

(1999) 03 DEL CK 0071

In the Delhi High Court

Case No : Suit No's. 3016/89 and 2230 of 1995

Nina International Pvt. Ltd.

APPELLANT

Vs

Saraswati Industrial Syndicate Ltd.

RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 151
Delhi Rent Control Act, 1958 — Section 50

Citation : (1999) 2 AD 201 : (1999) 78 DLT 524

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Madan Bhatia and L.K. Garg, for the Appellant; V.K. Makhija and Vandana Khurana, for the Respondent

Judgement

K. Ramamoorthy, J.—In Suit No. 3016/89 the plaintiff (hereinafter called the "owner") has prayed for the following reliefs :

"In view of the foregoing it is most humbly prayed that this Hon''ble Court may kindly be pleased to decree the following reliefs to the plaintiff against the defendant:

(a) Relief for ejectment of the defendant from the premises No. 6, Shopping Commercial Complex, New Friends Colony, New Delhi, as shown in the plan filed in this Hon''ble Court.

(b) The defendant be directed to restore the property in its original condition and failing compliance by the defendant, the plaintiff be authorised to restore the said property in its original condition and a decree for the cost of the same amount of Rs. 20,000/- be passed in favor of the plaintiff against the defendant.

(c) A decree for rent of the property from 1st August to 12th August, 1989, amounting to Rs. 15,000/-.

(d) A decree for the contumacious use and occupation of the property from 13th

August, 1989 to October, 1989, at Rs. 6,000/- per day. Total Rs. 4,62,000/-.

(e) The Hon"ble Court may also decree the amount for the further use and occupation of the property with effect from 27th October, 1989, to the date of the delivery of the possession of the property to the plaintiff in its original condition and for the said period a sum of Rs. 6,000/- per day with effect from 27th October, 1989, to the date of decree. The plaintiff undertakes to pay the additional Court fee required for the decree for the contumacious use and occupation of the property with effect from 27th October, 1989, to the date of delivery of the possession of the property in proper order.

(f) The cost of the suit may be awarded to the plaintiff against the defendant.

In Suit No. 2230/95 M/s. Saraswati Industrial Syndicate Ltd. {hereinafter called "S.I.S.") the defendant in Suit No. 3016/89 has filed this suit for specific performance claiming the following reliefs:

"Under the circumstances mentioned above, it is most humbly prayed that a decree for specific performance be passed in favor of the plaintiff and against the defendant directing the defendant to execute a duly registered lease deed in terms of draft lease deed Annexure A to the plaint in relation to the property bearing No. 6, Community Centre, New Friends Colony, New Delhi comprising of basement, mezzanine floor, ground floor, first floor, second floor on the terms and conditions mentioned therein.

(b) Direct the defendant to execute the lease deed on the terms and conditions as mentioned in the proposed lease deed Annexure A to the plaint and have the same registered.

(c) In the event of the defendant not complying the aforesaid directions, appoint an officer of the Court to have the lease deed executed and registered on the terms and conditions mentioned in the proposed lease deed Annexure A to the plaint."

2. It is not necessary to refer to the pleadings in Suit No. 3016/89 as the fact that the S.I.S. was the lessee under the owner is not in dispute. The defense to the suit is that during the pendency of this suit the owner had agreed for execution of a fresh lease and the S.I.S. is entitled to renewal of the lease and in view of the compromise the S.I.S. had to seek the relief of specific performance.

3. In view of the fact that the S.I.S. is seeking the relief of specific performance in Suit No. 2230/95 it is necessary to notice the pleadings. It is stated in the plaint in paragraph 4 :

"That since February/March, 1995, negotiations started between the parties in relation to this property for creating a fresh tenancy at an enhanced rent for a period of 9 years. The said negotiations were conducted by Mr. V.K. Singal, Chief Manager of the plaintiff Shri G.D. Chhabra, Asstt. Manager of the plaintiff Company for and on behalf of the plaintiff and Mr. Sujan Singh, Managing

Director of the defendant Company as also Shri N.K. Mehra, Accountant of the defendant Group of Companies/Associations. After detailed negotiations the terms of the lease were reduced into writing by way of a draft/ proposed lease deed which provided inter alias as under:

That from 1.1.1995 to 31.12.1997 the rent of the premises shall be Rs. 1,93,400/-, from 1.1.1998 to 31.12.2000 the rent of the premises shall be Rs. 2,32,080/- and from 1.1.2001 to 31.12.2003 the rent of the premises shall be Rs. 2,78,496. It was further agreed that initially the tenancy shall be for a period of nine years and any further renewal shall be subject to the mutual agreement between the parties.

The other terms of the tenancy are reproduced in para No. 2 of the said draft agreement, and are being reproduced as under :

"2. The lessee with the intent that the obligations may continue throughout the terms hereby created doth hereby covenant with the Lesser as follows :

(i) To punctually pay the .said monthly rent hereby reserved in the manner aforesaid.

(ii) To pay directly to the authorities concerned all charges for electricity (both light and power) and water consumed by the lessees in the said premises as per bills raised by DESU/MCD without any protest or demur, whatsoever.

(iii) Without the previous consent in writing of the Lesser not to make any structural alterations or any permanent fittings to any portion of the said premises provided that the lessee shall be at liberty, without any such consent as aforesaid to construct in or upon or fasten to the said premises, partitions, counters and all office and trade fixtures and fittings and also fans, fan rods and light drops in accordance with the Municipal regulations as may be applicable thereto and with the prior sanction of the Municipality as may be required. Therefore so that such constructions and fixtures shall be easily removable and to re-adjust the existing partitions on the said premises belonging to the Lesser without in any way causing damage to the said premises and to make good all damage that may be caused by such removal. The lessee shall have the right to install air conditioners, coolers etc. in the demised premises. It is further agreed between the parties that the aforesaid rent reserved is on the basis of the present rate of house tax, ground rent and other taxes that are being charged by the MCD/NDMC/ L&DO/DDA and other local authorities. In case the said authorities increase/decrease their rate of taxes or impose new taxes at any later date, the difference between the initial prevalent rate of taxes and the revised rate of taxes in future shall be to the lessee's account.

It is further agreed between the parties that the lessee/tenant shall be entitled to carry out substantial renovations, to the premises, at the lessee expenses and responsibility. The lessee shall not make any structural alterations without the previous consent in writing of the lessor. In case any permission will be required

the same shall be obtained from local authorities etc before commencing substantial renovations etc at the cost and expenses of the lessee.

(iv) To execute and do at its own expenses all such repairs other than structural as shall keep the said premises in the same good condition as they are at commencement of this lease. Such repairs to include damages to the flooring, doors and windows shutters panes, flushing tanks and water closet and wash basins, hinges locks and keys, electric and other fittings and the like interior dilapidations on account of the lessee negligence and at its own cost and expenses during the terms hereby created to keep and maintain in repair and in good working order the electric installations and the light and fan points and the flushing tanks and the plumbing system (natural wear and tear and damages by fire earthquakes, flood, tempest, lightening, violence by a mob or other such like conditions beyond the control of the lessees excepted.)

(v) Upon the expiry or sooner determination of this lease to peacefully and quietly yield up the said premises in such repairs and conditions as shall be in accordance with the lessees covenants, herein contained.

(vi) To permit the Lesser or any person or persons deputed by it with or without workmen or others and all persons authorised by the Lesser during the said terms at all reasonable hours during day time after giving twenty four hours notice to the lessee.

