

IN THE COURT OF MS VINEETA GOYAL,
DISTRICT JUDGE (COMMERCIAL-03),
PATIALA HOUSE, NEW DELHI

CS (COMM) No. 612/2021

CNR No. DLND01-009046-2021

In the matter of:

1. MRS. AMEET BHATIA

.....

2. MRS. PRAKASH KAUR BHATIA

.....

Both R/o .D.

.....

..... Plaintiffs

Versus

DEVYANI INTERNATIONAL LTD

.....

.....

.....Defendant

Date of institution of suit : 15.12.2021

Judgment reserved on : 20.05.2023

Date of Judgment : 09.06.2023

Appearance : Sh. Pawanjit S. Bindra, Ld. Sr. Advocate with Sh.
Vinayak Marwah, Ld. Counsel for the plaintiffs.

Sh. Bharat Chugh, Sh. Mayank Arora, Sh. Aditya
Narayan Choudhary and Sh. Ashray Chopra, Ld.
Counsel for defendant.

JUDGMENT

1. The present suit has been instituted by the plaintiffs for recovery of Rs. 1,52,77,020/- (Rupees One Crore Fifty Two Lacs Seventy Seven Thousand Twenty Only) along-with interest and mandatory injunction against the defendant.

2. Facts as epitomized in plaint are that the plaintiffs are the owner and sufficiently entitled to commercial land and independent building situated thereon comprising basement, mezzanine, ground, first, second and part third floor in the building located at 41, Community Centre, Basant Lok, New Delhi (in short "suit property"). The suit property was let out by the plaintiffs to the defendant for a period of 09 years under and by virtue of Registered Lease Deed dated 30.05.2013 w.e.f. 01.01.2013 with a monthly rent of Rs. 10,50,000/- (Rupees Ten Lacs Fifty Thousand Only) with enhancement @ 18% per annum after every 3 years.

2.1 It is further averred that after sometimes, the defendant requested the plaintiffs to reduce the rent stating that it was facing financial crises. After around a year, the plaintiffs agreed to the defendant's request to reduce the rent to the tune of Rs. 9,00,000/- payable w.e.f. 01.01.2015 till 31.12.2016, Rs. 11,50,000/- w.e.f. 01.01.2017 till 31.12.2019 and Rs. 13,22,500/- effective from 01.01.2020 till 31.12.2021. An addendum dated 06.11.2014 to the lease deed dated 30.05.2013, was executed between the parties reducing the rent as aforesaid. Even thereafter, defendant again approached the plaintiff stating that it was facing financial crises and difficulties. Plaintiffs again acceded to the request of

defendant and reduce rent to Rs. 6,00,000/- payable w.e.f. 01.07.2016. It is stated that as per the lease, rent in July 2016 would have been Rs. 12,07,500/-, if it had not been reduced.

2.2 It is further averred that despite the plaintiffs having agreed to defendant's requests from time to time for reduction of rent, the defendant had been irregular in payment of rent. After the onset of Covid-19 pandemic, Finance Team of the defendant, vide email dated 14.03.2020, made a request to plaintiffs to consider 50% waiver in the existing rent amount and waiver of other charges as stated in lease deed / license agreement till such time that the epidemic circumstances become normal to which the plaintiffs did not agree. The defendant stopped paying rent after 31.03.2020. The plaintiff, however, vide letter dated 12.06.2020, expressed their shock and fright over the above said email request of the defendant and stated that they had already accommodated several requests of lowering the rent from an amount that was originally decided through addendum to lease deed dated 06.11.2014. By reducing rent from time to time at the defendant's requests, the plaintiff lost over Rs. 1.0 crore. It is further stated that the *force majeure* clause that was attempted to be invoked by the defendant in the said letter, was not applicable to the instant case. The defendant, thus, was requested to pay rent for April, May & June, 2020 for which the invoices were already raised.

