing the present suit? OPD

2) Whether the encashment of cheque/drafts tendered by the defendant to the plaintiff w.e.f. 01.08.2006 rent amount to renewal of the lease agreement? OPD"

8. Since the appellant had vacated the suit premises during the pendency of the suit, the only question left to be determined by the trial Court was regarding the damages/mesne profits and the quantum thereof. In support of its claim for damages, the respondents had placed reliance on two lease deeds relating to premises in the same building, the first being a lease deed dated 31.12.2007 executed between M/s Nehru Place Hotels Ltd. and Kotak Mahindra Capital Company Ltd. and the second being a lease deed dated 31.12.2006 executed between M/s Nehru Place Hotels Ltd. and Citi Bank. The trial Court, after recording the submissions of the respective counsel of the parties at length and referring to the evidence led before it, decreed the suit only with respect to the issue of mesne profits by observing as under:-

"Accordingly, the issues no. 3 and 8 are decided against the defendant and in favour of plaintiff. Issue no. 7 and additional issues no. 1 and 2 are decided in favour of defendant and against the plaintiff.

RELIEF."

24. In view of my observations with respect to the above issues, the suit of the plaintiff is decreed in terms that the plaintiff is entitled for arrears of damages @ Rs. 1 Lakh for the month of August, 2006 as well as pendente lite and future interest @ 1 Lakh per month alongwith interests thereupon @ 7% per annum from the date of filing of the suit till realization. The proportionate costs of the suit are also allowed in favour of the plaintiff."

9. Aggrieved by the grant of mesne profits in favour of the respondent, the present appeal has been filed. On 21.12.2018, while issuing notice in the appeal, the appellant was directed by this Court to deposit 2/3rd of the decretal amount as a condition for stay, which amount has duly been deposited by the appellant.

10. Mr.Tiku, learned Senior Counsel appearing on behalf of the appellant has raised three submissions while assailing the impugned judgment and decree passed by the trial Court. Firstly, he submits that the trial Court has allowed the claim for mesne profits without even determining whether the appellant was an unauthorised occupant. He submits that once the trial Court decided issue no.7 in the appellant's favour, it could not be held that the appellant was an unauthorised occupant. Secondly, he submits that, without prejudice to the aforesaid, even if the appellant was found to be an unauthorised occupant, the respondent could claim only the agreed enhanced rate of rent/damages in terms of clause 2(c) of the lease deed, as had been mutually decided between the parties at the time of execution of the lease deed itself. He finally submits that the trial Court, while awarding the mesne profits as claimed by the respondents, has neither dealt with any of the submissions of the appellant, nor has it given any reasons whatsoever for awarding such mesne profits.

11. On the other hand, Mr.P.D. Gupta, learned Senior Counsel for the respondent, while supporting the impugned judgment and decree, submits that once the respondent had brought on record lease deeds relating to similar premises in the

same building with much higher rate of rents, the trial Court was justified in granting mesne profits at the rate as claimed by the appellant. He further submits that once the trial Court had decided issue no.5 in the respondents' favour by holding that the lease had come to an end by efflux of time w.e.f. 01.08.2006, it could not decide issue no.7 in favour of the appellant and hold that the lease had been renewed for a further period of three years w.e.f. 01.08.2006. He submits that the findings of the trial Court on issue no.7 are contrary to its findings in respect of issue no.5 thereby rendering its findings on issue no.7 liable to be ignored. He, therefore, prays that the appeal be dismissed.

12. I have considered the submissions of learned senior counsel for the parties and with their assistance, perused the records.

13. Upon a perusal of the impugned judgment, I find merit in the submissions of Mr.Gupta that the findings in favour of the appellant on issue no.7 prima facie appear to be contrary to the findings qua issue no.5 which has been found in favour of the respondent. In fact, the findings in the impugned judgment with respect to issue nos.5 and 7 are wholly irreconcilable. There is, however, also merit in the submission of Mr.Tiku, learned senior counsel for the appellant that the trial Court has decreed the respondents' claim without dealing with any of the submissions of the appellant, more particularly regarding the applicability of clause 2(c) of the lease deed upon it which would be a crucial factor for determining the mesne profits. In fact, a perusal of the impugned judgment shows that the trial Court, while deciding the issues, has not at all given any reasons whatsoever for its decision and has perfunctorily observed which of the issues are decided in favour of the appellant and which of those are decided in favour of the respondent. Surprisingly, the trial Court has not at all given any reasons for its findings; which could perhaps explain why it has given contradictory findings in respect of issue nos.5 & 7, one being in favour of the appellant and the other being in favour of the respondent.