(vii) To use the demised premises only for commercial purposes.

(viii) To maintain and keep the said premises and all lavatories, corridors, passages etc in cleaned tenantable conditions.

(ix) Not to assign, sub-let, re-let, transfer or part with possession of the said premises or any part thereof without the previous consent of the Lesser in writing, provided always that the use of the premises by the lessee and the under noted companies viz:

(a) M/s. Indian Sugar and General Engineering Corporation.

(b) M/s. Saraswati Sugar Mills

(c) M/s. ISGEC John Thompson which are the subsidiaries/units of the lessees, shall not amount to sub letting, transfer, assignment or parting with possession for which the lessees shall not be required to obtain prior permission from the lessors.

III. THE Lesser DOTH HEREBY COVENANT WITH THE LESSEE AS FOLLOWS:

(i) Subject to the lessees covenants, to pay all present rates, taxes, ground rent, house tax, charges of what so ever character, assessment and out going assessed charged, imposed or payable to the New Delhi Municipal Committee or any other Government department / authority in respect of the demised premises. Any future increase in these taxes, the difference shall be borne by the

lessee.

(ii) To ensure for water and electric connections, Both electric and water connections have been provided by the Lesser augmentation of power and water connections/increase in existing power load. If any, required shall be arranged by the Lessee at its own cost and without any objection from the Lessor.

(iii) On the condition that the lessee continues to pay the rent hereby reserved and observes and performs several covenants on their part herein contained, they shall peacefully and quietly hold and enjoy the premises during the said terms without any interruption or disturbance by Lesser or any person, lawfully claiming under or in trust of his or any other person whatsoever.

(iv) To carry white washing in the demised premises every year during the terms of the lease provided the lessees inform the Lesser to get the same done.

(v) Whereas day-to-day minor repairs, (any repair of any item to the extent of Rs. 350/- shall be at the cost of the lessee and repairs beyond Rs. 350/- shall be at the cost of the lessor) shall be carried in the agreed manner. Structural repairs to the said premises shall be undertaken by the lessors. The lessors covenants to keep the basements water tight against sub soil water. It is further agreed that in case the granting done in the basement fails, the Lesser will get the basement repaired at his cost.

. (vi) The Lesser represents and warrants that he is duly authorised to make this lease and hereby covenants with the lessee that during the terms of this lease and or any extension thereof the lessees shall enjoy and peaceful possession of the demised premises without disturbance by the Lesser or any other person claiming through the lessor.

IV. Provided always and it is hereby agreed and declared as follows :

(i) The monthly rent agreed to herein is the fair rent for the demised premises and neither the Lesser nor the lessee shall be entitled to seek any variations thereof or to call the rent into question.

(ii) If the rent hereby reserved shall be in arrears or not paid in accordance with Clause (I) hereinbefore, whether legally demanded or not or if the lessee omits or neglects to perform or observe any covenants on the part of the lessee or conditions herein contained, the Lesser shall give to the lessee a notice in writing to make good the breaches within one month of the receipt of the notice, failing which the Lesser will have the right to terminate the lease.

(iii) If the lessee shall be desirous of terminating the lease hereby created before the expiry of the period of the lease, it shall give to the Lesser three months notice in writing of its intention to terminate the lease, and thereafter on the expiry of the said period the lease thereof shall stand determined without any further liability on the part of the lessee for payment of rent to the Lesser provided actual, physical and vacant possession is handed over to the Lesser by

the lessee and each party shall be bound to refund to the other party any amount that such party may under the terms of this agreement be under an obligation to refund to the other party.

(iv) The Lesser shall acknowledge and give valid receipts for each and every payment made by the lessee to the Lesser or his order and such receipts which must be duly stamped and signed by the lessor, or his duly authorised agent shall be conclusive proof of the such payments.

(v) The cost of all papers, stamps etc. for the execution of the lease deed will be borne by the lessee.

(vi) That the lease agreement shall be executed in duplicate the original of the agreement will be retained by the Lesser and its duly executed copy will be retained by the lessee.

(vii) That this lease deed shall be got registered with the Sub-Registrar, Delhi under Indian Registration Act and Stamp duty payable under the law shall be borne by the lessee. The lease deed shall be executed in duplicate, the original shall be on the stamp paper as per the Indian Stamps Act and the counter part thereof on two rupees non judicial stamp paper. The original lease deed will remain in the custody of the Lesser and the counter part shall remain in the custody of lessee. Counter part of the lease deed shall also be admissible in evidence in " all Courts."

4. It is stated that the draft lease deed was signed by Mr. N.K. Mehra on behalf of the owner who was duly authorised by the owner and its Managing Director Mr. Sujan Singh. It is also stated :

"That a draft application under Order 23, Rule 1 of the CPC for the withdrawal of the Suit No. 3016 of 1989 was also prepared which was also initialed by Shri N.K. Mehra acting for and on behalf of the defendant and Shri V.K. Singal Chief Manager of the plaintiff and Shri G.D. Chhabra, Asstt. Manager of the plaintiff Company on behalf of the plaintiff Company."

According to the plaintiff, these documents were made out and duly signed in the first week of September 1995. The S.L.S. passed a resolution on 22.5.1995 authorising Mr. V.K. Singal to arrive at a settlement and to enter into a fresh lease deed with the owner with reference to premises No. 6, Community Centre, New Friends Colony. On 19.5.1995 Mr. V.K. Singhal on behalf of the S.I.S. sought sanction of Rs. one lac from the Joint Managing Director of the S.I.S. for the purchase of non-judicial stamp papers and also for other expenses for the registration of the lease deed. Mr. V.K. Singhal put up a note to the Joint Managing Director seeking approval from him for formalising the settlement. The main features of the note are mentioned in paragraph 10 of the plaint. In paragraph 11 it is asserted that the terms of the lease had been settled between the parties. The owner has resoled from the terms and, Therefore, the S.I.S. had to institute the suit claiming the relief of specific performance. The owner filled

the written statement on 13.3.1996. It is stated in paragraphs 1 & 2 on merits in the written statement on the captioned Reply on Merits :

"1. That the plaintiff was a tenant of the defendant in respect of premises No. 6, the Shopping Commercial Complex, New Friends Colony, New Delhi, comprising the basement floor, the ground floor, the mezzanine floor, the first floor and the second floor, excluding the roof and terrace on the top of the 2nd floor. The said plaintiff had been paying a monthly rent at the rate of Rs. 37,510/- p.m. to the defendant.

2. Originally, the aforesaid premises were let out to the plaintiff for a period of 3 years" beginning from 13.3.1980, at the rate of Rs. 31,000/- p.m. and the said rent was subsequently increased to Rs. 34,100/- p.m. and thereafter raised to Rs. 37510/- p.m. After the expiry of the lease period, the plaintiff had continued to hold over and occupied the demised property and as such, the status of the plaintiff Company was as lessee holding over in respect of the said property from month to month the tenancy starting on the 13th day of each English calendar month and ending on the mid-night of the 12th day of the immediately succeeding calendar month."

