
(2015) 02 MAD CK 0372
In the Madras High Court
Case No : Civil Suit No. 982 of 1999

The New India Assurance Company Limited	APPELLANT
Vs	
Dewa Properties Ltd.	RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Contract Act, 1872 — Section 2, 2(e), 29, 37, 38
Specific Relief Act, 1963 — Section 16, 16(1)(c), 16(c)(ii), 17

Citation : (2015) 4 CTC 407 : (2015) 2 LW 889

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : S. Vasudevan, for the Appellant; S. Ramasamy for Ramasamy Law Associates, Advocates for the Respondent

Judgement

S. Vimala, J.—When a contract get concluded or when a concluded contract come into existence?

1.1. Whether a contract can be spelt out of performance established through long correspondence?

1.2. Whether there had been consensus ad idem on the subject matter of the contract between the parties?

1.3. When the conduct demonstrates the contract, whether non-completion of the final part of the agreement alone can be pleaded towards denial of the existence of the contract itself?

1.4. Whether the existence of a concluded contract depends upon the completion of performance already made or should it depend only upon the formal completion of a document detailing the performance to be made?

1.5. Want of communication of the confirmation by the plaintiff, whether really stands in the way of there being a concluded contract?

1.6. Whether the performance of the condition in the agreement by the plaintiff

is sufficient to constitute acceptance in the absence of an express notification of the acceptance of agreement to the defendant?

1.7. When the material terms are agreed upon between the parties or when the material terms agreed upon are capable of being ascertained or when there was a mutual assent, which as to its nature is unqualified, and as to its extent, covered all material terms under negotiation, even then, whether it can be contended that there is no concluded contract?

The above are the issues that arises for consideration in this Civil Suit.

The suit is filed seeking specific performance of lease agreement as per the draft approved by the defendant.

1.8. The plaintiff is the New India Assurance Company, a Subsidiary of the General Insurance Corporation of India, having Regional Office at Chennai.

2. The plaintiff has taken on lease, portions of the building owned by the defendant known as "Spencer Tower-I, comprising carpet area of about 11306.62 sq. ft., in the second and third floors of the building situated in Door No. 770A Annasalai, Chennai, in R.S. No. 26/2 for a period of 99 years.

2.1. The lease was in pursuance of the agreement between the plaintiff and the defendant and in consideration of the mutual covenants agreed upon. The defendant handed over the possession of the premises transferring the leasehold, for a period of 99 years.

2.2. The draft lease agreement prepared by both the parties was duly approved by the defendant, on 01.02.1995, vide their letter. The draft lease deed was signed by the Director of the Spencer Estates Limited on each and every page. The rent payable was agreed upon as Rs. 6,09,553.36 per annum, payable on or before 15th April of every year. The proportionate property tax was also paid by the plaintiff.

2.3. The plaintiff also paid to the defendant, as deposit, an amount of Rs. 60,39,225.40, which bears the interest at the rate of 10% from the date, when the plaintiff was put in possession of the premises. The keys were actually handed over on 16.11.1981. All expenses and outgoings were paid by the plaintiff, as agreed upon. Despite approval of the draft lease agreement by the Director, Spencer Estates Limited, the defendant was evading execution/ registration of the lease deed, as contemplated under the Transfer of Property Act, read with Indian Registration Act.

2.4. The plaintiff issued legal notice, dated 09.10.1997, calling upon the defendant to execute the lease deed in their favour within one month. The defendant sent an evasive reply, dated 05.02.1998. Hence, the plaintiff was compelled to file the suit. The plaintiff has been ever ready and willing to perform his part of the contract, but the defendant was not willing. Hence, the suit.

3. The brief averments in the written statement are as follows:-

3.1. The suit is barred by limitation.

3.2. There was no concluded contract between the plaintiff and the defendant.

3.3. The averment that the property was taken on lease for a period of 99 years is disputed. There was no consensus on the terms and conditions of the lease. There was no grant or transfer of the said premises to the plaintiff. The plaintiff was put in possession, as a tenant, in respect of scheduled premises on the basis of certain stipulations in respect of rent and other charges including maintenance charges, reimbursement of property taxes, etc., (payable by the plaintiff). The plaintiff is not regular in the payment of rents. There is serious and willful default in the payment of rents.

3.4. The plaintiff was not willing to accept the draft lease agreement as approved by the defendant. The plaintiff came out with certain counter proposals which were not acceptable to the defendant. As such the lease agreement was never finalized and the question of defendant coming forward to execute any lease deed, much less for a period of 99 years, in favour of the plaintiff, does not arise.

3.5. There is no concluded contract between the plaintiff and the defendant. Even assuming that there was concluded contract, the plaintiff has lost the right to enforce the same, at the belated stage.

3.6. There was no consensus ad idem between the parties. The cause of action has arisen in the year 1981. In the absence of concluded contract to even execute a lease deed, the suit claim is not maintainable. On these grounds, the defendant seeks dismissal of the suit.

4. Based on pleadings, the following issues were framed for trial:-

1. whether the plaintiff is entitled to the relief of specific performance by compulsory registration of lease agreement (Ex. P-2), for 99 years?

2. Whether the plaintiff has paid the entire lease premium?

3. Whether the suit is barred by limitation?

4. Whether the plaintiff was put in possession of the schedule mentioned property pursuant to the lease agreement?

5. To what other reliefs, are the parties entitled to?

5. The inadequacy of common law remedies in general and incompleteness of compensatory remedy, in particular, became the foundation of equitable remedies of which specific performance was one. Granting of specific performance started from the immovable properties, namely, the land and later on, it spread its tentacle to other kinds of contracts.