2.3 It is alleged that the defendant vide letter dated 06.06.2020 stated that Corona Virus Epidemic caused unprecedented crisis to its industry and the it was making all efforts to make sure continuity of operations while ensuring safety

of the staff and customers, however, there was significant decline in flow of customers and revenue. It further requested vide its letter dated 20.03.2020 received by plaintiff on 06.06.2020 that to tide over the situation, it is requested to pay rent @ 5% of net sales, during the period from 01.03.2020 to 31.07.2020, be acceded, while the situation would be reviewed in the month of July 2020. It further stated that if normalcy resumed, it would start paying rent as per the agreement. The plaintiffs did not agree to the same.

2.4 It is further stated that the plaintiff received a notice dated 15.06.2020 under Section 106 of Transfer of Property Act from the defendant for termination of, as allegedly claimed by the defendant, the “unregistered” lease deed dated 27.02.2013 entered into between them. In reply to the said letter, the plaintiff vide its letter dated 17.06.2020, duly responded to the said notice thereby, vehemently disputing the false averments made by defendant whereof, it stated that demised premises have been let out to the defendant, vide registered lease deed dated 30.05.2013 and thus reiterated that the subject lease deed was in fact registered. In the said letter, the plaintiff also demanded the defendant to clear the outstanding rent of 3 months as also, in case they wished to vacate the premises, three months’ notice period in accordance with the terms of the lease deed. Defendant thereafter, sent an email dated 08.07.2020 terminating the lease and an alleged notice thereby, serving to the plaintiff three month’s advance notice period. The said notice was replied by the plaintiff vide letter dated 08.07.2020 reiterating that three month’s notice period would include rent for month of October 2020 going by simple

calculation of three months. It was also contended in the letter that defendant was required to clear the arrears of rent with GST, as also the outstanding of unpaid water and electricity charges, prior to vacating the premises. However, the defendant paid no heed to the said letter of plaintiff. Thereafter, defendant sent another letter dated 06.07.2020, whereby, the defendant sought to terminate the lease and stated that it wished to vacate the suit property, which letter was also responded by the plaintiff vide letter dated 08.07.2020 reiterating the terms & conditions of the existing lease deed. It is further alleged that since, the defendant had been a habitual defaulter in payment of rent, the plaintiff through letter dated 09.11.2020 again requested the defendant to clear the outstanding arrears of rent along with interest @ 18% per annum. Again no heed was paid to the representations made by the plaintiffs. The plaintiffs through their advocate sent notice dated 28.11.2020 along with Statement of Account, requesting the defendant to pay Rs. 56,62,020/- being outstanding rent with interest and also continue to pay the rent until the vacant and peaceful possession of the suit property was handed over to the plaintiff. It is stated that on receipt of the said notice, the defendant contacted the plaintiffs and assured them that it would be clearing the outstanding rent along with interest. The plaintiff also requested the defendant to clear the dues qua water & electricity, which, the defendant agreed to pay. Though, the defendant paid the electricity and water bills in respect of the suit property up till 31.01.2021, which was also informed by Mr. Sanjeev Arora of the defendant through whatsapp messages dated 28.01.2021, 29.01.2021 & 09.02.2021, however, it had not paid a single penny to the plaintiffs towards rent.

2.5 It is averred that the defendant continues to occupy the suit property thus as on date, a sum of Rs. 1,52,77,020/- is due and payable by the defendant to the plaintiffs on account of rent and interest (including rent for the month of October 2021). It is stated that the plaintiffs had applied for Pre-Mediation at Delhi State Legal Services Authority. The mediation failed on 25.09.2021. It is averred that the plaintiffs vide email dated 12.09.2021 communicated to the defendant about the dilapidated state of the building, which continues to be in possession of the defendant. It was mentioned that it is solely due to non-maintenance of premises by the occupants. The email was responded by the ARs of defendant vide email dated 4.09.2021, whereof, as usual they shirked away their responsibility by making wrong statement.