According to the owner, it was in the month of December, 1994 the plaintiff approached the owner for a compromise and agreed to pay mesne profits @ Rs. 6,000/- per day. In the meeting of the Board of Directors of the owner on 22.12.1994 a resolution was passed authorising Mr. Sujan Singh, Managing Director of the Company to negotiate. Therefore, according to the owner, Mr. N.K. Mehra had absolutely no authority to negotiate on behalf of the owner. According to the owner, the terms of the draft lease deed were never settled between the parties. Mr. Sujan Singh rejected the compromise suggested by the plaintiff. It is stated :

"it was outrageous unacceptable and iniquitous inasmuch as it proposed to enhance the rent to less than Rs. 20/- per square foot whereas the prevailing market rent is the same shopping complex even in those cases where the tenant had originally been let out the premises on a much lower rent and who enhanced the rent subsequently was not less than Rs. 40/- per square feet. One such tenant is of the defendant itself, namely M/s. Oil India Limited. The premises were let out in December, 1987 and the rent has been increased to Rs. 35/- (thirty five) per square foot in July, 1994."

It is stated that in the same complex the owner owns premises No. 1 and the same had been let out to M/s. Oil India Limited. It is asserted by the owner that Mr. N.K. Mehra did not sign in the draft lease deed and he was not authorised to sign any document. It was also denied that Mr. V.K. Singal signed the draft lease deed on behalf of the S.I.S. It is stated in paragraph 6 :

"Para 6 is totally false and denied. The Draft Lease Deed having been rejected by Shri Sujan Singh there was no other offer made by the plaintiff to resume the negotiations arid on 27.7.1995 the Board of Directors of the defendant at its,

meeting passed the following resolutions :

"Mrs. Mohinder Kaur informed the Board that negotiations initiated by M/s. Saraswati Industrial Syndicate Limited for compromise of Lease/Court case have failed as their terms are not acceptable, hence it was decided to close this chapter and pursue the Court case."

The subsequent conduct of the plaintiff in filing the present suit clearly shows that Shri N.K. Mehra was deliberately tricked late initialling the copy of the Draft Lease Deed for the purpose of building up a totally false story in order to circumvent the suit of eviction pending against the plaintiff and which had been fixed for evidence on 27.9.1995, 28.9.1995 and 29.9.1995 with deliberate intent and purpose to delay the disposal of the said suit, eviction suit. The plaintiff waited, and it was only on the eve of commencement of the trial of the eviction suit that the plaintiff moved an Amendment Application for amending Written Statement on 25.9.1995 which for the first time, the defendant came forward with the story on which the present suit is founded."

Regarding the signatures of Mr. N.K. Mehra alleged to be on behalf of the owner, it is explained in paragraph 7 in the following terms:

"Para 7 is wrong and is denied. It is wrong and denied that Shri N.K. Mehra, initialled any Draft application for withdrawal of the Suit No. 3016 of 1989, for and on behalf of the defendant. Shri N.K. Mehra was handed over a draft application by Shri Chhabra for withdrawal of the suit. It did not bear any signature or initial of any person on behalf of the defendant. Shri Chhabra carried other copy of this application and asked Shri N.K. Mehra to initial it in token of receipt of the draft application and in token of the correctness of the * identity of the contents of both the copies after comparison. Shri Chhabra also initialled the copy which has been initiated by Shri N.K. Mehra in token of the correctness of the identity of the two copies. Shri N.K. Mehra also kept a -photocopy of the copy which had been initialled by Shri N.K. Mehra and Shri Chhabra. But, it now appears that on the copy which was initialled by Shri N.K. Mehra and Shri Chhabra, and retained by Shri Chhabra the signature of Shri V.K. Singhal and some other person belonging to the plaintiff have been put subsequently thereby committing forgery in respect of the aforesaid document for ulterior purpose and leading credence to the whole false story on which the present suit has been filed by the plaintiff as defendant in Suit No. 3016/89."

It is stated in paragraph 8 of the written statement that both the draft lease deed and draft application were handed over to Mr. N.K. Mehra sometime in April 1995. Thereafter, there was no meeting point and there was no settlement of the terms. In April 1995 Mr. Sujan Singh informed Mr. Singhal rejecting the outright proposal of the draft lease deed and thereafter neither the S.I.S. nor any of his representatives contacted the owner. It is stated in paragraph 13 :

"It is for the first time that the subject of the Draft Lease Deed was raised with him on 27.9.1995 during the course of his cross-examination in the suit filed by

the defendant against the plaintiff."

The S.I.S. filed its replication on 13.5.1996 and it is not necessary to refer to the averments in the replication because it is almost a repeat performance of what is stated in the plaint.

5. Before I refer to the documents filed in the two suits, the issues framed in the two suits may be noticed:

"Issues in Suit No. 3016/89

1. Whether this Court has got no jurisdiction to entertain the present suit for the reasons stated in preliminary objection No. 1 of the written statement?
2. Whether the notice of termination stands waived for the reasons stated in para 8 of the written statement?
3. Whether the plaint has been signed and verified and the suit has been instituted by a duly authorised person?
4. Whether the tenancy has been validly terminated?
5. Whether the defendant is liable to pay damages? If so, at what rate and for what period?
6. Whether the defendant has caused any damage to the premises? If so, its effect?
7. To what relief, if any, is the plaintiff entitled?

Issues in suit No. 2230/95

1. Whether there was any concluded contract between the parties for creating a fresh lease for 9 years w.e.f. 1.1.95 as alleged in the plaint?

OPP

2. Whether the plaintiffs have always been ready and willing to perform his part of the agreement if there was any concluded contract between the parties?

OPP

3. Whether Shri N.K. Mehra had any authority to enter into a draft lease deed on behalf of the defendant to bind the defendant?

OPP

4. Whether the plaintiff is entitled for the decree of specific performance against the defendant?

OPP

5. Whether the suit of the plaintiff is based on forged documents as alleged in the written statement?

OPD

6. Whether the plaint is liable to be rejected?

OPD

7. Relief.

6. In suit No. 3016/89 the following documents have been exhibited :

Ex. P.W.1/1 is the notice to quit issue by the owner to S.I.S. on 30.6.1989..

Ex. P.1 is the A.D. Card.

Ex. P.W.1/2 is the postal receipt in respect of P.W.1/1.

Ex. P.W.1/3 is the postal receipt and Ex. P.W.1/4 is the A.D. Card.

Ex. P.W.1/5 is a copy of the resolution passed by the Board of directors of the owner in the meeting held on 12.10.1989 authorising Mr. S. Sujan Singh to sign and verify and file the suit.

Ex. P.W.1/6 is the site plan of the property No. 6, Community Centre, New Friends Colony.

Ex. P.W.1/D-2 is a copy of the lease deed.

Ex. P.W.1 /D-3 is draft of the I.A. to be filed in Suit No. 3016/89.

Ex. D.W.1 /2 is the copy of the Minutes of the Meeting of the Board of Directors of the owner company dated 20.12, 1994.

Ex. D.W.1 /3 is the copy of the Minutes of the Meeting of the Board of Directors of the owner on 27.7.1995.

The defendant in Suit No. 3016/89 (plaintiff in Suit No. 2230/95) filed LA. 9282/95 for the amendment of the written statement in Suit No. 3016/89. In view of the fact that separate suit had been filed by the defendant, it is not necessary to refer to the application for amendment.

7. In Suit No. 2230/95 the following documents are exhibited :

"Ex. P.1 is the copy of the resolution of S.I.S. dated 22.9.1995.

Ex. P.2 is the copy of the lease deed.

Ex. P.3 is the copy of the LA. under Order 23, Rule 1 read with Section 151, CPC in Suit No. 3016/89.

Ex. P.4 is the copy of settlement of the disputes with landlord of building No. 6 dated 18.3.1995.

Ex. P.5 is photo copy of note dated 19.5.95.

Ex. P.6 is copy of the Board Resolution dated 3.5.95.