5.1. In "Lectures On Equity", Maitland observed, "the equitable relief of granting of specific performance applies to agreements for sale or lease of lands as a matter of course; its application outside these limits is somewhat exceptional and

discretionary".

6. The plaintiff seeks specific performance of the draft lease agreement, as approved by the defendant. The defendant claims that even though the draft lease agreement has been approved by him, the plaintiff remained lethargic in not signifying its acceptance and hence, there is no concluded contract.

7. In order to prove their respective contentions, on the side of the plaintiff, P.Ws. 1 to 3 have been examined and Exs. P-1 to P-21 have been marked; on the side of the defendant, D.W. 1 has been examined and Ex. D-1 has been marked.

8. Section 17 of the Specific Relief Act lays down the circumstances under which a contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor and the said Section reads as under:-

"17. Section 17 - Contract to sell or let property by one who has no title, not specifically enforceable-

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor--

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply as far as may be, to contracts for the sale or hire of movable property."

8.1. This Section thus deals with the case wherein the seller or lessor has either: (a) no title to the property sold or let out or (b) where he cannot give the purchaser or lessee a title free from reasonable doubt and (c) where prior to such sale or letting he has made a settlement of subject matter of the contract.

8.2. So far as this case is concerned, the lessor/defendant has no such (impediment) case, as contemplated under Section 17 of the Specific Relief Act.

9. Before going into the merits of the contentions, it is necessary to answer the objection raised as to jurisdiction.

9.1. It is the contention of the learned counsel for the defendant that the agreement provides for resolution of dispute by resorting to Arbitration and therefore, this Court has no jurisdiction.

9.2. The existence of the clause providing for Arbitration is not under dispute. But the question is, the stage at which this remedy should be resorted, is the issue. This objection ought to have been raised before the commencement of the

trial and not after the conclusion of evidence. Therefore, this objection cannot be considered as valid at this stage.

10. The next issue to be considered is, whether the suit is in time or barred by limitation.

10.1. According to the learned counsel for the plaintiff, Section 54 of the Limitation Act would be a relevant provision dealing with limitation, in respect of suit for specific performance; the starting point of limitation is whenever a date is fixed for specific performance of the agreement, then the date of non-compliance of the agreement would give rise to cause of action to file a suit within three years from the date so fixed; whenever no such date is fixed, limitation of three years would begin when the plaintiff had knowledge that the defendant has refused the performance of the agreement.

10.2. In order to support this proposition, the decision reported in Rathnavathi Vs. Kavita Ganashamdas, (2014) 4 RCR(Civil) 904 : (2014) 10 SCJ 189 is relied upon by the plaintiff where-under the proposition stated has found affirmation.

10.3. So far as this case is concerned, under the draft lease deed, which has been signed by the defendant, no date has been fixed for performance. Therefore, the starting point of limitation would be the date when the plaintiff had knowledge that the defendant has refused the specific performance.

10.4. The learned counsel for the plaintiff would point out that under Exs. P-4 to P-6, when notice was issued by the plaintiff calling upon the defendant to perform his part of the agreement, there was no reply, and only, for the notice issued on 09.10.1997, the defendant issued a reply on 05.02.1998 (under Ex. P-8) refusing specific performance and if that is taken as a starting point of limitation, then the suit filed is within time. Under Ex. P-8 the defendant has issued a reply stating that there was no grant or transfer of the property for lease and there was no mutually agreed draft lease agreement at any point of time. Therefore, the suit filed within a period of three years from 1998 is well within time, the suit having been filed on 26.11.1999. The suit could have been filed within three years from 05.02.1998, which ends on 04.02.2001. Even though there is protracted negotiations between the parties for years together, right from 1981, only during 1998, there is a definite reply from the defendant that they are refusing performance. The impact of the correspondence is discussed in the later paragraphs in the subsequent issues. The long correspondence between the parties did not give any indication to the plaintiff that the specific performance is refused by the defendant, except Ex. P-8. Therefore, it is clear that the suit is not barred by limitation.

11. The learned counsel for the defendant submitted that: (a) there was no acceptance by the plaintiff to the offer made by the defendant; (b) even assuming that there was acceptance there was revocation on account of lapse of time prescribed in the offer made; (c) the agreement is void for uncertainty; (d) the plaintiff was never willing to perform his part of the contract as contemplated

under Section 16(1)(c) of the Specific Relief Act, even though the defendant was ever willing to perform his part of the contract; (e) there is no consideration on the part of the plaintiff in terms of Section 2(e) of the Indian Contract Act, 1872, and therefore, there is no agreement and hence, there is no concluded contract.

11.1. In order to appreciate the contentions raised, it is necessary to look into the legal provisions relating to the essential terms, including concluded contract, in the Contract Act.

11.2. A contract is concluded when the offer made by one party is accepted by the other party. Therefore, it is the acceptance that give rise to the cause of action.