2.6 It is contended that from the aforesaid, it is clear that the defendant is occupying the suit property without paying rent to the plaintiffs. The outstanding amount to be paid is Rs. 1,34,52,000/- including rent for the month of October 2021. Since, the defendant has failed to pay the rent in time, therefore it is liable to pay interest @ 18% per annum from the date, it became due and payable, which is Rs. 18,25,020/-. As such, the defendant is liable to pay Rs. 1,52,77,020/- to the plaintiffs. Hence, this suit.

3. Summons of suit were sent to the defendant. Pursuant to summons issued, defendant appeared and filed written statement *inter alia* raising preliminary objection that the present suit is not maintainable either in the law or in facts and is liable to be dismissed. It is submitted that the defendant gave the termination

notice to the plaintiffs and timely vacated the suit property. The defendant offered to give the keys of the vacated suit property to the plaintiffs. The plaintiffs, however, refused to accept the keys of the vacant suit property on the grounds that it needed repairs. The defendant also sent a legal notice asking the plaintiffs to accept the keys of vacant suit property and since, the plaintiffs themselves refused to take the keys, it was deemed as a delivery of possession to the plaintiffs. Also, the plaintiffs could not show even a single confirmation from their side conveying their willingness to take the keys of the vacant suit property. Therefore, the defendant was not liable to pay the rent subsequent to vacation of suit property. As a result, the plaintiffs with sole intention to harass and extort money from the defendant, had filed the present suit for recovery against the defendant.

3.1 Giving the background, it was submitted that Sh. Sanjeev Arora is Authorized Representative vide Board Resolution dated 17.02.2021, the defendant is a listed company w.e.f. 16.08.2021, it employs more than 9000 employees and was engaged in the Food & Beverage Industry. It holds an impeccable reputation for its track record and has robust presence of more than 700 outlet of Pizza Hut, KFC, Costa Coffee, Vaango and many other brands, including presence in different space zones cutting across Indian Sub-Continent, Nepal & Nigeria. With a view to expand, its presence and foot-reach and in furtherance of discussions between plaintiffs and defendant, the plaintiffs have let out suit property pursuant to registered lease deed dated 30.05.2013. It is further submitted that by virtue of the amended agreement dated 12.08.2016, the lease, in so far as it

concerned of the third floor of the suit property, stood determined by mutual consent. In this respect, given the fact that the area under lease was reduced accordingly the rent of the suit property was re-negotiated and settled at Rs. 6,00,000/- per month. After the above-said agreement, the actual portion leased out to the defendant was basement, mezzanine, first floor & second floor along with roof side of the building (suit property).

3.2 It is further submitted that due to Covid-19 pandemic amongst other personal operational difficulties / frustration / impossibilities, the defendant vide letter dated 14.03.2020 requested the plaintiff to waive of 50% of rental and other charges in view of drop in sales due to Covid-19. The defendant vide letter dated 20.03.2020 again requested the plaintiffs to revise request of consideration of 5% net sales as rental. The plaintiffs rejected the requests of the defendant. The defendant without prejudice to their rights and contentions vide letter dated 15.06.2020, sent a termination notice under Section 106 of the Transfer of Property Act, 1882 considering the fact that parties had executed the unregistered lease deed dated 27.02.2012. The plaintiffs vide its termination letter dated 17.06.2020 replied to the termination notice and stated that said lease is a registered vide lease deed dated 30.05.2013. Further, the plaintiffs asked the defendant to give three month notice period as per the terms of said registered lease deed dated 30.05.2013.

