

(2013) 12 DEL CK 0212
In the Delhi High Court
Case No : CS (OS) 84 of 2009

Sparsh Builders Pvt. Ltd.

APPELLANT

Vs

Maharishi Ayurveda Products Pvt. Ltd.

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 4 AD 25 : (2014) 206 DLT 63 : (2014) 140 DRJ 705

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Sanjay Jain, Mr. Sunil Agarwal, Ms. Ruchi Jain and Mr. Noor Anand, for the Appellant; V.P. Singh Mr. M.L. Bhargava, Ms. Latika Kohli and Mr. Abhishek Swarup, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Nath, J.—The present suit is filed seeking a decree of possession, recovery of damages and permanent injunction pertaining to property No. A-14, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi admeasuring 4617.67 sq. yards. It is the contention of the plaintiff in the plaint that the said suit property was purchased from the defendant on payment of full sale consideration of Rs. 4 crores accompanied by transfer of symbolic possession and execution of alleged transfer documents including registered agreement to sell (affixing stamp duty of Rs. 30 lacs), registered power of attorney, registered Will, registered indemnity bond, etc. on 30th December, 2004. It is further averred that at the time of sale, the defendant requested to the plaintiff that it would be willing to take the suit property on rent for a period of three years. The request of the defendant was acceded to and vide a separate lease agreement dated 30th December, 2004 w.e.f. 01.01.2005 was entered into between the plaintiff and the defendant. The monthly rent of Rs. 14,25,000/- was agreed upon. The defendant also deposited with the plaintiff a sum of Rs. 42,75,000/- as an interest free security deposit refundable within 30 days of the vacation of the suit property. A separate MOU was also entered into on the same date i.e.

30.12.2004 giving to the defendant an option to buy back the suit property on a consideration to be mutually agreed upon between the parties. It is further averred that on expiry of the lease period of 3 years, the defendant further requested the plaintiff to extend the lease for a period of 11 months to help it to locate/identify/finalize suitable/alternative premises. Hence, a fresh lease agreement dated 01.01.2008 on an enhanced lease rent of Rs. 18,50,000/- besides service tax on rent or any other tax that may be applicable was executed. An MOU was also executed on the same date further giving an option to the defendant to buy back the property on a consideration to be mutually agreed upon between the parties. The defendant was also liable to pay electricity and water charges, municipal tax, levies and charges, ground rent etc. It was specifically agreed that the lease is not extendable beyond the period of 11 months. It is stated that all along this period of lease, namely, 01.01.2005 till 30.11.2008, the defendant acknowledged the plaintiff as the owner of the suit property.

2. It is further averred that the lease period of 11 months expired by efflux of time on 30.11.2008. However, the plaintiff on 22.09.2008 in reply to the defendant's letter dated 25.08.2008 reminded the defendant to vacate and hand over physical possession of the suit property by 30.11.2008. Similar letters were written by the plaintiff on 18.10.2008, 18.11.2008 and 27.11.2008. The plaintiff received on 28.11.2008 a letter dated 25.11.2008 from the defendant expressing its desire to purchase the property. It is averred that despite the visit of the authorized representative of the plaintiff for taking the vacant physical possession of the suit property, the defendant failed to do the needful. It is averred that no doubt MOU dated 01.01.2008 gives an option to the defendant to purchase the property but this is on a consideration to be mutually agreed upon by the owners and the occupants. It is averred that as there had been no consensus on the consideration, the defendant did not, at any point of time acquire any right to purchase the suit property. As the defendant failed to vacate the suit property, the plaintiff sent a legal notice dated 12.12.2008 requiring the defendant to vacate the suit property on expiry of 15 days of the receipt of the notice or latest by 31.12.2008. In this notice it was also made clear that in terms of the lease agreement, the defendant is also liable to pay damages @ Rs. 50,000/- per day in addition to the rent of Rs. 18,50,000/- per month being the agreed rent and other agreed charges for the period of stay beyond the expiry of the lease agreement.

3. On 23.12.2008, a reply was received to the legal notice from the defendant claiming that the defendant is in possession of the suit property as an absolute owner and that the defendant never intended to sell the suit property. It is averred in this reply that on account of a loan of Rs. 4 crores received from the plaintiff and on the insistence of the plaintiff, the said documents, namely, agreement to sell, power of attorney, Will, etc. were executed. It is further stated that the said loan was to carry an interest @ 3.5 % per month and that is why, the rent had been fixed at Rs. 14,25,000/- as per the lease agreement dated

30.12.2004. It is also averred in the reply that the payment of Rs. 14,25,000/- per month was not rental but in fact interest that was being paid for the loan given by the plaintiff.

4. Hence, the plaintiff has filed the present suit seeking a decree of possession in favour of the plaintiff pertaining to the suit property, recovery of Rs. 42,78,450/- being the arrears of damages for the use and occupation for the period from 01.12.2008 till the date of filing of the suit and rent at the rate of Rs. 18,50,000/- per month plus Rs. 50,000/- per day as damages in terms of Clause 16 of the lease agreement dated 01.01.2008 for the period thereafter. A decree of permanent injunction is also sought restraining the defendant from selling, alienating and transferring the said suit property.