Ex. P.7 is photo copy of the resolution of the Board of Directors of S.I.S. dated 22.5.1995.

Ex. DW1/X-2 is the copy of the I.A. under Order 23, Rule 1 read with Section 151, CPC in suit No. 3016/89.

Ex. DW1/X-4 is letter dated 26.9.1991 from Oil India Ltd. to M/s. Sujan Mohinder Charitable Trust regarding extension of lease of premises at No. 1, Community Centre, New Friends Colony.

Ex. DW1/X-5 is letter dated 28/31.8.1991 from Oil India Ltd. to M/s. Sujan Mohinder Charitable Trust regarding extension of lease of premises at No. 1, Community Centre, New Friends Colony.

Ex. DW1/X-6 is copy of letter dated 25.9.1995 from Oil India Ltd. forwarding a cheque to Sujan Mohinder Charitable Trust.

Ex. DW1/X-7 and DW1/X-8 are the bank slips.

Ex. DW1/X-9 is copy of letter dated 12.10.1995 from Oil India Ltd. forwarding a cheque to Sujan Mohinder Charitable Trust.

Ex. D.1 is the lease deed.

Ex. D.2 is the copy of the lease deed.

Ex. X-1 is the I.A. under Order 23, Rule 1 read with Section 151, CPC in Suit No. 3016/89.

8. For the purpose of considering the question whether there has been concluded contract for renewal of lease, the evidence on behalf of the plaintiff (S.I.S.) is to be analysed.

9. Mr. V.K. Singhal, the General Manager of S.I.S. company was examined as P.W.1. He was the only witness examined on the side of the S.I.S. From his evidence, it has to be seen whether the S.I.S. has established concluded contract between the S.I.S. and the owner for the renewal of the lease. Unless it is proved by S.I.S. that there was a concluded contracting S.I.S. cannot seek to enforce the terms which have had not taken any concrete shape. The broad heads under which we can analyze the evidence of P.W. 1 are, (1) the circumstances under which, during the pendency of Suit No. 3016/89 the parties had started negotiations and what was the effect of those talks for settlement; (2) the steps alleged to have been taken by S.I.S. pursuant to the talks of settlement; (3) whether there had been any specific agreement with reference to the quantum of rent, which is one of the essential terms of lease; (4) preparation of draft sale deed and application for withdrawal of Suit No. 3016/89 to be filed and the case of SIS with reference to the signatures in the documents relied on by it; (5) the effect of admission by the witness in the cross examination that what is stated in the plaint is wrong.

10. It is stated by the witness that S.I.S. has been the tenant since 1980. He

would state that sometimes in the month of November, 1994 talks of compromise were held. According to him:

"Q. How did it happen?

Ans. Actually, I happened to go to the Mahendra Hospital, some intentions were expressed that we can enter into an amicable settlement and series of negotiations were started in the month of November, 1995 and verbal settlement was arrived at.

In the cross examination he would state that he went to see Mr. Sujan Singh in Mohinder Hospital in the month of November, 1994. Having said that he would say:

"Q. In the month of November you have stated that negotiations took place and the verbal settlement was arrived at, is it correct?

Ans. No. I said that when I was in the hospital an interest was expressed for an amicable settlement. The real negotiations for an amicable settlement started in the months of February and March, 1995.

Q. You deny that there were any negotiations in the month of November, 1994.

Ans. I said that some interest was expressed in the month of November, 1994 for some amicable settlement. Negotiations started in February and March, 1995."

Then when specific question was put as to why nothing was done between May and September, he would answer:

"Ans. Basically, there are two reasons for that. The reasons are as under :

1. We have arrived at the mutual settlement for enhancing the rent etc. The landlord Shri Sujan Singh started asking for that if a part of the settlement can be paid in cash or can it be paid as a gift to his Charitable Trust.
2. Sometimes in the end of August, Mr. Sujan Singh, went abroad for about a month. After his return, we again approached him and a meeting was fixed and the minor points of the draft were sorted out."

Therefore, according to the witness it is because Mr. Sujan Singh was asserting some part of the rent to be paid in cash and at the end of August, 1995 Mr. Sujan Singh went abroad the terms could not be settled. In the cross examination he would admit that Mr. Sujan Singh left India on 2.6.1995 and returned on 26.7.1995. Therefore, the version in the chief examination is not at all acceptable. The witness admits that he did not mention in the chief examination about the person who represented the owner company for negotiations but in the cross examination he would state :

"Q. You have not named the person throughout your examination-in-chief as to who expressed the interest for negotiations and settlement.

Ans. I have not stated in the examination-in-chief the name with whom the negotiations started but now I can give the name.

Q. Can you name that person?

Ans. Sardar Sujan Singh.

Therefore, according to the witness Mr. Sujan Singh was the person representing the owner Company in the negotiations. If there had been a concluded contract the witness should have stated in the chief examination itself that on behalf of the S.I.S. the person competent to represent the Company put forth the terms of the lease and the terms of the lease were accepted by Mr. Sujan Singh on behalf of the owner Company. The omission to state anything about it in the chief examination cannot be taken to be casual. This shows the manner in which the S.I.S. had approached the point. A suggestion was put to the witness and in my view rightly.

"Q. I put it to you that this story of meeting in the first week of Sept., 1995 and the document being signed or initialled in the first week of Sept., 1995, it has been fabricated for the purpose of filing an application for amendment of the written statement in the defendant suit for eviction and for the purpose of filing the present suit by the plaintiff for specific performance in order to delay and passing of eviction decree in favor of the defendant in its own suit.

Ans. I deny."

When the suit was pending in this Court and when S.I.S. would come forward with a compromise, the Court would accept the S.I.S. to prove it with positive evidence. There cannot be any presumptions with reference to terms of a lease deed. Therefore, the witness has not established that there had been any terms agreed to between the parties which could form any basis for argument that there had been a concluded contract.

11. This would take us to the second point with reference to steps alleged to have been taken by the S.I.S. on the basis that the owner had agreed for the settlement of the terms of lease. This has become necessary for the S.I.S. as S.I.S. is a Company and, Therefore, the formalities have to be proved before anything could be attributed to the Company. A bare perusal of the evidence of P.W.I would show that the case of taking some steps pursuant to the agreement between the parties for compromise has been set up just to make it appear as if that the S.I.S. is justified in seeking the relief of specific performance. According to the witness, that prior to March, 1995 the parties had agreed for settlement. On 18.3.1995 a note was put up by the witness to his Joint Managing Director to approve the proposed settlement. That note is marked as Ex. P.4 by S.I.S. Therefore, the contents of the documents cannot be disputed by S.I.S. Ex. P.4 reads as under :

"Settlement of the Dispute with Landlord of Building No. 6.

1. As you are kindly aware, the landlord of Building No. 6 had filed a suit for eviction of the building, which is pending in the Court for the last more than 7 years.

2. To arrive at an amicable settlement of the dispute, we have had a number of meetings with the landlord.

3. We are pleased to inform you that we have now arrived at a settlement. The main features of the proposed settlement are as under :

(a) Revised rent @ Rs. 19/- per sq. ft. per month effective from 1.1.95. As against the present monthly rent of Rs. 37,510/- per month, revised rent would be Rs. 2,00,000/- per month.

(b) There will be a fresh lease deed in respect of Building No. 6 effective from 1.1.95, for a total period of 9 years with built in escalation clause providing for escalation @ 25% of the agreed rent after every 3 years.