3.3 It is further submitted that due to Covid-19 pandemic, all obligations of the defendant stood discharged even otherwise due to frustration of lease deed. Despite the same, the defendant

still choose to terminate the lease deed as per clause 5.1, by serving three month notice period from the date of termination notice of the lease deed. Vide email dated 06.07.2020, the defendant conveyed its decision to terminate the lease deed and served the plaintiffs a notice period of three months in accordance with the clause 5.1 of the lease deed subject to refund of security deposit of Rs. 31,50,000/- paid by defendant to the plaintiffs. Accordingly to the termination notice, last date of termination of lease deed was 07.10.2020 i.e. three month starting from 06.07.2020. In response to the termination notice, the plaintiffs vide letter dated 08.07.2020 stated that last date of said notice period as 31.10.2020 (instead of 07.10.2020) and arbitrarily, asked the defendant to pay rent for the whole month of October 2020, the demand which, needless to state, had no factual or legal rationale at all. It is submitted that it is settled law that period prescribed in “Calender Month” running from arbitrary date expire with the date in the succeeding month immediately proceeding the day corresponding to the date upon which, the period starts. Thus, the last day of notice period was 07.10.2020 i.e. three month from the date of termination notice, as opposed to 31.10.2020, which was falsely claimed by the plaitniffs in the letter dated 08.07.2020 in its attempt to extort more money from the defendant. It is submitted that it is clear from Closure Challans dated 28.09.2020, 29.09.2020, 30.09.2020 & 01.10.2020 that defendant duly vacated the suit property by 01.10.2020 i.e. before the date of the termination of lease deed. The defendant on 06.10.2020 also shared the images of vacant suit property with the plaintiffs by whatsapp and same was acknowledged by the plaintiffs.

3.4 It was further submitted that despite admitted vacation of suit property after proper termination notice, the plaintiffs wrongfully insisted on repair of building, even though, the defendant was not liable, in any manner, for the same, either in contract or in law. The suit property was returned in condition as emphasized in the lease deed. Via whatsapp, the defendant on 08.10.2020 also shared the image of demand drafts of full & final amount till 07.10.2020 adjusted with SD amount, however, the plaintiffs refused to accept the keys of vacant suit property and insisted on payment of rent till 31.10.2020 and renovation of entire building including the 3rd floor, which has already been surrendered by defendant vide Addendum dated 12.08.2016, as a pre-conditioned to accept the keys of the suit property contrary to the provisions of lease deed and law.

3.5 It is further submitted that in view of admitted vacation of suit property, after serving the notice period, the plaintiffs refusal to take key, the possession is being to have be delivered to the plaintiffs and the defendant is not liable to pay rent thereafter. As far as handing over the suit property is concerned, the possession of suit property was handed over to the plaintiffs by the defendant upon termination of lease deed, it was sufficient to fulfill the requirement of clause 3.11 of the lease deed. It is further submitted that three month notice period started from date of termination notice i.e. 06.07.2020 and therefore, the defendant was liable to the rent of demise premises only till 07.10.2020. Moreover, the PNG Gas supplied of suit property was admittedly disconnected on 06.10.2020 at the request of the defendant vide

email dated 01.10.2020, implying that the operation of suit property was completely shut down on 06.10.2020. The same is corroborated by the emails dated 06.10.2020 & 08.10.2020 exchanged with Indraprastha Gas Limited and defendant's employee namely Balraj Bahoria was also marked in those emails. Further, the plaintiffs vide letter to the defendant dated 09.11.2020, once again made an unreasonable demand for rent to be paid by the defendant for the rest of month for October 2020. The plaintiffs vide letter dated 28.11.2020 sent a legal notice to the defendant illegally demanding Rs. 56,62,020/- from the defendant, despite the fact that suit property had already been vacated by the defendant. The said demand was an unreasonable amount as it included the rent for the month of October 2020 and November 2020, that too, without adjusting the SD amount of Rs. 31,50,000/-, which was already paid by defendant to the plaintiffs. Moreover, it was the plaintiffs, who refused to accept the keys of vacant suit property despite repeated request of the defendant. Further, the defendant cleared the water bill dated 13.10.2020 for the period from 28.09.2020 to 30.09.2020.