5. The defendant has filed the written statement. As per the written statement filed, it is averred that the agreement to sell dated 30.12.2004 and other documents were sham transactions to camouflage the loan given by the plaintiff to the defendant at a very high rate of interest. It is the case of the defendant that the said plot was originally allotted to Sh. S. Agarwal in terms of the perpetual sub-lease deed dated 12.10.1973. The said Sh. S. Agarwal died leaving behind his legal heirs. The said legal heirs agreed to sell the leasehold rights in the land to the plaintiff vide agreement to sell dated 19.10.1990 and possession of the suit property was handed over to the plaintiff. The legal heirs of the original allottee executed (a) general power of attorney (b) indemnity bond (c) Will and (d) agreement to sell with intention to transfer the leasehold rights after getting the land converted into freehold in favour of the defendant. It is further averred that the defendant got constructed over the plot the basement, ground, mezzanine and first floor. It is stated that in 2004 the defendant was in desperate need of some finances and the plaintiff offered Rs. 4 crores as a loan against the security of the suit property worth more than 3 times (approximately Rs. 12 crores) of the loan amount at a very high interest rate i.e. 3.5 % per month and as a security asked for execution of certain documents. It was agreed that certain documents would be executed and after repayment of the loan amount, the property would revert back to the defendant. It is stated that as result of this understanding, the parties agreed to execute the following documents in favour of plaintiff on 30.12.2004 i.e. (a) agreement to sell (b) memorandum of understanding (c) lease deed (d) power of attorney and (e) indemnity bond. It is stated that as per the MOU, the rights in the property were to revert back to the defendant and the effect of all documents was to be nullified. It is further stated that the defendant was never interested in parting with ownership or possession and hence, lease deed dated 30.12.2004 was also executed for a period of three years. The rent was fixed at Rs. 14,25,000/- per month which was in fact not rent but interest on the loan amount. The amount spent for getting the Agreement to Sell executed of about Rs. 30 lacs was also agreed to be reimbursed by the defendant. It is stated that after the expiry of 3 years, the defendant was in some difficulty in arranging to repay the entire sum and on discussion with the plaintiff, the lease agreement was extended for a

further period of 11 months on the same terms. To cover the interest on the expenses incurred by the plaintiff in relation to the transaction and capitalizing the same, the alleged rent was increased from Rs. 14,25,000/- to Rs. 18,50,000/-. Hence, it is stated that the defendant is in lawful possession of the suit property and that is the reason, the defendant has not given possession of the property to the plaintiff. It is further averred that the agreement to sell does not create any right in favour of the plaintiff in the property and hence, on the basis of the documents executed, the plaintiff has not acquired any proprietary rights in the suit property. It is further stated that the agreement to sell was in contravention of the perpetual sub-lease which was executed on 12.10.1973 by the President of India and hence of no effect.

6. In this matter, at the time of framing of issues arguments were heard on the submission of the learned senior counsel for the plaintiff that on the basis of facts as stated in the pleadings which are not at dispute, the plaintiff is entitled to a decree on admissions. The statement of the Managing Director of the defendant, namely, Mr. Anand Prakash Srivastava was recorded u/s 165 of the Evidence Act read with Order 10 of CPC on 21.07.2009. Subsequent to the said statement, arguments were heard on the framing of issues and accepting the said submission of the senior learned counsel for the plaintiff, this Court passed a decree in favour of the plaintiff on 16.09.2009. On 30.11.2009 in RFA (OS) 78/2009, learned senior counsel appearing for the respondent (plaintiff herein) stated that in order to expedite the final hearing in the suit and not to run the risk of the suit being remanded after a considerable period of time, the impugned order may be set aside. Accordingly, the impugned order was set aside. Learned senior counsel for the appellant (defendant herein) had stated in the appeal that they would continue to pay Rs. 18,50,000/- per month to the plaintiff.

7. Thereafter on 07.12.2009, after remand of the matter, the following issues were framed:-

- (i) Whether the plaintiff is a private limited company? OPP
- (ii) Whether Mr. Shishir Agarwal is authorized to institute, sign and verify the pleadings on behalf of the plaintiff? OPP
- (iii) What is the legal status of the plaintiff qua the suit property in view of the execution of the agreement to sell dated 30.12.2004, lease deed dated 30.12.2004 and MOU dated 30.12.2004 and 01.01.2008 and other documents mentioned in para 3 of the plaint? OPD
- (iv) Whether the agreement to sell dated 30.12.2004 has been executed between the plaintiff and the defendant in contravention of Clause 6(a) and 6(b) of the perpetual sub lease dated 12.12.73? If so, to what effect? OPD
- (v) Whether the agreement to sell dated 30.12.2004 is a sham document executed between the plaintiff and the defendant only to secure the re-payment of loan advanced by the plaintiff? OPD

(vi) Whether the defendant had exercised the option to buy back the suit property in terms of MOU dated 30.12.2004 and 01.01.2008? OPD

(vii) Whether the plaintiff is entitled to possession of the suit property and to what extent? OPP

(viii) Whether the plaintiff is entitled to damages? If so, to what extent? OPP

(ix) Reliefs.

8. A Court Commissioner was appointed to record evidence of the parties. The plaintiff has led evidence of one witness, namely, PW1-Mr. Shishir Agarwal whereas the defendant also led evidence of one witness, namely, DW1-Mr. Anand Prakash Srivastava.

9. I have heard learned counsel for the parties.

10. Learned senior counsel for the plaintiff has submitted relying on the various documents placed on record that the present suit does not seek any declaration of title. Admittedly, there exists a relationship of landlord and tenant between the plaintiff and defendant. Hence, the present suit is filed for possession and ejectment of the defendant. He does not seek decree of Declaration of title on the basis of the document executed by the parties on 30.12.2004. He relies upon the minutes of the meeting of the Board of Directors of the defendant held on 25.06.2003 (Ex. P-1) which authorizes Mr. Anand Prakash Shrivastava to explore possibilities of selling of the suit property and to also hand over possession of the property to the purchaser and to do all other things as may be necessary and incidental for the purpose. He also relies upon registered agreement to sell dated 30.12.2004 (Ex. P-2), which is on a stamp paper of Rs. 30 lacs. Apart from these documents, he also relies on other documents, namely, registered general power of attorney (Ex. P-3), receipt (Ex. P-4), Will of Mr. Anand Prakash Srivastava (Ex. P-5), affidavits, (Ex. P-6 & 7), registered indemnity bond (Ex. P-8), lease agreement (Ex. P-9) and MOU (Ex. P-10). He has also relied upon possession letter (Ex. PX) issued by the defendant whereby the physical possession of the suit property was stated to have been handed over to the plaintiff. He submits that the defendant has mischievously denied the said letter. He submits that the denial is entirely contradictory inasmuch as in affidavit (Ex. P-6), it is clearly stated that the defendant has delivered actual vacant physical possession of the suit property to the purchaser i.e. the plaintiff. He further submits that in cross-examination Mr. Shishir Agarwal/PW1 on 25.02.2010, was asked that the word "handed over vacant physical possession" as stated in the possession letter (Ex. PX) is not correct. The said witness replied that the said words were added in Ex. PX in order to complete the sale transaction. It is further submitted that the original power of attorney executed by the legal heirs of the original allottee in favour of Mr. Shishir Agarwal which is a registered document has been physically handed over to the plaintiff and is also placed on record. He has further submitted that the defendant has regularly been paying monthly rent and has been deducting TDS and depositing TDS on account of rent payments. Similarly,