(c) The tenancy can be extended after 9 years by mutual consent of the parties.

(d) On execution of the fresh lease deed, the landlord will withdraw the case pending before the Court.

(e) The landlord has agreed to extend the Mezzanine floor at his cost and we have agreed to pay the rent for the additional space when made available at the revised rent of Rs. 19 /- per sq. ft. per month.

(f) The landlord has also agreed to repair the roof of the building at his cost.

(g) The landlord has also agreed to enhance the electricity load as per our requirement, cost to be borne by us.

4. We seek your approval for formalising the settlement on the basis of agreed points as mentioned above.

5. Submitted please."

The witness would state:

"Q. Did you take permission from your Joint Managing Director to get this through. What were the documents you submitted?

Ans. I applied on 19.3.1995 requesting my Joint Managing Director to approve the proposed settlement with the landlord which was already stated therein."

He would further state:

"Q.20. For what purpose you had sent this note?

Ans. I had sent this note requesting him to grant me sanction for buying the judicial stamp papers worth about Rs. 1 lakh so that the settlement can be formulated. This has also been approved by the Joint Managing Director. The date is 19.3.1995. This has been signed by the J.M.D. and duly approved by him.

The photostat copies of the same is marked as Ex. P.5. On 3.5.1995, I applied to the Secretary so that I can enter into an settlement with the landlord. The photostat copies thereof is marked as Ex. P.6. On 22.5.1995 A resolution was passed in my favour. I have brought the minute book and the extract of the resolution is marked as Ex.P.7."

Ex. P.5, referred to by the witness, reads as under :

"For kind sanction

rw-201 19.5.95

JMD

1. As you are aware, we have arrived at verbal settlement With the landlord of building No. 6.

2. In order to formalize the verbal settlement, we have to execute the lease deed for which we are required to purchase non judicial stamp papers of Rs. 85 K. Other miscellaneous expenses are estimated to be around Rs. 15K towards registration of the lease deed, lawyer's fees etc.

3. We request you to kindly accord your sanction for Rs. 1L enabling us to execute the lease deed with the landlord of building No. 6."

Ex. P.6, referred to by the witness, reads as under:

"3.5.95

Board Resolution

We have 2 buildings namely building No. 5 & building No. 6 on rent with us for office use. The landlord of both the buildings have filed eviction petition in the Courts. In order to resolve the matter amicably, we have conducted a series of negotiation with the landlord of building No. 6 and a compromise has been arrived on the following terms and conditions :

(a) Revised rent @ Rs. 19/- per sq. ft. per month against Rs. 3.70 per sq. ft.

(b) There will be a fresh lease deed effective from 1st January, 95 for a period of 9 years with built in escalation clause providing for escalation @ 20% of the agreed rent after every 3 years.

(c) The tenancy can be extended after 9 years by mutual consent of the parties.

(d) On execution of the fresh lease deed, the landlord shall withdraw the Court case pending before the Court for eviction,

(e) For your information, the present market rent in Friends Colony Complex is aprox. Rs. 40/- per sq. ft.

2. As regards the dispute with the landlord of building No. 5, the same still remain unresolved and once the settlement is formalized with the landlord of

building No. 6 which is more curious to us because the access to both the buildings is only through the building No. 6, we shall try to settle the dispute with the landlord of building No. 5 also.

3. You are requested to kindly arrange the board resolution authorising undersigned to formalize the settlement with the landlords, withdraw the Court cases and enter into fresh lease deed with the landlords."

According to the witness, the resolution was passed authorising him to take further action and that is marked Ex. P.7. Ex. P.7 reads as under :

"COPY OF RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF THE SARASWATI INDUSTRIAL SYNDICATE LIMITED IN THEIR MEETING HELD ON 22.5.1995:

"In Supersession of all Previous Resolutions, Resolved That --

(a) Mr. V.K. Singhal, Chief Manager (Material and Administration) of the Company, be and is hereby authorised to defend legal proceedings instituted against the Company in the Delhi High Court for ejection and recovery of damages by M/s. Neena International Pvt. Ltd., New Delhi, in respect of premises at 6, Community Centre, New Friends Colony, New Delhi-110065, taken on lease.

(b) Mr. V.K. Singal, Chief Manager (Material and Administration) is further authorised to arrive at compromise with the landlord to settle the above-mentioned legal suit. He is further authorised to enter into fresh lease deed with the landlord in respect of the above said premises."

In the cross examination the witness admits Ex. P.4 to be a genuine document. He was asked a question:

"Q. You have stated earlier that the terms of the lease deed were settled by G.D. Chhabra in the first week of September but in Ex. P.4 you have stated that we are pleased to inform you that we have now arrived at a settlement and this is dated 18.3.1995, which of the two statements is correct?

The answer is that both the statements are correct. The cross examination was further directed to show that the witness is not speaking the truth.

"Q. The documents Ex. P.4 further says "we seek your approval for formalising the settlement on the basis of the agreed points as mentioned above. Whose approval did you ask?

Ans. Mr. Ranjit Puri who was my Joint Managing Director.

Q. Did he give an approval?

Ans. Yes.

Q. When did he give the approval?

Ans. He gave the approval on 18.3.1995.

Q. When you received the approval from the Joint Managing Director Ranjit Puri on 18.3.1995 for formalising the settlement, did he have the authority to give the approval from the Company?

A. Yes.

Q. When he had given you the approval for formalising the settlement on 18.3.1995, what steps did you take to formalize the settlement thereafter?

Ans. A draft lease was made in the month of April and thereafter there were some drafting errors in the draft lease deed. The errors could be sorted out sometime in the first week of September, 1995."

If according to the witness that parties had agreed to the terms prior to March, 1995, the Explanation given for the documents being signed in September, 1995 is absolutely a myth. The witness was asked whether stamp papers were purchased :

"Q. Please see this Ex. P.5 dated 19.5.1995, by which you had asked for sanction of Rs. 1 lakh for purchasing of stamp papers etc. and the sanction is shown to have been given on 23.5.1995. Did you buy any stamp papers?

Ans. No. "

If really what the witness says is true the S.I.S, should have purchased the stamp papers and the conduct of S.I.S. would betray the real position of the S.I.S. It was suggested to the witness :

"Q. I put it to you that this document Ex. P.5 is a fabricated document?

Ans. I deny the suggestion.

Q. I put it to you that both these documents Ex. P.4 and P.6 have been fabricated by you with the object of creating a story before filing of the suit?

Ans. I deny the suggestion."

12. I am of the view that the suggestions are fully justified. As I had mentioned above when documents came into existence during the pendency of the case cogent evidence must have been, adduced by S.I.S. to substantiate, its case. About the resolution Ex. P.I dated 22.9.1995, a suggestion was put to the witness:

"Q, I put it to you that this resolution Ex. P.I dated 22.9.1995, purported to have been passed by the Board of the plaintiff has been manipulated and is based on totally false facts in order to enable the filing of the present suit?

Ans. I deny the suggestion."

From this the inference is irresistible that the steps alleged to have been taken pursuant to the alleged contract between the parties for renewal of lease is unbelievable.

13. If the case of S.I.S. is true there should have been concrete proof to show that the owner had accepted the quantum of rent proposed by the S.I.S. In the chief examination, P.W.I would state the rent per month was approximately Rs. 37,000/-. About the settlement the question was asked :

"Q. What was the rent and what was the period of lease?

Ans. It was approximately Rs. 1,93,000/- per month, and the lease was for nine years and after nine years, renewal should be done on mutual consent."