11.3. The acceptance is defined under Section 7 of the Indian Contract Act, 1872. Under Section 7 of the said Act, the acceptance must be absolute and unqualified, but the acceptance may be either express or implied under Section 9 of the Act. The necessary provisions dealing with acceptance are found in Sections 7, 8 and 9 of the Act, which are reproduced here-under:-

"7. Section 7 - Acceptance must be absolute - In order to convert a proposal into a promise, the acceptance must--

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Section 8 - Acceptance by performing conditions, or receiving consideration- Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Section 9 - Promises, express and implied - In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

11.4. A proposal may be revoked either before acceptance or even after acceptance. Section 6 of the Indian Contract Act deals with mode of revocation. Section 6 reads as under:-

"Section 6 - Revocation how made

A proposal is revoked--

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance."

11.5. According to the learned counsel for the defendant there is no agreement between the parties as defined under Section 2(e) of the said Act, and even assuming that there was an agreement, the agreement is void as defined under Section 29 of the said Act. The said provisions are reproduced here-under:-

"Section 29 - Agreements void for uncertainty.

Agreements, the meaning of which is not certain, or capable of being made certain, are void."

11.6. What is an agreement is defined in Section 2(e) of the said Act, which reads thus:-

"Section 2-

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:--

.....

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;"

11.7. If these contentions are considered in the light of the evidence and documents available on record, the critical issues, as noted in the opening paragraph, would stare at the face of defendant.

11.8. All the contentions regarding existence of agreement, consensus ad idem and "no acceptance of the proposal" deserves to be rejected in the light of non-denial of execution of Ex. P-2 lease deed. The acceptance need not be express and it can be implied also. The contention of the learned counsel for the defendant is that there is uncertainty with respect to jural relationship between the parties, the date from which the lease has commenced and with regard to the terms and conditions of the lease.

11.9. So long as execution of Ex. P-2-lease deed is not disputed, the contention that there is uncertainty with regard to the status of parties and the terms and conditions of the lease cannot be accepted. The defendant may entertain his own doubt regarding the jural relationship, may be in his own interest, but so long as the contents of Ex. P-2 reveals the jural relationship between the parties is very clear, apart from the terms and conditions of the lease.

11.10. Several clauses under Ex. P-2 agreement has been already given life by the performance on both sides. The evidence of D.W. 1 (which is discussed in the succeeding paragraphs) and the terms and conditions under Ex. P-2 itself will conclusively show that there had been an agreement with clear recitals upon which there had been consensus ad idem and evidenced by performance, which estop the defendants from contending that there is no agreement/no acceptance/no contract/no concluded contract.

11.11. In order to substantiate the contention that there is no concluded contract, it is pointed out by the learned counsel for the defendant that Ex. P-2 did not contain any date and therefore, it is an incomplete document and hence it is not enforceable.

11.12. This contention cannot be accepted as this document emanated from defendant itself. It is the duty of the defendant to have entered the date of agreement. The document reads that the lease is for 99 years, but effective from which date is not mentioned. A perusal of the contents of the document would go to show that the plaintiff has paid, as deposit, an amount of Rs. 60,39,225.40. If Ex. P-2 is read along with Ex. P-4 one can understand that a sum of Rs. 40.50 lakhs has been paid by way of demand draft on 23.10.1981. Final payment has been made on 08.10.1982. On 12.08.1985, the defendant has made a request to the plaintiff, for the amount, being treated as deposit for Income Tax reasons. On 25.05.1984 the plaintiff had written a letter to the defendant agreeing to treat the amount as deposit. On 14.03.19%, the defendant has confirmed that clearance certificate from the Income Tax would be obtained to enable finalization of the lease agreement before 31.03.1997.

11.13. In the evidence of D.W. 1, it is stated that possession was given to the plaintiff on 16.11.1981 and therefore, probably that should have been the date of commencement of the lease.

11.14. This letter would also show that the delay in getting the finalization of the lease agreement was exclusively on the part of the defendant only and not on the part of the plaintiff.

11.15. The learned counsel for the defendant contents that the draft agreement cannot be treated as a concluded agreement and the word "draft" itself indicates that it is liable to be changed. The draft, so long as it remains solely as a draft, is liable to be changed. But once draft is endorsed with the seal that it is approved, it is not liable to be changed, at the instance of the party signing and it is liable to be changed, if at all, only at the instance of the other party, who has to accept it. So far as this case is concerned, the acceptance of the other side is by way of performance. The draft itself has been prepared only by mutual agreement. Therefore, there is no question of the draft being changed.

12. The contention of the learned counsel for the defendant is that when the defendant sent the agreement with the endorsement "draft approved" the plaintiff did not respond to it, thereby making it clear that offer by the defendant

has not been accepted; therefore, when the defendant is not responsible for non-performance, the plaintiff cannot ask the defendant to perform, as if the defendant is the guilty person. In support of the proposition, the provisions of Sections 37 and 38 of The Indian Contract Act are relied upon, which read as under:-

"37. Obligations of parties to contract

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or of any other law. Promises bind the representative of the promisor in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

38. Effect of refusal to accept offer of performance

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfill the following conditions-

- (1) it must be unconditional;
- (2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
- (3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them."

12.1. If the facts are analyzed in the light of the provisions, quoted above, it would be evident that the plaintiff is not guilty of any non-performance. When the terms and conditions of the lease find place in Ex. P-2-draft lease agreement and when the endorsement in the draft lease agreement is "draft approved", then the meaning is that the draft must have emanated from the plaintiff, which has been approved by the defendant. The word "approval" signifies that the defendant has considered the terms of agreement and has felt satisfactory. The word "approve" and the various stages of approval namely, endorse, certify, sanction and ratify have been defined as follows:-

"Approve - the most general of the following terms, means simply to regard as good or satisfactory;

Endorse - adds the further implication of active support or advocacy [to endorse a candidate for office];

Sanction - implies authoritative approval [a practice sanctioned by the charter];

Certify - implies official approval because of compliance with the requirements or standards [a certified public accountant];

Ratify - implies official approval of that which has been done by one's representative [to ratify a peace treaty]."