the defendant has also paid service tax based on the said rental being paid. Reliance is placed on the TDS certificates placed on record (Ex. P-19, P-20, P-21 & P-22) to show that the nature of payments being made by the defendant to the plaintiff is rental. Reliance is placed on letter dated 23.05.2006 (Ex. P-17) where the plaintiff was informed by the defendant that Maharishi Ayurveda Corporation Pvt. Ltd. has been amalgamated with Maharishi Ayurveda Products Ltd. The said communication requested the plaintiff to change in the records of the plaintiff with respect to the "rent agreement executed for the property mentioned above, that the rent for the said property would now be paid by Maharishi Ayurveda Products Ltd. w.e.f. 01.06.2006". On the basis of the above documents, communications etc, it was strenuously urged by learned senior counsel for the plaintiff that the title to the suit property had passed on to the plaintiff and the plaintiff was the absolute owner thereof. The plaintiff and defendant had a relationship of landlord and tenant. It is also averred that the attempt of the defendant to argue that the present transaction as contained in the documents, namely, agreement to sell, General Power of Attorney etc, is not the actual transaction and that the actual transaction is a loan is an averment which cannot be made on the face of Section 91 and 92 of the Indian Evidence Act. The learned senior counsel has also refuted the contention of the defendant as contained in the written statement that there was any concluded buy back agreement between the parties. He submits that a perusal of MOU would clearly show that the option of buy back was at a price to be mutually agreed between the parties. In the absence of any consensus on the price, there was no concluded buy back agreement between the parties. Hence, it is stated that the plaintiff was the absolute owner of the suit property. The plaintiff is hence entitled to a decree as prayed for inasmuch as the lease has come to an end.

11. On the other hand learned senior counsel appearing for the defendant has strenuously urged that the relationship between the parties was that of a lender since 2003. He submits that a sum of Rs. 2 crores was advanced by the plaintiff in the year 2003 and of this amount Rs. 1 crore was returned. Reliance is placed on the receipt (Ex. P-4) to show that the payments have been made to the plaintiff in August, 2003 of Rs. 1 crore. It is submitted that at that stage no documents showing sale of property were executed implying that the payment received was a loan. He further submits that the entire transaction was a sham and camouflage which the plaintiff had insisted upon before advancing a loan of Rs. 4 crores. It is averred that the agreed rate of interest was 3.5 % per month and that is why the lease agreement provided for a rent of Rs. 14,25,000/-per month. He submits that in cross-examination, PW1 himself agreed that the market value of the property was Rs. 134 crores for the land inasmuch as the area is 4617 sq. yards. He submits that nobody would sell such a valuable estate for Rs. 4 crores. It is also urged that the defendant had purchased the suit property namely the land in the year 1990 from Mrs. Shanti Devi and family for a sum of Rs. 1.15 crores. Later on it is stated that the defendant constructed a building by spending Rs. 2.31 crores in the year 1993. Hence in the affidavit of

DW1 it is urged that the cost of the land and building itself comes to Rs. 3.5 crores during the period 1990-1993 period. Hence the property cannot be valued at Rs. 4 crores after a span of 13 years when in 2004, the alleged sale took place in favour of the plaintiff. He further submits that despite specific averment made, the plaintiff took no steps to get registered the sale deed or to get mutation done in the name of the plaintiff or to change the electricity connection in the name of the plaintiff. It is further averred that the property tax was being paid by the defendant and the possession of the suit property continued to remain with the defendant. It is strongly urged that in a normal sale transaction a bona fide purchaser would take physical possession of the property and endeavour to speedily apply for change of the records to show the change in title. This was not done by the plaintiff in this case on account of the fact that the transaction was a camouflage. It is further urged that the cross-examination of DW1 Mr. Shishir Aggarwal would further show that the transaction in question was not a sale in effect. It is stated that the said PW1 has clearly said in his cross-examination on 25.02.2010 that before purchase of the suit property, he did not inspect the same minutely, but only very broadly. It is strongly urged that a person purchasing such a valuable estate would normally physically examine the suit property in minute details and then only make a deal. Hence, it is stated that this conduct of the Plaintiff clearly demonstrates the documents relied upon by the plaintiff are sham. He heavily relied on the MOU dated 30.12.2004 and 01.01.2008 which specifically provide that the defendant has a right of buying back the suit property. It is averred that this right was exercised by the defendant when it wrote letter dated 25.08.2008 (Ex. P-13). It is further averred that even otherwise there is no title with the plaintiff as no title can be passed on the basis of an agreement to sell. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another,

12. Learned senior counsel for the defendant has also relied upon the following judgments to submit that the defendant is entitled to lead evidence to show that the transaction in question is a sham document and not intended to be a sale of the property. Based on these judgments, it is stated that the plaintiff has no right, title or interest. The present suit is hence liable to be dismissed. Reliance is placed on the following judgments:-

- (i) AIR 1936 70 (Privy Council)
- (ii) Gurdial Singh and Others Vs. Raj Kumar Aneja and Others,
- (iii) Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi,
- (iv) Bhaskaran Nair Vs. Habeeb Mohammed,
- (v) Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs.,