In the cross-examination he was asked about Ex.P.6, about the resolution which was passed on 22.5.1995, the witness admits it to be correct:

"Q. In Ex. P.6, you have stated that compromise had been arrived at Rs. 19/- per sq. ft. for this premises as monthly rent which would come to Rs. 2 lacs per month and the market rent is approximately Rs. 40/ - per sq. ft. Is it correct?

Ans. Yes, it is correct."

It was suggested to the witness as to how the owner could accept rent at Rs. 19/- per sq. ft. when even according to the S.I.S. the market rent was approximately Rs. 40/- per sq. ft. The witness state:

"Q. The defendant had filed the suit for eviction against the plaintiff in 1989 and was perusing this suit for six years. It had been fixed for evidence in the last week of September, 1995, please give us the reasons why Sujan Singh agreed to accept the rent at less than half the market rent just two or three weeks before the evidence in the suit for eviction was to be recorded and gave the concession of more than Rs. 2 lacs per month to the plaintiff?

Ans. I have already stated that the negotiations were started in the month of March, 1995. A verbal compromise was arrived at in February-March, 1995, not exactly in September. The final draft was signed in the first week of September, 1995. I am the occupant of the building as a tenant if it has been a vacant building, then the matter would be something different. Therefore, it was a compromise which could be arrived at between the landlord and the tenant and the landlord always knows that we have been a good pay master."

The witness obviously is trying to get over the difficulty and he gives an Explanation which cannot at all be accepted when the question is whether there have been a concluded contract. The S.I.S. has not placed on record any material to clinchingly establish that the parties had agreed to a definite sum of the rent payable for the premises.

14. This will take us to the next point with reference to the preparation of draft lease deed and application for withdrawal to be filed in Suit No. 3016/89 and the case of S.I.S. that Mr. N.K. Mehra had signed the draft lease deed on behalf of the owner Company and that is the conclusive proof of the concluded contract between the parties. I have already referred to the fact that according to P.W.I there were talks of compromise in November, 1994. The witness would state:

"Q. When was this document signed?

Ans. It was signed sometimes in the first week of September, 1995."

It was now specifically put to him what exactly were the documents that the witness was referring to. He was further asked in the chief examination:

"Q. See this file and tell us that whether this is the original document?

Ans. Yes.

Q. Who has signed it?

Ans. This has been signed by Mr. V.K. Mehra, myself i.e. V.K. Singhal and my assistant Mr. G.D. Chabra.

Q. Prior to the photostat copy thereof which is Ex. P.2, the same original is marked in Suit No. 3016/89 (PW.1/D). When this agreement was signed?

Ans. An application for the withdrawal of the Suit No. 3016/89 was signed by me and Mr. N.K. Mehra and by Mr. G.D. Chabra. I have filed the originals in the file of Suit No. 3016/89 and the photostat copies thereof is Ex. P.3."

Therefore, the witness would project Ex. P.2 and Ex. PW1/D-1 to be the document to show the contract. In the cross-examination he would state :

"Q. When was the application for the withdrawal of suit was prepared if the draft lease deed was prepared in the first week of September?

Ans. I have no idea.

Q. I put it to you that today you are resiling from the statement which you made on 7.11.1996 when it was subsequently put to you that when was the draft lease deed was prepared and your answer was some where in the month of April, 1995, correct?

Ans. The draft lease deed was prepared somewhere in the month of April."

The witness would further state that the application for withdrawal was prepared in April 1995. The witness would assert:

"Q. Was this application for withdrawal of the suit prepared with the consent of the defendants?

Ans. I repeat that the draft lease deed Along with the application for withdrawal of the suit was prepared in the month of April and there were certain corrections, which were rectified. The final documents were initialled in the first week of September."

The further cross-examination on this point would show that the witness has not been able to give any cogent reply ;

"Q- When was this application for withdrawal of the suit and lease deed was

prepared in the month of April, 1995, whether copies of it were handed over to the defendants in April, 1995?

Ans. Yes, copies of the application and lease deed were delivered in April, 1995, to the defendants.

Q. Now, please see this replication filed by the plaintiff, does it bear your signatures?

Ans. Yes.

Q. Now this copy of the application for withdrawal of the suit which was given by the plaintiff to the defendants, is this the copy, kindly see?

Ans. This is the unsigned copy. Ex. X-I is the unsigned copy of the application for withdrawal of the suit which was handed over by the plaintiff to the defendants, in April, 1995.

Q. Please see this photo copy of this application, whose initials it bears?

Ans. This bears initials of Mr. G.D. Chhabra, my Assistant and Mr. N.M. Mehra who signed as authorised by Shri Sujan Singh Ji.

Q. When was the application initialled by Chhabra and Mr. N.K. Mehra in the first week of Sept., 95, were you present at the time when this application and its copy was initialled ?

Ans. Yes, and also Shri Sujan Singh Ji.

Q. Was this photo copy handed over to Mr. N.K. Mehra by Chhabra and you in the first week of September?

Ans. I left these papers got signed by Chhabra and Mr. N.K. Mehra and with the request that a copy should be handed over to Sujan Singh Ji and I came back to my office and when I returned to my office, then Mr. Chhabra came back and he told me that a copy has been handed over to Shri Sujan Singh Ji. Subsequently, after a little while, Chhabra came to me that I should also sign these documents and I did not see any harm in signing these documents. And I also signed a copy was also handed over to Sujan Singh Ji by Mr. Chhabra.

Q. I put it to you that did you receive the copies of the draft application bearing your signatures and of the draft lease deed signed to the defendant by post or by hand?

Ans. It was got hand delivered by Chhabra.

Q. Did he get any receipt for them for the delivery of this?

Ans. No, it was on mutual trust."

15. An attempt was made, as I had pointed out above, by P.W.I that the draft lease deed would show the consensus-ad-idem on the terms of the lease deed

between the parties. He was asked in chief examination:

"Q. Now, please tell me is there any difference in the contents of Ex. P.2 which is the lease deed you have filed and the document filed by defendant?

Ans. Document of defendant is the preliminary lease deed agreement where some minor corrections were agreed upon, but it was not a fresh lease agreement and it does not bear the signatures either of my Company or of Mr. Sujan Singh's Company officials. The contents are 99% the same, but one percent is different. The only change is at page No. 7 of the Ex. P.2 where paint/distemper is substituted by white wash and it bears the signatures.

Q. As far as document now marked as Ex. P.2 is concerned, it is the same or is there any difference?

Ans. It is exactly the same, but my signatures are not there.

Q. Between the document Ex.P.2 which you have filed and the document Ex. D.2 which the defendant has filed, is there any difference?

Ans. The difference between the two documents is that the document Ex. D.2 does not bear my signatures whereas the document Ex. P.2 filed along with the plaint bears my signatures also. The contents are absolutely same."

The witness asserted that there were no interpolations in the original of Ex. P.2 i.e. draft lease deed. In the cross-examination, about the authorisation, the witness would state:

"Q. Was there any resolution passed by the Board of Directors authorising him to negotiate or sign any lease deed with the defendant?

Ans. Yes.

Q. When was it?

Ans. That Board of Resolution is dated 22.5.1995. Immediately, it was elicited from him that there was no resolution prior to 22.5.1995:

"Q. Prior to 22,5.1995 there was no Resolution of the Board of Directors authorising you to negotiate any settlement or execute any lease deed on behalf of the Company. Is it correct?