12.2. Moreover, it is a case where the agreement, though not signed by the plaintiff, remains as a supplement to the performance, which is not the usual way of concluding the agreement. Normally, agreement precedes the performance. So far as the plaintiff is concerned, the most important part of his performance is to pay the lease amount, which it has paid. Apart from that, it has paid the water tax, property tax, electricity bill, etc., in respect of the property leased out to it. The only part remaining to be done is to get the lease deed registered. When the defendant refused to do so, the remedy open to the plaintiff is to file the suit, which also has been done. Therefore, the contention that the plaintiff is guilty of non-performance and therefore, the plaintiff cannot ask for any relief cannot be accepted.

13. The learned counsel for the defendant contended that the offer made by the defendant was not accepted by the plaintiff even within a reasonable point of time and therefore, even though time is not the essence of the contract, the plaintiff cannot seek for specific performance. In order to support this proposition the decision reported in *Suryagandhi Vs. Lourduwamy*, AIR 2004 Mad 8 : (2003) 1 ARBLR 234 : (2003) 2 LW 98 : (2002) 3 MLJ 788 is relied upon, where-under it has been observed as follows:-

"27. One another aspect the learned counsel for the defendant highlighted is that the plaintiff has not acted within a reasonable time and Nine years and above is not a reasonable time at all for the plaintiff to awake from the deep sleep and demand for sale. In *K.S. Vidyanadam and Others Vs. Vairavan*, AIR 1997 SC 1751 : (1997) 1 CTC 628 : (1997) 2 JT 375 : (1997) 1 SCALE 739 : (1997) 3 SCC 1 : (1997) AIRSCW 956 : (1997) 2 Supreme 597 , the Apex Court has laid down thus:-

"Even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."

28. In *Veerayee Ammal Vs. Seenii Ammal*, AIR 2001 SC 2920 : (2001) 9 JT 145 : (2001) 7 SCALE 403 : (2002) 1 SCC 134 : (2001) AIRSCW 4377 : (2001) 7 Supreme 812 , while examining the word "reasonable" in the context of specific performance of sale agreement, the Apex Court held thus:-

13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason

varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly"; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

13.1. Contending that the averment of readiness and willingness in the plaint is not a mathematical formula, which is stated in mere specific words, but it must be proved as a matter of fact and it must also be shown that there was continuous readiness and willingness on the part of the plaintiff; to support this proposition, the decision reported in M/s. Trinmurthy Constructions Vs. Smt. Vijaya Lakshmi Gadgil, AIR 1993 AP 95 is relied upon by the learned counsel for the defendant:-

"19. It is contended by Mr. A. Anantha Reddy, learned counsel for the defendant that under S. 16(c)(ii) of the Specific Relief Act, 1963 the plaintiff must aver performance of or readiness and willingness to perform the contract according to its true construction, and that mere statement also is not sufficient and there must be proof. P.W. 1 has admitted in his evidence that he had no ready cash for payment of the balance of consideration of Rs. 5,80,000/- but he could have raised that amount at any moment. No credible evidence has been let in to show that on 10-12-1980 he was having Rs. 20,000/- and subsequently also he was having money, to pay the consideration of Rs. 6 lakhs, as alleged. In a suit for specific performance the plaintiff should aver and prove his readiness to perform his part of the contract from the date of the contract up to the date of the hearing. The readiness should be to perform the contract as it actually was and not merely as alleged by the plaintiff. The plaintiff should show his continuous readiness to perform the contract from the date of the contract. There is no evidence on record adduced on behalf of the plaintiff to show that he was ready and willing to perform the contract. However, as we are holding that there is no concluded contract between the plaintiff and the defendant, the question of readiness by the plaintiff pales into insignificance."

13.2. Even though the law of contract is based on the ideal of freedom of contract it also provides for limiting principles within which parties are free to make their own contract and so far as this case is concerned, there is no consensus ad idem and therefore, there is no contract at all, is the submission of the learned counsel for the defendant. In order to strengthen the arguments, the

decision reported in *Mayawanti Vs. Kaushalya Devi*, (1990) 3 JT 205 : (1990) 1 SCALE 724 : (1990) 3 SCC 1 : (1990) 2 SCR 350 is relied upon:-

"11. If the above correspondence were true, it would appear that the contract was in the alternative of either whole or half of the property and that the offer and acceptance did not correspond. It is settled law that if a contract is to be made, the intention of the offeree to accept the offer must be expressed without leaving room for doubt as to the fact of acceptance or to the coincidence of the terms of acceptance with those of the offer. The rule is that the acceptance must be absolute, and must correspond with the terms of the offer. If the two minds were not *ad idem* in respect of the property to be sold, there cannot be said to have been a contract for specific performance. If the parties themselves were not *ad idem* as to the subject matter of the contract the court cannot order specific performance. If the plaintiff understood the terms to have included the building but the defendant understood it to have excluded the building and the so called memorandum Ext. PW-11/A did not mention the building, there is no contract before the court for specific performance.....