13. In rebuttal learned senior counsel for the plaintiff has relied upon a list of secured creditors of the defendant as on 30.07.2005 (Ex. DW1/F) which is stated

to have been filed in course of cross-examination of DW1. It is submitted by the learned senior counsel that this list would show that the plaintiff is not shown as a secured creditor by the defendant. This document was re-numbered as Ex. DW1/F1 as per the order of the Court Commissioner dated 01.03.2011. Similarly, reliance is also placed on an auditor's report of Arun Deepak and Co., the Chartered Accountant of the defendant Company which pertains to audit of the balance sheet as on 31st March, 2007. This report has a list of secured creditors in Schedule III where the plaintiff is not shown as one of the secured creditors. On the basis of this, it is strenuously urged that the argument of the defendant that the transaction being a sham transaction and in fact a loan is baseless and negated by the documents of the defendant itself. Reliance is also placed on the Memorandum and Articles of Association of Maharishi Ayurveda Products Ltd., namely, the defendant Company Ex. DW1/B. The amalgamation of Maharishi Ayurveda Corporation Private Limited and Maharishi Ayurveda Products Ltd. is stated to have taken place on 31.01.2006. The said Memorandum and Articles of Association further reproduces as Schedule II-Schedule of Properties of the transferring Company, namely, Maharishi Ayurveda Corporation Private Limited which is the original signatory to the agreement to sell and other documents dated 30.12.2004. The said Schedule of Properties of the Maharishi Ayurveda Corporation Private Limited shows that the present suit property is not stated as part of the assets of the said Company which had signed the agreement to sell. Hence, it is averred that even as per the defendant, the suit property was not part of the assets owned by the defendant Company. It is strenuously urged that the defence of the defendant is completely a sham and without any merit and the suit is liable to be decreed as prayed for.

14. I will first take up issue No. 5 for decision which reads as follows:-

(v) Whether the agreement to sell dated 30.12.2004 is a sham document executed between the plaintiff and the defendant only to secure the re-payment of loan advanced by the plaintiff? OPD

15. It has been strenuously argued by learned senior counsel for the plaintiff that in view of the clear unequivocal contents of the documents executed by the parties on 30.12.2004 most of which are also registered documents, the defendant is debarred in terms of Sections 91 and 92 of the Indian Evidence Act from leading evidence to claim that the actual transaction between the parties was that of a loan. Hence, no oral evidence can be given as sought to be done by the defendant.

16. Reference may be had to the judgments relied upon by the learned senior counsel for the defendant. The Privy Council in the case of Tyagaraja versus Vedathanni, (supra) held as follows:-

...S. 92 (Evidence Act) only excludes oral evidence to vary the terms of the written contract, and has no reference to the question whether the parties had agreed to contract on the terms set forth in the document. The objection must

therefore be based on S. 91 which only excludes oral evidence as to the terms of a written contract. Clearly under that section a defendant sued, as in the present case, upon a written contract, purporting to be signed by him could not be precluded in disproof of such agreement from giving oral evidence that his signature was a forgery. In their Lordships opinion oral evidence in disproof of the agreement (1), that as in 6 E & B 370(2) the signed document was not to operate as an agreement until a specified condition was fulfilled, or (2) that as in the present case, the document was never intended to operate as an agreement but was brought into existence solely for the purpose of creating evidence of some other matter stands exactly on the same footing as evidence that the defendant's signatures was forged...

Similarly in the case of Gangabai versus Chhabubai, (supra) the Supreme Court held as follows:-

11....In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The subsection is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of non consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties...

17. Similar are the observations made by the Hon'ble Supreme Court in the case of Ishwar Dass Jain(Dead) Through LRs versus Sohan Lal (Dead) by LRs, (supra) wherein it was held as follows:-

15. The point here is whether oral evidence is admissible u/s 92(1) of the Evidence Act to prove that a document though executed was a sham document and whether that would amount to varying or contradicting the terms of the document. The plea of the defendant in the written statement was that the mortgage deed though true was a sham document not intended to be acted upon and that it was executed only as a collateral security...

16. This Court has held in Gangabai v. Chhabubai that in spite of Section 92(1) of the Evidence Act, it is permissible for a party to a deed to contend that the deed was not intended to be acted upon but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted....

To the same effect is Gurdial Singh and others versus Raj Kumar Aneja and Others, (supra) where the Hon'ble Supreme Court held as follows:-

11....The occupants are impeaching the outward validity of the lease deed by submitting that what has been described on paper is not the real intention of the parties to do; the lease deed and the transaction spelled out by it was a sham or fictitious transaction not intended to be acted upon, rather intended to overcome or avoid the effect of the rent control legislation. It is permissible to take such a plea and adduce evidence to substantiate the same. The plea can be taken though the onus would lay on the shoulders of the party taking such a plea. To discharge the onus, direct evidence may or may not be available and if would be permissible to draw an inference from tell tale circumstances. However, the inference to be drawn from the circumstances should be an irresistible one and not merely a matter of conjectures and surmises.

The legal position that would follow from the above judgments is that it is permissible for the defendant to raise the plea that the documents relied upon by the plaintiff were sham documents and that the actual transaction was different as what is sought to be projected in the documents executed by the parties on 30.12.2004. However, as stated above, the onus to prove the same would be on the defendant and though direct evidence may not be available, the inference to be drawn from circumstances should be an irresistible one and not merely a matter of conjectures and surmises.

18. I will now come to the facts of the present case. The thrust of the arguments of the defendant to claim that the documents executed by the parties and relied upon by the plaintiff are sham documents are that the value of the suit property when the transaction took place was around Rs. 12 crores whereas the purported loan amount was only Rs. 4 crores. It is further claimed that the defendant was, at that stage, going through financial crisis and on account of the same it agreed to the terms and conditions imposed upon it by the plaintiff for grant of the said loan. It is averred that no property when bought would fetch a rent @ 3.5 % per month on the capital cost as was being done and paid by the defendant to the plaintiff. It is the further contention of the defendant that in a normal sale transaction the purchaser would take over possession of the suit property and would take steps to get the property transferred to its name. It is urged that the fact that the defendant continued in lawful possession of the suit property itself is a pointer in the direction that the documents executed were sham documents. Further, it is urged that the plaintiff took no steps to get the suit property mutated in its name, to get the water connection and electricity connection transferred to its name. Even the property tax for the suit property was being paid by the defendant showing that title to the property never passed to the plaintiff.

19. I will now deal with the contentions of the defendant one by one. The first contention of the defendant is that the defendant was in desperate need of finance and that is why it agreed to the terms and conditions imposed upon by the plaintiffs, namely, interest @ 3.5 per cent per month and also execution and registration of the documents in the form as suggested and dictated by the

plaintiff. It is no doubt true that the terms and conditions of the alleged loan as held out by the defendant if correct are indeed draconian and extremely steep. The defendant would have entered into such a loan transaction only in case of a desperate financial need.