Ans. No. "

That the S.I.S. is a company was holding talks with the owner company, S.I.S. in law could deal with the company through a person who is authorised by the owner company. The law would expect the S.I.S. to take the precaution of ascertaining whether the person representing the owner company is really the person authorised by that owner company. P.W.I who is an executive in the S.I.S. is expected to know all these things. But his evidence on this aspect would bring to the surface the subterfuge contrived for the purpose of sustaining the plea by

the S.I.S. Let us now notice his version:

"Q. You have stated in your statement that N.K. Mehra had the authority to sign the lease deed on behalf of the defendant company Can you tell this Hon"ble Court what was the authority from which he derived this authority to sign the lease deed on behalf of the defendant?

Ans. Mr. Sujan Singh told me that he was authorised."

The answer would clearly show the vulnerable position in which the witness had placed himself. Specific questions were put about the corrections in the documents:

"Q. Please see Ex. PW1/d-2 in Suit No. 3016/89. On the top the word "April" has been crossed out and substituted by January, 1995. Is it correct?

Ans. It is correct.

Q. Can you give any reason why the word "April" was crossed out and the word January was written?

Ans. As I said that this draft lease deed was made in the month of April by a typographical mistake the word "April" came whereas the settlement was to pay the enhanced rent from January, 1995 onwards so this draft lease deed while going through and making the correction this error was found and this error was corrected.

Q. Please tell the Hon"ble Court who has written the word "copy given to landlord" and whose initials are underneath?

Ans. The word "copy given to landlord" is written and initialled by G.D. Chhabra, my assistant.

Q. Please tell the Hon"ble Court whose initials are on Ex.PW1/d-2 on the left side bottom?

Ans. These are my initials. On the right hand corner it is initialled by G.D. Chhabra and in the middle it is initialled by N.K. Mehra, who was representing any duly authorised by Sujan Singh.

Q. Please see Ex. P.2 in Suit No. 2230/95 and state whose initials are there at the bottom of page 1 on the photo copy of the draft lease deed?

Ans. On the first page are my photo signatures, photo initials of G.D. Chhabra, photo signatures of N.K. Mehra and also my original signatures.

Q. Please see Ex. D.1 in Suit No. 2230/95 and state whose initials are there on the top of the first page.

Ans. These are initials of Mr. G.D. Chhabra.

Q. You have stated that the terms of the lease deed were settled in the first week

of September by Mr. Chhabra, did he have the authority to settle the terms?

Ans. I have already stated that when the draft lease deed was signed in the first week of September, 1995 I was present along with G.D. Chhabra, Sujan Singh and N.K. Mehra. I requested Sujan Singh to sign the draft lease deed. He advised that N.K. Mehra was authorised to sign on his behalf. I authorised G.D. Chhabra to sign on behalf of my Company.

Q. Was there any reason for you not to sign the draft lease deed in the presence of N.K. Mehra when N.K. Mehra signed it and you asked G.D. Chhabra to sign it?

Ans. It was all in good faith and trust."

These aspects of corrections are not very much relevant because when the S.I.S. has not proved that there had been any concluded contract the alleged corrections would be of no significance. But this would show the anxiety on the part of the S.I.S. to clutch at something to save its case. The witness was further asked :

"Q. When was this application initialled by Chhabra and Mr. N.K. Mehra in the first week of Sept., 95, were you present at the time when this application and its copy was initialled ?

Ans. Yes, and also Shri Sujan Singh Ji.

Q. Was this photo copy handed over to Mr. N.K. Mehra by Chhabra and you in the first week of September?

Ans. I left these papers got signed by Chhabra and Mr. N.K. Mehra and with the request that a copy should be handed over to Sujan Singh Ji and I came back to my office and when I returned to my office, then Mr. Chhabra came back and he told me that a copy has been handed over to Shri Sujan Singh Ji. Subsequently, after a little while, Chhabra came to me that I should also sign these documents and I did not see any harm in signing these documents. And I also signed a copy was also handed over to Sujan Singh Ji by Mr. Chhabra.

Q. I put it to you that did you receive the copies of the draft application baring your signatures and of the draft lease deed signed to the defendant by post or by hand?

Ans. It was got hand delivered by Chhabra.

Q. Did he get any receipt for them for the delivery of this?

Ans. No, it was on mutual trust.

Q. You have stated that the draft lease deed and the application for withdrawal of the suit were initialled by Chhabra and Mr. N.K, Mehra when you and Sujan Singh Ji were present. Can you give any reason why this application for withdrawal of the suit and the draft lease deed were signed by these two individuals who had no authority but they were not appointed by you or by Sujan Singh, who has got

the authority to enter into such transaction?

Ans. This document was signed on instructions of Sujan Singh Ji. I requested Sujan Singh to also sign the papers. He said No, on my behalf N.K. Mehra will sign and I said that on my behalf Mr. G.D. Chhabra will do it. I told him the said thing."

What the witness had further stated is noteworthy. He would state:

"Q. Did Chhabra had any authority to enter into any such agreement on behalf of the plaintiff Company?

Ans. I authorise him.

Q. Did you have any authority to authorise him?

Ans. No. "

Therefore, the whole case of S.I.S. falls to the ground. The witness was asked about his own statement that the draft lease deed was prepared in the month of April, 1995 but the witness has not been able to give straightforward answer:

"Q. You have stated that the draft lease deed was prepared in the month of April, 1995, where was it prepared?

Ans. In the months of April-September, 1995, I met Sujan Singh Ji as well as Mr. N.K. Mehra in Mahendra Charitable Hospital and many minor points pertaining to the draft of the lease deed were discussed and sorted out."

Again he was asked about the changes made after April, 1995. The witness would state:

"Q. Please tell me you have stated that the minor points were discussed and settled. Please look at Ex. PW-1/D.2, which are the changes which were made after April, 1995?

Ans. There is one copy which is unsigned and there is one another copy which is signed. The difference between the two can easily be made out. All the documents are on record."

What is damaging to the S.I.S. is the admission of P.W.I that what is stated in the plaint with reference to a very crucial part of the case is wrong:

"Q. When was the draft lease deed prepared?

Ans. Sometime in the month of April, 1995.

Q. When this suit was filed by your Company, did you have the authority to sign the plaint?

Ans. I had the authority from my Board of Directors.

Q. Did you give the instructions to the Counsel for the drafting of the plaint?

Ans. Yes. I did.

Q. Please read paragraph 8 of the plaint, this says that the lease deed was made out and signed in September, 1995. Is this correctly written on your instructions?

Ans. No. The made out part is wrong."

Paragraph 8 of the plaint reads as under :

"That these documents were made out and duly signed in the first week of September, 1995.

That as the defendant's suit was pending and the negotiations in relation to the creation of fresh lease as also settlement of the Suit No. 3016 of 1989 were in progress, the plaintiff Company passed a Resolution dated 22nd May, 1995 authorising Shri V.K. Singal to arrive at a settlement/compromise with the landlord as also to enter into a fresh lease deed with the landlord in respect of the premises No. 6, Community Centre, New Friends Colony, New Delhi. Before the resolution dated 22nd May, 1995, on 3rd May, 1995, Mr. V.K. Singal Chief Manager made a request to the General Secretary of the plaintiff Company for the Board Resolution to be passed so that he could be authorised to enter into a fresh lease with the landlord as also settle old Suit No. 3016 of 1989 which was pending in the High Court."

This paragraph now cannot be taken to be correct.

