(2012) 11 DEL CK 0182

In the Delhi High Court

Case No : CS (OS) 1597 of 2011

Nisha Gupta and Others APPELLANT

Vs

GKB Optolab Pvt. Ltd. RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2012) 10 AD 205

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : B.B. Gupta, for the Appellant; Gautam Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—This is a suit for ejectment and recovery of money. The plaintiffs are the owners of a shop admeasuring 550 square feet on the ground floor of property no. G-27, NDMC Part-I, New Delhi. Initially, the property was owned by plaintiff nos. 1, 3 and two HUFs namely S.N. Gupta and Sons (HUF) and Manoj Gupta and Sons (HUF). It was let out by plaintiff nos. 1, 3 and the two aforesaid HUFs to the defendant vide lease deed dated 28th April, 2005. During subsistence of the lease, the two HUFs i.e. S.N. Gupta and Sons (HUF) and Manoj Gupta and Sons (HUF) sold their respective shares in the property to plaintiff nos. 2 and 3 vide sale deed dated 30th May, 2007.

The premises in question was initially let out for a period of three years commencing 1st May, 2005. Since the lease was extendable for two terms of three years each with an escalation of 15% of the last paid rent after expiry of every three years, the tenancy was extended for three years with effect from 1st May, 2008. However, the fresh sale deed was not executed by the parties on expiry of three years commencing 1st May, 2008. The case of the plaintiff is that since the lease deed was registered for a period of five years commencing 1st May, 2005 and expired by efflux of time on 30th April, 2010. This is also the case of the plaintiff that besides rent, the defendant was also liable to pay electricity and water charges as well as service tax.

Vide legal notice dated 11th April, 2011, the plaintiffs required the defendant to hand over physical possession of the tenanted premises on or before 30th April, 2011. Since the premises was not vacated on 30th April, 2011, the plaintiffs filed the suit seeking possession of the tenanted premises. The plaintiffs have claimed Rs. 10,86,750/- towards rent for the period from 1st February, 2011 to 30th April, 2011; and Rs. 6 lakhs towards damages for use and occupation at the rate of Rs. 1 lakh per month with effect from 1st May, 2011 till filing of the suit. A sum of Rs. 40,760/- has also been claimed towards interest on arrears of rent. The plaintiffs have also sought a mandatory injunction directing the defendant to pay all dues including service tax and interest on them.

2. The possession of the suit premises was delivered by the defendant to the plaintiffs during the pendency of the suit. When this matter came up for hearing on 30th March, 2012, it was agreed between the parties that a sum of Rs. 41,26,500/- shall be paid by the defendant to the plaintiffs towards arrears of rent and damages for use and occupation. A sum of Rs. 10,26,500/- was agreed to be paid on or before 10th April, 2012 and the balance amount was to be paid in six monthly installments of Rs. 5,16,660/- with effect from 10th May, 2012. It was also agreed that the defendant will clear all electricity charges till that date.

3. The learned counsel for the plaintiffs states that payments in terms of agreement between the parties are being made by the defendant to the plaintiffs. Therefore, as far as relief of possession is concerned, the suit has become infructuous and as far as recovery of arrears of rent and damages for use and occupation charges are concerned, the same are being paid in installments in terms of settlement between the parties.

The only issue which remains is payment of service tax on the rent.

4. The learned counsel for the plaintiffs on instructions states that the plaintiff would claim amount of service tax after they have deposited the same with service tax department.

5. In these circumstances, a decree for recovery of Rs. 41,26,500/- is hereby passed in favour of the plaintiffs and against the defendant.

The decretal amount shall be paid in terms of the settlement recorded on 30th March, 2012 after adjusting the amount which has already been paid.

The plaintiffs are also entitled to proportionate costs which would be calculated on the valuation of Rs. 43,47,000/- in respect of the relief of possession and on the amount of Rs. 41,26,500/- which the defendant has agreed to pay towards arrears of rent and damages for use and occupation.

The deficient court fee to be worked out in terms of this order would be filed by the plaintiff within four weeks from today.

6. The learned counsel for the plaintiffs has pointed out that the defendant has

been deducting income tax at source while making payment to the plaintiffs without making the TDS certificate available to them. The learned counsel for the defendant undertakes that henceforth TDS certificate would be provided along with payments and the TDS certificate for the past payment would be issued within four weeks from today. Since the matter is being disposed of pursuant to settlement between the parties and issues are yet to be framed, the plaintiffs are entitled to refund of half of court fee paid on the plaint in terms of Section 16A of the Court Fee Act. The registry is directed to issue requisite certificate to the plaintiffs in this regard.

The suit stands disposed of in the above terms. Decree sheet be drawn accordingly.