20. However, the written statement is completely silent as to the nature and reason as to why the defendant was in such a desperate financial need of funds to agree to these alleged one sided terms and conditions. In the evidence by way of affidavit of DW 1 Shri Anand Prakash Shrivastava, it is pointed out that there was a huge economic recession in the world following the World Trade Tower tragedy in the USA on account of which some payments of the defendant were not received in time from two of its major buyers. It is urged that this resulted in its account with M/s. Oriental Bank of Commerce being classified as sub-standard and that the bank stopped releasing any further credits and started recovering the outstanding from the company which led to very severe cash crunch and hence the immediate requirement for a loan arose. It is averred that the defendant company immediately required Rs. 3-4 crores to honour its commitments in the market and that is why the loan was organised from the plaintiff company. Hence, it is stated that the rate of interest offered by the plaintiff was very high and the terms and conditions were strange but the defendant company being in a desperate situation and finding no immediate solution to the crunch problem agreed to the terms imposed upon by the plaintiff. Having made these averments in the affidavit it may, however, be pointed out that there are no documents filed by the defendant to further elaborate and demonstrate the severity of the financial problems allegedly faced by the defendant. There is no proof placed on record to show the steps taken by the Oriental Bank of Commerce or even to place on record the name of the buyers of the defendant company who had defaulted, the amount of default etc.

21. The cross-examination of DW 1, however, throws light on these aspects. Reference may be had to some of the questions in the cross-examination conducted on 12.8.2010 of DW 1 which reads as follows:-

Q. Whether such limit was there and duly availed by you during the financial year 2003-2004 and 2004-2005?

A. No, the limit given by Oriental Bank of Commerce, GK-II were suspended because one of our account became NPA. VOL-Because of that we started facing tremendous cash crunch.

Q. When did your account and which particular account become NPA with OBC, Overseas Branch?

A. I do not remember the exact date but it happens during the period between 2001 and 2003.

Q. Did your bank inform in writing that your account in question had become NPA account?

A. I will have to check the correspondence but they stopped giving any fresh credits and whatever money used to come into the account they were taking towards the liquidation of their dues. I can check up the correspondence and the statement of account for the relevant period and produced the same in these proceedings.

Q. In what circumstances did your account with OBC Overseas Branch became NPA Account?

A. Some of the bills from our major buyers in USA and Europe were not paid in time and because of that the account became NPA.

Q. Can you name such buyers who defaulted in payment in invoices raised by the defendant company?

A. Maharishi Ayurveda Products, International USA and Maharishi Technology Corporation, Netherlands."

Q. What was the approximate amount in which the invoices were raised on the said two companies which remained unpaid?

A. I do not remember. I will have to check the record and revert back.

Reference may also be had to the cross-examination of DW1 done on 1st September, 2010 relevant part of which reads as under

It is correct that Maharishi Group has a website regd. as www.maharishiayurvedaindia.

I have seen the document marked as Exhibit DW 1/PA and the same is a print out from the website.

Q. I put it to you that the two business entities at USA & Netherlands, which were described by you as customer of defendant company are in fact the sister concerns of the defendant company and part of Maharishi Ayurveda Group?

A. There is no legal entity as Maharishi Ayurveda Group. In my understanding sister concern has no legal connotations or ownership/management. The entities mentioned in my earlier answers are independent entities and I do not have any ownership or management control on them.

It is wrong to suggest that my proceeding answer is false to my knowledge.

We did not give any legal notice to either the US or Netherlands entity for payment of the outstanding but wrote letters in this regard. (Vol.) In our returns to RBI, we have shown the outstanding of export bills and RBI gave the extension. I do not have with me today the copies of correspondence with the parties mentioned above.

22. In view of the said cross-examination, it is apparent that the averment of DW 1 that its defaulting customers on account of which it suffered a huge liquidity

problem are Maharishi Ayurveda Products, International USA and Maharishi Technology Corporation, Netherlands. This is blatantly false and incorrect. These two companies are in fact shown in the website (print out of which is Ex. DW 1/ PA) of the defendant as part of the Group of the defendant company and are shown in the website accordingly. The website is admitted. In fact DW1 is unable to give the dues payable by the two companies. He accepts that no legal steps were taken to recover the dues. It is hence not possible to believe that the alleged defaults caused in payment by these two companies i.e. Maharishi Ayurveda Products International USA and Maharishi Technology Corporation, Netherlands caused any financial crisis to the defendant.

23. Similarly, reference may be had to the cross-examination done on 14.9.2010 relevant portion of which reads as follows:-

Q. How much profit did the defendant company declare for the financial year 2001-02, 2002-03 and 2003-2004?

A. Profits were in crores in all these years but I am not able to give the exact figure for which I will produce the copies of Balance Sheet. VOL. I would like to add although the book profit was shown in the balance sheet in all these years but due to declaration of NPA by the bank suddenly the cash flow of the company came down by more than 20 crores as the running working capital was suddenly withdrawn and that is why we had to go for a short term loan from the plaintiff.

The above answer clearly shows that the defendant company was in fact a profit making company. If it was a loss making company and was in desperate need of funds there is no reason as to why the defendant would not have placed on record its balance sheet which would have shown the losses suffered by the defendant company. The DW1 in fact tendered the balance sheet in the course of his cross-examination which was held on 01.03.2011 for the years 2006-07 to 2009-10. They were collectively marked as exhibit DW1/1. A perusal of these balance sheets show that the defendant company is making profits in the said financial years.

24. There is also no reason as to why the defendant should not have on its own placed on record the full communications received from Oriental Bank of Commerce which is stated to have frozen the accounts. Better details should have been available with the defendant.

25. The inevitable conclusion follows. The best evidence available with the defendant to prove its financial desperation/need have been clearly withheld from the Court. There is no evidence to show that the defendant was in a desperate financial condition.

26. Reference may also be had to the cross-examination that has taken place on 14.7.2010 which reads as follows:-

Q. Did you create any mortgage at any point of time with respect to plot no. 32, 34 and 35 SEZ, Noida?

A. Yes, a mortgage was created in respect of the aforesaid plots with Oriental Bank of Commerce, Overseas Branch, Greater Kailash-II, New Delhi. It was in the 1990s. The same was redeemed in the year 2005.