19. The specific performance of a contract is the actual execution of the contract according to its stipulations and terms, and the courts direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, therefore, to be certain and the parties must have been consensus *ad idem*. The burden of showing the stipulations and terms of the contract and that the minds were *ad idem* is, of course, on the plaintiff. If the stipulations and terms are uncertain, and the parties are not *ad idem*, there can be no specific performance, for there was no contract at all. Where there are negotiations, the court has to determine at what point, if at all, the parties have reached agreement. Negotiations thereafter would also be material if the agreement is rescinded."

13.3. In principle, the proposition evolved in the decisions, cited *supra*, cannot be disputed. But, whether those decisions would be applicable to the fact situation is the issue to be considered.

13.4. It is the specific contention of the learned counsel for the defendant that, no relief can be granted to the plaintiff, because the plaintiff is taking a different stand before the different courts and it is not sure as to whether its claim is based upon a lease arrangement/occupational arrangement/tenancy arrangement, etc.,

13.5. The letter written by the plaintiff on 18.03.1997 to the defendant would bring to limelight the issues involved. In the letter, the plaintiff has stated that the delay involved in the finalization and execution of the lease agreement has created lot of problems and it is indicated that sooner the problem is resolved, it would be better in the interest of both the parties. The letter did not stop with that. The letter also indicates that the defendant was not even maintaining records. From the letter, it is evident that the defendant was not even having

copies of letters written by them to the plaintiff and they have sought for copies of document from the plaintiff. But for the plaintiff furnishing copies of documents probably the defendant would not have been able to file its written statement at all. This would indicate that how lethargic the defendant had been in handling the matter and ironically, this conduct of the defendant had emboldened it to call the plaintiff as a procrastinate, much alike a pot calling a kettle black.

13.6. Per Contra, the learned counsel for the plaintiff contended that, when the important terms and conditions have been agreed upon and the mere formal execution of deed alone is deferred, on that basis, the defendant cannot contend that there is no concluded contract. In support of this proposition, the decision reported in Trimex International FZE Ltd. Dubai Vs. Vedanta Aluminium Ltd., India, (2010) 1 JT 474 : (2010) 1 SCALE 574 : (2010) 3 SCC 1 : (2010) 2 SCR 820 : (2010) 2 UJ 655 : (2010) AIRSCW 909 : (2010) 1 Supreme 302 is relied upon, whereunder it has been held as follows:-

"52. The Court of Appeal in the case of Pagnan SPA vs. Feed Products Ltd., [1987] Vol. 2, Lloyd's Law Reports 619 observed as follows:

"It is sometimes said that the parties must agree on the essential terms and that it is only matters of detail which can be left over. This may be misleading, since the word "essential" in that context is ambiguous. If by "essential" one means a term without which the contract cannot be enforced then the statement is true: the law cannot enforce an incomplete contract. If by "essential" one means a term which the parties have agreed to be essential for the formation of a binding contract, then the statement is tautologous. If by "essential" one means only a term which the Court regards as important as opposed to a term which the Court regards as less important or a matter of detail, the statement is untrue. It is for the parties to decide whether they wish to be bound and, if so, by what terms, whether important or unimportant. It is the parties who are, in the memorable phrase coined by the Judge, "the masters of their contractual fate". Of course, the more important the term is the less likely it is that the parties will have left it for future decision. But there is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later. It happens every day when parties enter into so-called "heads of agreement"."

The above principle has been consistently followed by the English Courts in the cases of Mamidoil-Jetoil Greek Petroleum Co. S.A. v. Okta Crude Oil Refinery AD, (2001) Vol. 2 Lloyd's Law Reports 76 at p. 89 ; Wilson Smithett and Cape (Sugar) Ltd. vs. Bangladesh Sugar and Food Industries Corporation, (1986) Vol. 1 Lloyd's Law Reports 378 at p. 386. In addition, Indian law has not evolved a contrary position. The celebrated judgment of Lord Du Parcq in Shankarlal Narayandas Mundade vs. The New Mofussil Co. AIR 1946 97 (Privy Council) makes it clear that unless an inference can be drawn from the facts that the parties intended to be bound only when a formal agreement had been executed,

the validity of the agreement would not be affected by its lack of formality."

13.7. Yet another decision which would throw light on the issue is the one reported in (1891-4) All ER 127 (*Carlill v. Carbolic Smoke Ball Co.*), where-under mode of acceptance has been considered. Specifically, performance of condition has been held to be sufficient acceptance without notification. The important observations in the above judgment would be helpful to resolve this issue, which runs as under:-

"Then it was said that there was no notification of the acceptance of the offer. One cannot doubt that as an ordinary rule of law an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together. Unless you do that, the two minds may be apart, and there is not that consensus which is necessary according to the English law to constitute a contract. But the mode of notifying acceptance is for the benefit of the person who makes the offer as well as for the opposite party, and so the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so. I suppose there can be no doubt that where a person in an offer made by him to another person expressly or impliedly intimates that a particular mode of acceptance is sufficient to make the bargain binding, it is only necessary for the person to whom the offer is made to follow the indicated method of acceptance. And if the person making the offer expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, and the offer is one which in its character dispenses with notification of the acceptance, then according to the intimation of the very person proposing the contract, performance of the condition is a sufficient acceptance without notification."