16. Further in the cross-examination the witness admitted that what is stated In paragraph 7 to be wrong :

"Q. When was the application for the withdrawal of suit was prepared if the draft lease deed was prepared in the first week of September?

Ans. I have no idea."

Para 7 of the plaint reads as under :

"That a draft application under Order 23, Rule 1 of the CPC for the withdrawal of the Suit No. 3016 of 1989 was also prepared which was also initialled by Shri N.K. Mehra acting for and on behalf of the defendant and Shri V.K. Singal, Chief Manager of the plaintiff and Shri G.D. Chhabra, Asstt. Manager of the plaintiff Company on behalf of the plaintiff Company."

This paragraph also has to be ignored.

17. The sine qua non for claiming the relief of specific performance is a concluded contract between the parties, and it is only when that is established the party can come to the Court if the other party had failed to perform its part of the contract. When the agreement itself is not established no question of granting specific relief would arise. It is not necessary to advert to the principles in detail. I have no hesitation in coming to the conclusion that S.I.S. has not made out any case of concluded contract for claiming the relief of specific

performance for renewal of the lease.

18. This would take me to the point relating to the damages for use and occupation, claimed by the owner in Suit No. 3016/89. The fact that the area in occupation of S.I.S. is 10400 sq. ft. is not disputed before me. The owner had claimed damages for use and occupation @ Rs. 1,80,000/- per month (Rs. 6,000/- per day). The owner had referred to the rent paid by Oil India Ltd. and a few documents showing the payment of rent by Oil India Ltd. have been filed by the owner. Oil India Ltd. is one of the tenants in the adjacent premises, held by the owner. But those documents cannot be taken to be conclusive proof of market rent in the locality. In the note Ex. P.4 it is admitted by the S.I.S. that it was prepared to pay rent @ Rs. 19/- per sq. ft. and the market rent at that time i.e. 1995 was Rs. 40/- per sq. ft. Therefore, from 1.1.1995 the damages for use and occupation would be fixed at Rs. 1,97,600/- per month. The Court can always fix the damages for use and occupation more than what is claimed by the owner on the basis of the admission by the person in possession of the property. Now the question is what is the quantum towards damages for use and occupation to be fixed between the date of the plaint till 31.12.1994. On the date of suit, the rent was Rs. 37,000/- per month. There had been continuous increase in the market rent and towards the beginning of 1995 even according to S.I.S. it was Rs. 40/- per sq. ft.

19. Having regard to the leap in the market rent one can safely arrive at the figure in the year 1989 at Rs. 75,000/- per month, in the year 1990 at Rs. 90,000/- per month, in the year 1991 at Rs. 1,10,000/- per month, in the year 1992 at Rs. 1,30,000/- per month, in the year 1993 at Rs. 1,50,000/- per month and in the year 1994 at Rs. 1,70,000/- per month.

20. In a matter like this, certain amount of guess work is inevitable. However, I have fixed the quantum on the basis of the admission by the S.I.S.

21. The plaintiff had claimed damages for use and occupation Rs. 15,000/- for the period from 1.8.1989 to 12.8.1989 and "from 13.8.1989 to October, 1989 Rs. 4,62,000/- at Rs. 6,000/- per day. I have fixed at Rs. 75,000/- per month for damages for use and occupation for the year 1989. Therefore, from 13.8.1989 to October, 1989 @ Rs. 75,000/- per month, the plaintiff is entitled to Rs. 1,97,500/- for this period.

22. The owner has claimed possession of the property. It is not disputed that if the S.I.S. is not entitled to the relief of specific performance the owner is entitled to the possession of the property.

23. Now I shall deal with the issues in Suit No. 2230/95.

24. On issue No. I, I find that the S.I.S. has not proved any concluded contract for creating a fresh lease for 9 years w.e.f. 1.1.1995. This issue is answered in favor of the owner and against the S.I.S.

25. On issue No. 2, the question of readiness and willingness of S.I.S. would not

arise on my finding on issue No. 1.

26. On issue No. 3, I find that the S.I.S. has not proved that Mr. N.K. Mehra had any authority to enter into negotiations with the S.I.S. and bind the owner. This issue is answer against the S.I.S.

27. On issue No. 4, I find that S.I.S. is not entitled to decree for specific performance against the owner.

28. On issue No. 5, the documents filed by S.I.S. cannot be said to be forged, as contended by the owner, but they are all self serving documents and those documents do not at all prove the case of the S.I.S.

29. I shall now proceed to give findings on issues in Suit No. 3016/89.

30. On issue No. 1, I find that this Court has got jurisdiction and that point was raised in the written statement referring to Section 50 of Delhi Rent Control Act, 1958. No argument was advanced on this point. Therefore, I find that this Court has got jurisdiction to deal with the subject matter.

31. On issue No. 2, I find that there has been no waiver of notice of termination. The issue is answered against the S.I.S. and in favor of the owner.

32. On issue No. 3, I find that the plaint has been signed, verified and the suit has been instituted by a duly authorised person on behalf of the plaintiff Company.

33. On issue No. 4, I find that the notice of termination is valid.

34. On issue No. 5, I find that the defendant S.I.S. is liable to pay damages for use and occupation. The plaintiff is entitled to damages for use and occupation and the details are given as under:

For the year 1989 at Rs. 75,000/- per month,

For the year 1990 at Rs. 90,000/- per month,

For the year 1991 at Rs. 1,10,000/- per month,

For the year 1992 at Rs. 1,30,000/- per month.

For the year 1993 at Rs. 1,50,000/- per month;

For the year 1994 at Rs. 1,70,000/- per month.

35. Accordingly, there shall be a decree in Suit No. 2230/95 :

(i) dismissing the claim of the plaintiff S.I.S.

(ii) directing the plaintiff to pay the costs of the suit to the defendant, owner.

There shall be a decree in Suit No. 3016/89 :

(a) directing the defendants S.I.S. to put the plaintiff in possession of the

property No. 6, Shopping Commercial Complex, New Friends Colony, New Delhi;

(b) directing the defendant S.I.S. to pay the plaintiff the sum of Rs. 30,000/- for the period from 1.8.1989 to 12.8.1989 @ Rs. 75,000/- per month;

Rs. 1,97,500/- for the period from 13.8.1989 to 31.10.1989 @ Rs. 75,000/- per month.

Rs. 1,50,000/- for the period from 1.11.1989 to 31.12.1989 @ Rs. 75,000/- per month.

Rs. 10,80,000/- for the period from 1.1.1990 to 31.12.1990 @ Rs. 90,000/- per month.

Rs. 13,20,000/- for the period from 1.1.1991 to 31.12.1991 @ Rs. 1,10,000/- per month.

Rs. 15,60,000/- for the period from 1.1.1992 to 31.12.1992 @ Rs. 1,30,000/- per month.

Rs. 18,00,000/- for the period from 1.1.1993 to 31.12.1993 @ Rs. 1,50,000/- per month.

Rs. 20,40,000/- for the period from 1.1.1994 to 31.12.1994 @ Rs. 1,70,000/- per month.

Rs. 98,80,000/- for the period from 1.1, 1995 to 28.2.1999 @ Rs. 1,97,600/-.
Directing the defendant to pay @

Rs. 1,97,600/- per month from 1.3.1999 till the date of the delivery of possession.

(c) Directing the defendant to pay the plaintiff the costs of the suit;

(d) Directing the plaintiff to pay the Court fees on the amount of Rs. 1,78,30,000/- decreed for damages for use and occupation for the period from 1.11.1989 to 28.2.1999.