This answer shows that in the period in question in 2005 the plaintiff has redeemed its mortgaged properties from the Oriental Bank of Commerce. As per cross-examination of the DW1 dated 14.07.2010 these properties namely 32, 34 and 35 SEZ Noida was originally purchased by a proprietorship concern Maharishi Ayurvedic Product. The said proprietorship concern thereafter got merged into Maharishi Ayurveda Corporation Pvt. Ltd. which thereafter merged with the defendant Company Maharishi Ayurveda Product Pvt. Ltd. This act of redeeming its properties which were listed as mortgaged/secured with Oriental Bank of Commerce makes the contention of the defendant that it was in a desperate financial situation in December 2004 when it entered into a transaction with the plaintiff difficult to believe.

27. The defendant has not been able to prove that it was in a desperate financial situation in the year 2004 when the transaction for the suit property took place.

28. The next argument of the defendant to claim that the documents in question are sham relates to the market value of the property. Strong reliance is placed on the cross-examination of DW 1 when on 15.4.2010 DW 1 stated that the market value of the property would be of Rs. 2.5 to Rs. 3 lac per sq. yard meaning thereby that the market value of the property was worth more than Rs. 100 crores on that date. It is strongly averred that no person would sell such a valuable property for a figure of only Rs. 4 crore. In fact in the written statement it is averred that the market value of the property on the day of the transaction, namely, December 2004 was around Rs. 12 crores. Hence, this is one of the contentions raised strongly to argue that the documents executed on 30.12.2004 are sham documents and there was no sale as the alleged sale consideration is grossly undervalued.

29. However, the matter of fact is that the defendant has failed to place on record any document or proof to show the market value of the suit property in 2004. Except mere averments there is no attempt to prove the market value of the suit property. As this was one of the main contentions of the defendant, it ought to have placed on record copies of Sale Deed or such other proof to show value of land/properties around the suit property. Reliance on the cross-examination of PW1 where he gives the market value as on 2010 has no relevance. We are here concerned with the market value as of 2004. Hence, the said contention of the defendant has also to be rejected. There is nothing on record to accept the contention of the defendant that the sale consideration allegedly paid by the plaintiff does not represent the market value of the property.

30. The next contention of the defendant, namely, that normally a purchaser would take over possession of the suit property and that in any case no property can fetch a rent @ 3.5 % per month of the cost of the property has also to be

rejected. The parties have with open eyes entered into the transaction. The defendant is running a huge business with branches all over the world. As per the cross-examination of DW1 the defendant has more than 200 employees and owns number of immoveable properties. A person of that stature would be conscious of what he is signing. Having agreed to the terms and conditions merely because these conditions may not be the norm in a sale of immoveable property, cannot itself be a ground to hold that the documents executed and registered between the parties are sham documents.

31. There is also merit in the contention of learned senior counsel for the plaintiff that the documents of the defendant themselves do not show that the defendant has after 2004 treated the said suit property as its asset. Had the documents in question being a sham transaction, that would not have prevented the defendant to continue to show in its balance sheets and other documents the suit property as an asset of the defendant company during the period in question. On the contrary, learned senior counsel for the defendant has pointed out various documents of the defendant to show that in fact the said suit property has not been shown as one of the assets by the defendant company itself. Reference may be had to Ex. DW1/F which was so marked by the Court Commissioner on 17.2.2011 and re-marked as Ex. DW1/F-1. The same is a list of creditors as on 30.7.2005 of the defendant company. The list runs into 13 pages but does not show the plaintiff as one of the secured creditors.

32. Similar are the facts relating to Ex. DW1/B so marked by the Court Commissioner on 18.1.2011. This document which is produced by the defendant is a Memorandum and Articles of Association of the defendant company. It places on record a Certificate of Registration of Orders of Court confirming amalgamation of the company, namely, Maharishi Ayurveda Corporation Private Limited and Maharishi Ayurveda Products Ltd. Schedule 2 of the said document reads as follows:-

Schedule of Properties of Transferor Company

(Maharishi Ayurveda Corporation Pvt. Ltd.)

(Part-I)

Short Description of freehold properties of Transferor Company.

NIL

(Part-II)

Short Description of leasehold properties of Transferor Company

1. Shop No. 130, in Block No. 4, Ganga Shopping Centre, Sec-29, Noida, measuring 19.34 Sq. Mtrs.
2. Flat No. 127B/C Siddharth Ext. N. Delhi, measuring 86.392 Sq. Mtrs.
3. Building under Construction (Unfinished Structure at Green Field Colony,

Faridabad)

Maharishi Ayurveda Corporation Pvt. Ltd. is the signatory to the documents executed on 30.12.2004 and was merged with the present plaintiff Company.

33. These two documents clearly demonstrate that even the defendant has not treated the said suit property as its own asset.

34. The above facts clearly show that there is no evidence on record to show that the defendant company was in a desperate financial condition or situation in 2004 when the transaction in question took place. On the contrary, it appears that the defendant company was having profits in the balance sheet at that time. Further, in its own balance sheets, and other statement of accounts, the defendant company has not shown the suit property as its own asset. If as per the defendant, no sale transaction had taken place, there was no reason for the defendant company not to show the suit property in its balance sheet as one of its property and also in various other documents.

35. Reference may also be had to the conduct of the defendant. For the first time, the defendant sought to invoke the buy back clause as contained in MOU dated 01.01.08 was on 25.08.2008 when it wrote a letter to the plaintiff stating that it was willing to avail its right to buy back the property which is in their absolute possession and was earlier owned by them. (Ex. P13). The plaintiff has on 22.09.2008 (Ex. PW1/3) denied the contents of the letter of the defendant dated 25.08.2008. As according to the defendant, the documents executed on 30.12.2004 are actually sham documents and that the defendant continued to remain the absolute owner of the suit property, one would expect that on receipt of letter of the plaintiff dated 22.09.2008 there would be an extremely strong response from the defendant. However, the defendant did not even reply to letter dated 22.09.2008 of the plaintiff. On the contrary, the plaintiff has written various letters to the defendant asking the defendant to ensure that vacant peaceful possession is handed over 30.11.08. Such letters were written on 18.10.2008, 18.11.2008 and 27.11.2008. Defendant has on 25.11.08 (Ex. P14) while acknowledging the receipt of earlier letters of the plaintiff dated 22.09.2008, 18.10.2008 and 18.11.2008, reiterated that in terms of the MOU, the defendant had a right to buy back the property by paying the amount received by the plaintiff alongwith the stamp duty. Again in this communication, there is no contention that documents executed on 30.12.2008 are the sham documents or that that defendant continued to be the owner of the suit property. In fact for the first time, when the defendant has chosen to claim itself to be the owner of the suit property and to claim that the documents executed on 30.12.2004 are sham documents was in a reply to legal notice sent by the plaintiff. The plaintiff sent a legal notice on 12.12.2008 (Ex. P. 15). In response thereto, learned counsel for defendant on 23.12.2008 (Ex. P. 16) sent a reply stating that the defendant at no stage intended to sell the property or sold the property to the plaintiff. Response of the defendant does not generate confidence. Despite several communications received from the plaintiff to vacate