13.8. This view has been followed in the decision reported in the case of *Haris v. Nickerson* (1873) L.R. 8 Q.B. 286 and in the case of *Brogden v. Metropolitan Rail Co.* (1872) 2 AC 666 at 691. The principle which lies at the bottom of the acceptance without notification has been held to be performance of the condition subject to nature of things. The important discussion of the decisions, cited *supra*, runs as under:-

"If that is the law, how are you to find out whether the person who makes the offer does intimate that notification of acceptance will not be necessary in order to constitute a binding bargain? In many cases you look to the offer itself. In many cases you extract the answer from the character of the business which is being done. And in the advertisement cases it seems to me to follow as an inference to be drawn from the transaction itself that a person is not to notify his acceptance of the offer before he performs the conditions, but that, if he performs the conditions at once, notification is dispensed with. It seems to me, also, that no other view could be taken from the point of view of common sense. If I advertise to the world that my dog is lost and that anybody who brings him to a particular place will be paid some money, are all the police or other persons whose business is to find lost dogs to be expected to sit down and write me a

note saying that they have accepted my proposal? Of course, they look for the dog, and as soon as they find the dog, they have performed the condition. The very essence of the transaction is that the dog should be found. It is not necessary under such circumstances, it seems to me, that in order to make the contract binding, there should be any notification of acceptance. It follows from the nature of the thing that the performance of the condition is sufficient acceptance without the notification of it. A person who makes an offer in an advertisement of that kind makes an offer which must be read by the light of that common sense reflection. In his offer he impliedly indicates that he does not require notification of the acceptance of the offer".

13.9. In a case where even at the first stage there is no notification of acceptance, it has been held that there is a concluded contract even though there is no communication of acceptance. Performance amounted to acceptance. But, so far as this case is concerned, already there had been communication of acceptance in several ways including by performance. The last act to be completed is registration of the document, containing the terms and conditions of the contract, which got concluded already. Even in respect of registration, there is no mistake on the part of the plaintiff in getting it registered.

13.10. When the defendant wanted to make constructions in zero budget, (so far as it is concerned) by using novel method, the defendant has obtained money from Public Sector Undertakings in lakhs, so as to enable it to put up constructions. Later, after completion of constructions, in order to gain more money, the defendant has chosen to procrastinate, so as to defeat the rights of the plaintiff. It is pointed out that if the lease premium of Rs. 60 lakhs and odd, had been invested in purchasing the property, the plaintiff would have been in a better place, having become the owner instead of remaining as a lessee. It is pointed out that the idea of the defendant is to grab more money from somebody else, after evicting the plaintiff, and that is why, the defendant refused to execute the lease deed. This contention appears to be probable as the contention of the defendant is against the evidence and documents available on record.

13.11. The notification of acceptance to the person who makes the offer is considered essential only to ensure that the two minds may come together. The two minds, when remain apart, there is no expected consensus which is necessary to constitute a contract. But when the evidence indicates that there is consensus ad idem and the major part of the contract having been performed on both sides, the first act of getting the document executed has been destined to be the last act, then the contention that there is no consensus ad idem and there is no concluded contract have no meaning and it deserves to be rejected.

13.12. It would be most appropriate to refer the evidence of D.W. 1, V. Prabha, is the Authorized Manager (Administration) of the defendant/company and it is important to cull-out the vital admissions made in the evidence of D.W. 1, which would be helpful for the court to ascertain whether there had been concluded

contract between the parties or not, which reads thus:-

1. The plaintiff/company took possession of the scheduled property on 16.11.1981.

2. When D.W. 1 was asked to state whether on 01.02.1995, the fresh draft lease agreement was sent along with Ex. P-1, she has replied stating that, as per Ex. P-1, on 01.02.1995, the defendant prepared the draft lease agreement and sent it to the plaintiff.

2.1. This part of the admission that the draft lease agreement was prepared by the defendant is more valuable to decide the suit than any other part of the admission, because under clause-2 it is stated that the terms and conditions of the lease have been "mutually agreed upon" between the parties. There is a further admission that Ex. P-2 is the draft lease agreement given in the year 1981. When the terms and conditions of the lease, as noted in Ex. P-2 is an outcome of mutual agreement between the parties, there is no question of the defendant having to express any acceptance. The term "mutual agreement" signifies consensus ad idem.

3. It is the case of D.W. 1 that on 01.02.1995 when the defendant sent Exs. P-1 and P-2, the defendant was willing to execute and register the lease deed.

4. The readiness and willingness on the part of the plaintiff is also admitted by D.W. 1 when she admitted in the evidence that as per Ex. P-7, the plaintiff was willing to bear the stamp duty and registration for the lease deed.

4.1. Even though it is claimed that acceptance to Ex. P-2-lease deed was not given by the plaintiff, it is not elaborated as to the grounds on which the plaintiff was not willing to accept or what else were the demand made by the plaintiff to enable it to accept Ex. P-2. Under such circumstances, the contention that it is only the plaintiff, who was not willing to get the lease deed registered cannot be accepted. It is the plaintiff, who had been requesting the defendant to get the lease deed executed. As the request was not complied with, the plaintiff has filed the suit.

14. At this juncture, it would be relevant to consider the contents of Ex. P-1-letter addressed by the defendant to the plaintiff, where-under it is admitted that the draft is in order and wanted the plaintiff to give confirmation of the draft, so as to enable the defendant to proceed further. It is mentioned that Shri R. Balakrishnan had discussions with the plaintiff and the draft of the lease agreement, as prepared by the Legal Advisor of the defendant, is to be executed.