14. What emerges is that the trial Court has, in its judgment spanning a total of 24 paragraphs, merely reproduced the facts, noted the evidence led by the parties and has, thereafter, recorded their submissions all within the first 23 paragraphs. Subsequently, it has given its findings in the final paragraph without assigning any reasons whatsoever for arriving at those findings. In doing so, the trial Court has ignored the basic principle that every order which decides the inter se rights of the parties, should provide reasons howsoever brief, in support of its findings. Evidently, the trial Court has simply reproduced the submissions and the evidence led on record by the parties and has failed to deal with them before giving its findings. The importance of passing a well-reasoned order, while performing an adjudicatory function, has been repeatedly emphasized by the Hon'ble Supreme Court as also by this Court. In this regard, reliance may be placed upon the recent decision in M/s British Airways Vs. Union of India & Ors W.P.(C) No.5720/2015 wherein this Court, while dealing with an unreasoned Award passed by the Labour Court, had observed as under:-

"13. There is no gainsaying that an award passed by a Labour Court is the end product of an adjudicatory process by a statutory authority appointed under the Industrial Disputes Act, 1947. While performing this adjudicatory function, it is incumbent upon a Labour Court to apply its mind to the material on record and provide reasons, howsoever brief, in support of its findings. The importance of passing a well-reasoned order while performing adjudicatory functions, cannot be undermined and has been repeatedly emphasized by the Hon'ble Supreme Court as also this Court in a plethora of decisions. Reliance may be placed upon a recent decision of this Court in Ms. Richa Shailja v. Union of India and Anr. [WP(C) No.4757/2018], wherein a Division Bench while dealing with a challenge to an order passed by the Central Administrative Tribunal, held as follows:-

"15. The impugned order in our view is not a reasoned order. The petitioner being dissatisfied by the reasons given by the respondents while rejecting her representation has led to the filing of the OA and an application seeking stay of transfer. While dealing with the similar issue, the Hon'ble Supreme Court of India in the case of Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others reported in (2010) 9 SCC 496 has held that reasons have become an indispensable component of the decision making process. The Supreme Court has highlighted that even a quasi-judicial authority must record reasons in support of its conclusions. The Supreme Court has underlined the principle that recording of reasons is meant to serve the wider principle of justice that must not only be done but it must appear to be done..."

14. It may also be appropriate to refer to the decision of the Punjab and Haryana High Court in Fruit & Merchant Union v. Chief Information Commissioner and Ors. [WP No. 4787/2011], the relevant paragraph 12 of which reads as under:

"12. A perusal of the aforesaid order shows that the same is totally non-speaking. It is lacking not even in reasons for which it was opined that the information sought by the applicant herein does not amount to personal information or trade secrets of a third party, even the facts of the case have not been referred to in detail. In the absence of brief facts and the reasons contained in the order, it is not possible for the next higher court to appreciate as to what weighed with the authority in reaching the conclusion and as to whether there was application of mind by the authority or the order is arbitrary. Hon'ble the Supreme Court in Kranti Associates Private Limited and another v. Masood Ahmed Khan and others, (2010) 9 SCC 496, while referring to its earlier judgments... opined that every order passed by quasi-judicial authority or even an administrative authority affecting the rights of parties, must be a speaking order. It must not be like the "inscrutable face of a sphinx". The superior court cannot effectively exercise its power of judicial review unless in the order impugned, facts and reasons have been stated in detail. Merely giving an opportunity of hearing is not enough. Wherever an order can be subject to appeal or judicial review, the necessity to record reasons is even greater. It ensures that the decision is not a result of caprice, whim or fancy but was arrived

at after considering the relevant facts and the law. It enables an aggrieved party to demonstrate before the higher court that the reasons on which his claim has been rejected, are erroneous. It operates as a deterrent against possible arbitrary action by any authority invested with judicial power. The aim is to prevent unfairness or arbitrariness in reaching conclusions. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. The faith of the people in administrative authorities can be sustained only if they act fairly and dispose of the matters before them by well- considered orders..."

15. When the findings in the impugned award are examined in the light of the settled legal position noted hereinabove, there can be no doubt that the said award is wholly bereft of reasons and does not at all show application of mind to the materials on record. It is also evident that the learned Labour Court's findings and consequential directions are based on the bald assertions of the respondent. As noted hereinabove the learned Labour Court has just not given any reason for his findings and almost 54 pages out of the 55 pages award are a simpliciter reproduction of either the pleadings, evidence by way of an affidavit as also the cross-examination of the parties or their written submissions. Such an approach of the learned Labour Court discharging an important adjudicatory function wholly unacceptable. For the aforesaid reasons, the impugned award is, wholly unsustainable and is accordingly quashed."

15. In the light of the aforesaid, the impugned judgment being wholly bereft of any reason, cannot be sustained and is set aside. Keeping in view the fact that the parties had already led evidence on the issues framed by the Court, the matter is remanded back to the trial Court for a fresh determination of all the issues on the basis of the evidence already on record. It is expected that the trial Court, while deciding the suit, will give reasons for its findings in respect of all the issues as already framed. It is made clear that this Court has not examined the rival claims of the parties on the quantum of mesne profits.

16. Since the matter relates only to the aspect of the quantum of mesne profits to be awarded, the trial Court is requested to decide the matter expeditiously and preferably within a period of six months.

17. The parties will appear before the learned District Judge, Central on 04.09.2019 for further proceedings.

18. As the impugned judgement is being set aside without expressing any opinion as to whether the mesne profits as awarded by the trial Court was justified or not, it is directed that the amount deposited by the appellant before this Court be retrained in an interest bearing FDR till the decision of the suit by the trial Court. The amount will be released as per the final outcome of the suit. However, in case the suit is not decided within 6 months, the appellant will be at liberty to move an appropriate application before this Court seeking release of the aforesaid amount.