the suit property, the defendant did not at any stage assert its so called title to the suit property. This assertion came belatedly only after a legal notice was served by the plaintiff. A party who had been tricked into signing documents by which it was made to part with a valuable property, would certainly have been more vigilant and rigorous in its follow up and of asserting its right to the property.

36. From the evidence placed on record by the defendant, it is not possible to come to an irresistible conclusion that the documents executed by the defendant on 30.12.2004 are sham documents. The Defendant has failed to prove in the present case that the Agreement to Sell dated 30.12.2004 is a sham document. It is not possible to hold that Agreement to Sell dated 30.12.2004 is a sham document executed only to secure the repayment of loan advanced by the plaintiff. The issue is answered accordingly.

37. I will now take up issue No. (iii) which reads as follows:-

(iii) "What is the legal status of the plaintiff qua the suit property in view of the execution of the agreement to sell dated 30.12.2004, lease deed dated 30.12.2004 and MOU dated 30.12.2004 and 01.01.2008 and other documents mentioned in para 3 of the plaint? OPD

Learned senior counsel for the plaintiff has stressed that by the present Suit the plaintiff does not seek any declaration regarding title. He submits that it is simply a suit between the landlord and tenant seeking eviction of the tenant from the suit property.

38. It is admitted position of the parties that the parties had entered into a lease agreement dated 30.12.2004 and a second lease agreement dated 1.1.2008. Both the lease agreements are unregistered. However, the second lease agreement is only for a period of 11 months.

39. It is also the admitted position that for the period 1.1.2005 till 31.12.2007 the defendant had been paying rent to the plaintiff @ Rs. 14,25,000/- per month and thereafter from 1.1.2008 till 30.11.2008 @ Rs. 18,50,000/- per month. TDS certificates have also been placed on record for the payment of rent for the period 2005-2008. The defendant while admitting/denying the said documents has stated as follows:-

Deposit admitted nature of payment denied

The said documents have been marked Ex. P-18, P-19, P-20 and P-21 and P-22.

40. In view of my findings to issue no. 5 above and in view of the facts as stated above, it follows that a payment of Rs. 14,25,000/- per month till 30.11.2008 and thereafter @ Rs. 18,500/- per month was the payment of rent made pursuant to the agreement to lease between the parties. The defendant has also deducted Tax at Source and deposited the same stating that to be a deduction from the rent paid to the plaintiff. Clearly the relationship between the plaintiff

and the defendant is that of landlord and tenant.

41. The relationship of landlord and tenant between the plaintiff and defendant being clearly established, the defendant is estopped from denying the title of the plaintiff to the said immoveable property in view of Section 116 of the Indian Evidence Act. Reference may be had to Section 116 of the Indian Evidence Act.

42. Section 116 of the Evidence Act reads as follows:-

116. Estoppel of tenant; and of license of person in possession

No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when license was given.

43. In *Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones*, the Hon''ble Supreme Court in paragraphs 14 and 15 held as under:-

14. The "possession" in the instant case relates to second limb of the Section. It is couched in negative terms and mandates that a person who comes upon any immoveable property by the license of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such license was given.

15. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppels has been incorporated by the legislature in the said section.

44. Similar is the view taken by the Hon''ble Supreme Court in the case of *Sri S.K. Sarma Vs. Mahesh Kumar Verma*,

45. As defendant was paying rent to the plaintiff in terms of section 116 of the Indian Evidence Act it is estopped from now disputing the title of the suit property of the plaintiff as provided u/s 116 of the Indian Evidence Act. Hence, the legal status of the plaintiff would be of a landlord for the suit property. The present issue is answered accordingly.

46. I will now come to issue No. (iv) which reads as under:-

(iv) Whether the agreement to sell dated 30.12.2004 has been executed between the plaintiff and the defendant in contravention of Clause 6(a) and 6(b) of the perpetual sub lease dated 12.12.73? If so, to what effect?" OPD

The only submission that has been made by the learned senior counsel for the defendant is that the present sale transaction is contrary to the said Perpetual

Sub-Lease. Clause 6(a) of the Perpetual Sub Lease executed by the President of India states that the sub-lessee shall not sell, transfer, assign or otherwise part with possession of the whole or any part of the industrial plot to a person who is not a member of the Lessee i.e. The Mohan Co-Operative Industrial Estate Ltd. Clause 6(b) of the Perpetual Sub-Lease provides that the sub lessee shall not sell, transfer, assign etc the said plot except with the previous consent in writing of the lessor.

47. The submission of the defendant is misconceived. The admitted position is that the original allottee of the said plot is Shri S. Aggarwal in whose favour the perpetual sub lease has been executed. The said S. Aggarwal died leaving behind his legal heirs. The said legal heirs have sold the suit property to the defendant vide Agreement to Sell dated 19.10.1990 and have also executed General Power of Attorney, Indemnity Bond and Will in favour of the defendant with intent to transfer the leasehold rights after getting the land converted into freehold. The title of the defendant itself flows from similar documents which are purported to have been executed by the defendant in favour of the plaintiff. Hence, the defendant cannot take advantage of its own acts and try and nullify the transaction between the plaintiff and the defendant on the said grounds.