14.1. From this it is evident that the draft itself is an outcome of mutual agreement. The final word has to be only from the defendant. Once the defendant has expressed his acceptance, there is no further need for or there is no further necessity for the plaintiff to accept anything.

14.2. Under the draft agreement, under Ex. P-2, the duration of the lease has

been mentioned as 99 years. The rent is stated to be Rs. 6,09,553.36 per annum, payable on or before 15th April of every financial year. The lessee has paid, as deposit/lease premium, an amount of Rs. 60,39,225.40 which bears interest at 10% per annum from the date of commencement of lease, payable by the lessee, on or after 15th day of April of every financial year. The lessee has agreed to pay taxes, rates, assessments and outgoings, such as, electricity and water charges, maintenance and upkeep charges, insurance premia, property tax, cess and incidental expenses. The lessee has to bear the cost towards repairs, rebuilding, reconstruction due to structural reasons (which may require to be carried out after 50 years from handing over possession).

14.3. This clause contemplating repair work/reconstruction work after 50 years would only go to show the period of lease agreed as noted in the agreement must be 99 years and the defendant is willfully denying the period of lease with ulterior motive.

No Consensus ad idem

15. The specific case of the defendant is that the plaintiff and the defendant could not arrive at a consensus on the terms and conditions of the lease and therefore, there was no grant or transfer of the premises to the plaintiff in any manner known to law, much less for a period of 99 years.

15.1. This statement has been made forgetting the fact that, in the plaint, it has been very clearly stated that the premises was leased out and the possession was handed over to the plaintiff on 16.11.1981. The fact that the possession is with the plaintiff right from 16.11.1981 is not disputed. If that be so, under what terms and conditions possession of the property, which is very crucial, was handed over to the plaintiff has not been explained by the defendant.

15.2. Though it is contended that the plaintiff has lost the right to enforce the lease agreement at a belated stage, it is not explained by the defendant how it could be construed as a belated stage. There is vital admission by the defendant in paragraph 9 of the written statement that the defendant does not deny the status of the plaintiff as the monthly tenant nor does they deny the payment made by the plaintiff.

15.3. The payment referred to by the defendant is a sum of Rs. 60 lakhs and odd, that was paid in the year 1981. The learned counsel for the plaintiff has pointed out that the market value of the suit property itself was equivalent to Rs. 60 lakhs and odd, paid by the plaintiff and in that case, whether the contention of the defendant that the plaintiff was a monthly tenant could be correct, true or probable. Obviously, it cannot be correct. There is no acceptable answer on the side of the defendant for this critical question.

15.4. The sale deed, dated 16.09.1985, executed by M/s. Tarapore and Company has been filed in which the value of the property for an extent of 4,168 sq. ft., has been fixed at Rs. 18 lakhs. The important admission made by D.W. 1, in her

own language, reads as under:-

"I am aware that the plaintiff/Company took possession of the suit scheduled property on 16.11.1981. Originally our company has given offer of lease of the suit property in May 1981 and we have given possession of the suit property in November 1981.

What are the terms of the lease in 1981?

It was for 99 years."

15.5. There is a further admission by D.W. 1 that the plaintiff company had paid the deposit of Rs. 60,39,225.40.

15.6. These admissions which are vital and which go to the root of the matter seems to have been overlooked during the course of arguments on the side of the defendant.

15.7. Even though it is claimed that rent is not paid, no step has been taken, so far, towards collection of rent. With regard to time of payment of Rs. 60,39,225.40, D.W. 1 has stated that it must be before taking possession of the premises on 16.11.1981.

15.8. When the lumpsum payment of Rs. 60,39,225.40 has been paid before possession is taken and when the rent agreed is annual rent, then the contention that the suit property was given on the basis of monthly lease cannot be true.

15.9. In the Rent Control Original Petition filed by the defendant herein (under Ex. P-11), there is an admission that the plaintiff took the property on lease on the annual rent of Rs. 6,09,553.36. Deposit of Rs. 60,03,225.40 is also admitted. Out of seven tenants in the building, the plaintiff is also stated to be one of the tenants.

15.10. Under Ex. P-13, i.e., the letter, showing the handing-over/taken-over possession would clearly show that the property has been handed over to the New India Assurance Company Limited, i.e., to the plaintiff, on 02.11.1981.

15.11. Under Ex. P-15, which is the letter addressed to the plaintiff, it is indicated that the area of space leased was 11,306.87 sq. ft., Maintenance expenses is claimed at Rs. 2,11,942.00.

15.12. Under Ex. P-16, dated 31.05.2010, the plaintiff has been asked to pay the property tax and water tax for the first half of 2010-2011. The total comes to Rs. 8,72,648.00. It is not in dispute that the plaintiff is paying the property-tax as well as the water-tax.

15.13. The demand for payment of property tax belies the contention of the defendant that the suit property was leased out on a monthly rent.

