

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 6th January, 2020**

+ **CS(OS) 3032/2014**

DEEPAK CHOPRA

..... Plaintiff

Through: Mr. Dinesh Agnani, Sr. Adv. with
Mr. A.K.Thakur & Mr. R.K.Mishra, Advs.

Versus

FLAKT (INDIA) PVT LTD

..... Defendant

Through: Mr. Ajit Upadhyay &
Ms. Neha Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.1,92,15,000/- with *pendent lite* and future interest at 15% per annum, pleading (i) that vide registered Lease Deed dated 9th August, 2012, the plaintiff had let out a portion of his property at 28, Okhla Industrial Estate, Phase-III, New Delhi to the defendant, at a rent of Rs.4,35,000/- per month and maintenance charges of Rs.15,000/- per month, for a period of six years, the whole of which was described as lock-in period and with a provision for increase in rent and maintenance charges by 20% over the last paid rent after three years; (ii) that the defendant paid Rs.27,00,000/- to the plaintiff as interest free security deposit, to be refunded by the plaintiff to the defendant against delivery of vacant and peaceful possession of the leased premises on conclusion of the lease; (iii) that since the entire period of the lease, of six years was lock-in period, neither the plaintiff nor the defendant had any right

to terminate the lease; (iv) that the defendant paid rent till the month of July, 2014 and without informing the plaintiff, vacated the property on 12th August, 2014, even though the lock-in period of the lease was till 14th January, 2018; and, (v) that in terms of the Lease Deed and Maintenance Agreement, rent and maintenance charges towards lock-in period of July, 2014 to 14th January, 2015 of Rs.24,75,000/- and rent and maintenance charges for the remaining lock-in period of 15th January, 2015 to 14th January, 2018 of Rs.1,94,40,000/- was due from the defendant to the plaintiff and after adjusting the interest free security of Rs.27,00,000/-, a total sum of Rs.1,92,15,000/- was due from the defendant to the plaintiff towards rent and maintenance charges of the lock-in period; thus, the suit for recovery of Rs.1,92,15,000/-. It was the plea of the plaintiff, that the plaintiff was entitled to the said monies under the Lease Deed and the Maintenance Agreement.

2. The suit came up first before this court on 30th September, 2014, when without going into the aspect of maintainability thereof on the averments in the plaint itself, inasmuch as there was no plea of the plaintiff having suffered any loss or damage on account of breach of lease by the defendant, the suit was entertained and summons thereof ordered to be issued.

3. The defendant contested the suit by filing the written statement. However there is no need to go into the defence of the defendant inasmuch as, as aforesaid, the suit on the averments in the plaint did not lie.

4. The plaintiff filed a replication to the written statement.

5. Vide order dated 26th July, 2016, again without going into the aspect of maintainability of the suit, on the pleadings of the parties, the following issues were framed in the suit: -

“(1) Whether the plaintiff is entitled to a decree for a sum of Rs.1,85,74,500/- against the defendant towards the amount allegedly payable in respect of the suit premises for the period between 1.7.2014 to 14.1.2018, after adjustment of the interest free security deposit of Rs.26,10,000/-? (OPP).

(2) Whether the plaintiff is entitled to a decree for a sum of Rs.6,40,500/- against the defendant towards the maintenance charges in respect of the suit premises from 1.7.2014 to 14.1.2018, after adjustment of the interest free security deposit of Rs.90,000/-? (OPP).

(3) If issues No.1 & 2 are decided in favour of the plaintiff, whether he is entitled to interest on the amount decreed in his favour and if so, at what rate and for which period? (OPP)

(4) Whether the defendant was entitled to terminate the lease deed dated 9.3.2012, in terms of clause 7(b) thereof, containing a lock in period of six years? (OPD).

(5) Whether the plaintiff is entitled to costs of the suit? (OPP).

(6) Relief.”

and the parties relegated to evidence on commission.

6. On 19th January, 2017, the counsels stated that recording of evidence stood completed. The suit was ordered to be listed in the category of ‘Finals’ as per turn.

7. The suit was called for hearing on 3rd July, 2018 and thereafter adjourned from time to time.

8. The counsel for the defendant seeks adjournment on the ground of non-availability of the senior counsel engaged.

9. However, finding the suit to be not maintainable on the averments contained in the plaint itself, adjournment has been refused and the senior counsel for the plaintiff has been heard.

10. The reason why I state that the suit as per averments in the plaint itself was not maintainable and should not have been entertained is, that the plaintiff, though pleading breach of contract i.e. Lease Deed and the Maintenance Agreement by the defendant and without pleading any loss from such breach, is seeking relief in the nature of specific performance and which is not permissible in law. The Lease Deed was not specifically enforceable at the instance of the plaintiff as the landlord and on breach of the Lease Deed by the defendant as tenant, by vacating the premises before expiry of the term thereof, the plaintiff was entitled to only damages for breach of contract and the measure of which damages was the loss if any suffered by the plaintiff. However, the plaintiff was required to plead such loss and no loss has been pleaded.

11. The position with respect to rent of lock-in period is akin to that of earnest money/security and qua which the Supreme Court in ***Kailash Nath Associates Vs. Delhi Development Authority*** (2015) 4 SCC 136, followed by me in ***Speed Track Cargo Vs. State Bank of Patiala*** 2016 SCC OnLine Del 919, ***Palm Art Apparels Pvt. Ltd. Vs. Enkay Builders Pvt. Ltd.*** 2017 SCC OnLine Del 12776, ***Mera Baba Pvt. Ltd. Vs. Ram Lubhaya Puri*** 2018 SCC OnLine Del 9502, ***Klintoz Pharmaceuticals Pvt. Ltd. Vs. Ravinder CS(OS) 3032/2014***

Shankar Mathur 2018 SCC OnLine Del 11954, *Satish Verma Vs. Garment Craft (India) Pvt. Ltd.* 2018 SCC OnLine Del 6829 and *Mahendera Verma Vs. Suresh T. Kilachand* 2019 SCC OnLine Del 9333, held that mere entitlement in the agreement to forfeit is not enough and loss/damages from breach of contract has to be proved. In fact, the matter is no longer *res integra*. The Division Bench of this Court in *Tower Vision India Pvt. Ltd. Vs. Procall Pvt. Ltd.* 2012 SCC OnLine Del 4396 (DB) has held that rent of the lock-in period in a Lease Deed cannot be claimed without pleading loss from vacation by the tenant of the property prior to the expiry of the term of lease. I have also, following the said dicta of the Division Bench, in order dated 2nd December, 2019 in CS(COMM) 1438/2016 titled *L.R.Builders Pvt. Vs. Goldenera Leisure & Entertainment Pvt. Ltd.* and order dated 18th December, 2019 in CS(OS) 1789/2006 titled *Sunita Rekhi Vs. Y.D.Puri* taken the same view.

12. The senior counsel for the plaintiff has fairly not refuted the aforesaid position in law.

13. It is unfortunate that this ill-conceived suit has taken up the time of this Court for the last five years.

14. The defendant having sought adjournment today and there being no record of payment of costs imposed upon the defendant on 4th September, 2018, the defendant is not entitled to any costs of the suit.

15. The suit is dismissed with no order as to costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 06, 2020

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