48. Even otherwise, in view of the Power of Attorney executed by the defendant and other document nothing prevents the plaintiff from approaching the concerned authorities to take permission for completing the sale transaction. Hence, the Agreement to Sell dated 30.12.2004 is not in contravention of Clause 6(a) and 6(b) of the perpetual sub lease. The present issue is answered accordingly.

49. I will now deal with issue No. (i) which reads as follows:-

(i) Whether the plaintiff is a private limited company? OPP

The plaintiff has placed on record the original Memorandum and Articles of Association of the plaintiff/Sparsh Builders Private Ltd. This has been proved by PW1 and is marked as Ex. PW1/1. There is no serious challenge to the same. Hence, it is held that the plaintiff is a private limited company.

50. I will now deal with issue No. 2 which reads as follows:-

(ii) Whether Mr. Shishir Agarwal is authorized to institute, sign and verify the pleadings on behalf of the plaintiff? OPP

The plaintiff has placed on record the extracts of the Meeting of the Board of Directors of the plaintiff company dated 11.12.2008 whereby Mr. Shishir Aggarwal, Director has been authorised to sign and verify pleadings and institute a suit, engage counsel etc. PW 1 has proved the said documents which is marked as EX. PW1/2. There is no serious challenge to the said resolution. Hence, I hold that Mr. Shishir Aggarwal is authorised to sign and institute a suit on behalf of the plaintiff.

51. I will now deal with issue No. (iii) which reads as follows:-

(iii) What is the legal status of the plaintiff qua the suit property in view of the execution of the agreement to sell dated 30.12.2004, lease deed dated 30.12.2004 and MOU dated 30.12.2004 and 01.01.2008 and other documents mentioned in para 3 of the plaint? OPD

52. Clause 1 to the MOU dated 30.12.2004 reads as follows:-

1. That the owners have given an option to the occupants to purchase the said property from the owners, either in its own name or any of its group companies or in the name of any of the director of the occupants as on the date of this MOU or their legal heirs during the period of Lease Agreement, under which the occupants are presently in possession of the said property for a consideration to be mutually agreed upon by the owners and the occupants.

53. In view of the said clause the defendant had an option to purchase the said property from the owners for a consideration to be mutually agreed upon by the owners and the occupants, namely, the parties to the present Suit.

54. Clearly, the present Agreement is not a binding agreement inasmuch as there is no sale price agreed upon on the basis of which it can be said that a legal and enforceable contract came into being.

55. Reference may be had to the judgment of Hon"ble Supreme Court in the case of Mayawanti Vs. Kaushalya Devi, wherein Hon"ble Supreme Court has held as follows:-

burden of showing the stipulations and terms of the contract and that the minds were ad idem, lies on the plaintiff. If the stipulations and terms are uncertain there can be no specific performance, for there is no contract at all. Where there are negotiations, the Court has to determine at what point, if at all, the parties have reached agreement.

56. It is the case of the defendant that on 25.8.2008 it wrote a communication to the plaintiff exercising the option as provided in MOU dated 1.1.2008 to buy back the said property. The defendant on 22.9.2008 replied that the option to purchase the property is subject to a mutually agreed consideration. It is further stated that no consideration has been agreed to and hence the letter sent by the defendant has no legal sanctity. Several letters were thereafter written by the plaintiff. The defendant has on 25.11.2008 (Ex. P-14) reverted to the plaintiff that the plaintiff has not come up with the amount for buy back of the property in question. The plaintiff on 28.11.2008 has accepted the receipt of the letter of the defendant but has stated that this is a desperate attempt to delay handing over possession to the plaintiff on expiry of the lease. Parties were unable to agree on the price for re-sale.

57. In view of the above, the MOU is not a binding agreement between the parties.

58. Next I will take up the issue No. (vii) which reads as follows:-

vii) Whether the plaintiff is entitled to possession of the suit property and to what extent? OPP

59. The relationship of landlord and tenant has been duly established. The tenancy has expired. The plaintiff would hence be entitled to a decree of possession in its favour and against the defendant. Hence, the plaintiff is entitled to possession of the suit property.

60. I will now come up to issue No. (viii) which reads as follows:-

(viii) Whether the plaintiff is entitled to damages? If so, to what extent? OPP

61. The plaintiff has claimed in the Plaint that as per the lease agreement dated 1.1.2008, the defendant was to pay a rental of Rs. 18,50,000/- per month and in case of use and occupation beyond the period 1.12.2008 apart from the rentals the defendant was to pay damages @ Rs. 50,000/- per day. The plaintiffs have sought a sum of Rs. 42,78,450/- being the arrears for damages and use of occupation charges for the period 1.12.2008 till filing of the present Suit i.e. 12.1.2009.

62. No serious evidence has been led by the plaintiffs to prove the current market rentals which would enable the Court to determine the damages. However, an agreed rental of Rs. 18,50,000/-per month is being paid by the defendant to the plaintiff. Even before the Division Bench, learned senior counsel for the defendant has made a statement that they will continue to pay a sum of Rs. 18,50,000/- per month to the plaintiff. The said payment has been duly made.

63. In terms of Section 74 of the Indian Contract Act when a contract is broken and the sum named in the contract as the amount to be paid in case of such breach or if the contract contains any other stipulation by way of penalty then the period claiming breach is only entitled to actual damage or loss. In the present case the fact that no evidence has been led to show the market rentals payable for the property the conclusion is inevitable that the stipulation of payment of Rs. 50,000/- per day is akin to a penalty. Hence, the plaintiff cannot recover the said amount.

64. In view of the above, the plaintiff is only entitled to the said sum of Rs. 18,50,000/- per month for use and occupation charges. The suit is decreed to the extent that the defendant is liable to pay to the plaintiff a sum of Rs. 18,50,000/- per month w.e.f. 1.12.2008 till it receives vacant physical possession. Needless to add that the defendant would be entitled to adjustment of rentals of payments made during pendency of the present Suit to the plaintiff. Hence, a decree of possession is passed in favour of the plaintiff and against the defendant regarding the suit property No. A-14, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi. Decree is also passed in favour of the plaintiff and against the defendant for recovery of a sum of Rs. 18,50,000/- per month

w.e.f. 01.12.2008 till the recovery of possession by the plaintiff less amount already received by the plaintiff on this account. Plaintiff shall also be entitled to costs.