16. The other contention of the learned counsel for the defendant is that the plaintiff was never ready and willing to perform his part of the contract and

therefore, when the sine qua non as contemplated under Section 16(1)(c) of the Specific Relief Act is missing the suit cannot be decreed. Section 16(1)(c) of the Specific Relief Act reads as under:-

Section 16 - Personal bars to relief

Specific performance of a contract cannot be enforced in favour of a person--

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation.--For the purposes of clause(c),--

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

16.1. When we consider readiness and willingness on the part of the plaintiff, it is necessary to consider the rights and liabilities of the lessor and lessee, under the Transfer of Property Act:-

108. Rights and liabilities of lessor and lessee - In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

(A) Rights and liabilities of the lessor

- (a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;
- (b) the lessor is bound on the lessee's request to put him in possession of the property;
- (c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without

interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and liabilities of the lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to allusions for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

PROVIDED that, if the inquiry be occasioned by the wrongful act or default of the lessee, he shall be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessor is not aware, and which materially increases the value of such interest;

(l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property."

16.2. The plaintiff, as lessee, has performed his part of the contract and therefore, the contention that the plaintiff has not performed its part of the contract cannot be accepted.

17. Yet another contention of the learned counsel for the defendant is that the plaintiff was guilty in not getting the lease deed registered and the relief of specific performance being an equitable relief cannot be granted to the plaintiff who is guilty of laches.

17.1. So far as the reason for delay in getting the lease deed registered is concerned, suggestion to the defendant is that the delay was on account of getting the income-tax clearance certificate (on the part of the defendant). This statement is supported by Ex. P-4, dated 18.03.1997, which is a letter addressed by the defendant to the plaintiff, where-under it has been mentioned that on

14.03.1996, during the meeting, the Chief Executive of the Spencer confirmed that clearance certificate from the Income-Tax would be obtained to enable finalization of lease agreement, before 31.03.1997. This critical admission on a very important issue, namely, the reason for the delay as suggested by the plaintiff, would go to show that the delay was not on the part of the plaintiff, but only on the part of the defendant.

17.2. The earnest attempt on the part of the plaintiff to get the lease registered would be evident from Ex. P-6, which is the letter, dated 06.05.1997, whereunder it has been stated that the inordinate delay in finalization in the execution of the lease agreement is inviting lot of adverse remarks from the Government as well as statutory auditors, and therefore, early steps must be taken by the defendant.

17.3. In each and every page, under Ex. P-2, there is an endorsement "draft approved", which is signed by the Director of Spencer Estates Limited. Under Ex. P-7, the plaintiff has indicated that it is ready and willing to sign the lease deed, bear the stamp duty and cost of registration thereof, and therefore, the defendant should come forward to execute and register the lease deed.

17.4. The very important term in the lessors covenant is that if the lessor intends to sell the right, title and interest in the leased property, they shall give the lessee, the first option to purchase the same, by a notice in writing.

17.5. This singular covenant, but of a great significance, would indicate that the lease must be for a long duration and only in consideration of that, the lessor has given the right to purchase the property to the lessee/plaintiff.

Latches on the part of the plaintiff:

18. The learned counsel for the defendant pointing out the correspondence dated 04.05.1981 contends that offer has been made long before in the year 1981, but there was no acceptance till in the year 1995 by the plaintiff. This contention does not appear to be correct. Under Ex. P-6 the plaintiff has stated that there had been innumerable discussions and correspondences exchanged between the plaintiff and the defendant. Even on 14.03.1997 when the officials of the plaintiff met the officials of the defendant, the copies of various correspondences have been requested for. Therefore, the contention that there was delay on the part of the plaintiff has no legs to stand, on its own.

19. It is the apprehension of the defendant that the plaintiff intends to grab the property and it is claimed that, that is why, under Ex. P-6, the plaintiff has made a statement that they had purchased 11,306 sq. ft., on the second and third floors of the spencer Towers in 1982 from M/s. Spencer Estates Limited. No doubt, this statement is incorrect, because there is no purchase, but it is only a lease. This mistake has been realized by the plaintiff and correction has been made in the next line reading it, as a lease agreement. Therefore, merely because there is a inadvertent mistake in the letter, that cannot be taken

advantage of by the defendant.

20. Pointing out the following circumstances, it is contended by the learned counsel for the plaintiff that only on account of delay on the part of the defendant the plaintiff was compelled to institute the suit and it is not a luxury for the plaintiff.

20.1. Under Ex. P-8 the defendant has stated that there was no grant or transfer in any manner known to law, much less for a period of 99 years. The defendant has pretended by making a statement that the defendant is at a loss to understand as to which is the draft lease agreement, duly approved, to which the plaintiff was making a reference and that after getting clarification, the defendant will be in a position to respond.

20.2. It is not in dispute that Ex. P-2-lease agreement, accompanied by Ex. P-1-letter, was sent by the defendant.

20.3. Each and every page has been signed by the defendant with an endorsement "draft approved".

20.4. When Ex. P-2 is not disputed, it is clear that the reply sent by the defendant is false to the knowledge of the defendant.

20.5. The inordinate delay on the part of the defendant, which is averred by the plaintiff, gains strength from the statement made in Ex. P-1, where-under it is stated that in order to maintain the uniformity among the tenants of Spencer Towers, the draft lease agreement was prepared in-line with that of the lease agreement already executed by other tenants of the Spencer Towers-I, who are also Public Sector Undertakings.

20.6. The list of tenants under the defendant also finds place in the documents.

20.7. These circumstances as pointed out by the learned counsel for the plaintiff establish that the delay was only on the part of the defendant in getting the draft lease agreement in consonance with other lessees.

None of the contentions of the defendant merits acceptance. Therefore, the suit is to be decreed. In the result, this Civil Suit is decreed with costs.