3.6 It is further submitted that the plaintiffs / their representative requested the defendant to pay electricity bill for the period after vacation of the suit property on the ground of financial difficulties with a promise that the same would be set off / adjusted later. It was on this assurance that the defendant paid the electricity bill on 14.01.2021 for the period from 12.12.2020 to 11.01.2021 for the suit property which the defendant was not liable to pay. The same is clear from extracted whatsapp message dated 31.01.2021 of Sh. Sanjeev Arora to Sh. Charanjit Bhatia

stating that the defendant could not request the disconnection of electricity / water, like the defendant did in case of PNG Gas supplied by requesting for disconnection for PNG Gas supply on 06.10.2020 as the electricity & water meter were not in the name of defendant. Thus, the extra period for which, electricity bill has been paid by the defendant is in fact recoverable from the plaintiffs about which plaintiffs were duly informed.

3.7 It is further submitted that the plaintiff on 17.03.2021 applied for pre suit mediation at Delhi Legal Services Authority, Patiala House Court, wherein, notice of appearance dated 08.04.2021 was sent to the defendant. The said notice was received on 18.04.2021 as the defendant was closed and only security staff on duty on alternate days due to National-wide lock down, however, defendant appeared in Mediation proceedings i.e. on 10.04.2021. Meanwhile, the defendant sent the notice dated 15.04.2021 to the plaintiffs asking them to collect keys of vacant premises, adjust the SD amount with alleged rental dues and accept Rs. 9,77,710/- as full & final settlement. The plaintiffs acknowledged the receipt of the same by email dated 18.04.2021.

3.8 It is further submitted that despite the conciliatory approach adopted by the defendant the plaintiff vide letter dated 16.06.2021, choose to settle the defendant to file a frivolous complaint against the defendant. The defendant promptly responded vide letter dated 23.06.2021 by denying all the frivolous allegation levelled by the defendant. It is further submitted that despite the best efforts of the defendant, the mediation failed. It is further submitted that plaintiffs vide email

dated 12.09.2021 addressed to the defendant stated that suit premises were in dilapidated and accused the defendant for non maintenance of the suit property. It is further submitted that it is clear from two whatsapp messages from Sh. Taranjit Singh Bhatia H/o of plaintiff no. 1 that on 19.01.2021, the plaintiffs admit that the suit property was vacated by defendant on 01.10.2020 but the plaintiffs were demanding rent for the whole month of October despite knowing the fact that suit property was vacant and the operations were shut down on 06.10.2020. However, on 12.09.2020, which is almost one year after vacation of the suit property by the defendant, the plaintiffs attempted to retract their own admission by falsely alleging that the possession of the suit property is with the defendant. In para-wise reply, the averment of the plaint were denied and prayer was made that suit filed by the plaintiff deserves dismissal. _

4. Replication filed on behalf of plaintiffs to the written statement filed by the defendant, wherein, the plaintiffs has denied the averments made by the defendant and reiterated what has already been stated in the plaint.

5. From the pleadings of the parties, following issues were framed on 05.04.2022 by my Ld. Predecessor:

1. Whether the plaintiff is entitled to recovery of a sum of Rs. 1,52,77,020/- as prayed for? OPP
2. Whether the plaintiff is entitled to interest, if so, at what rate and for which period? OPP
3. Whether the plaintiff is entitled to equitable relief of mandatory injunction directing the defendant to pay Rs. 6.0 lacs +

GST to the plaintiff per month on account of rent as prayed for?

OPP

4. Whether the defendant had given termination notice to the plaintiff and timely vacated the premises and had offered to give the keys of the vacated premises to the plaintiff which the plaintiff refused to accept? OPD

5. Relief.

6. To prove its case, the plaintiff no. 1 examined herself as PW1 on 18.05.2022. She tender her evidence by way of affidavit Ex. PW1/A. She proved registered lease deed Ex. PW1/1, addendum dated 06.11.2014 Ex. PW1/2, email dated 14.03.2020 Ex. PW1/3, letter dated 12.06.2020 Ex. PW1/4, letter dated 06.07.2020 Ex. PW1/5, letter dated 08.07.2020 Ex. PW1/6, letter dated 09.11.2020 Ex. PW1/7, notice dated 28.11.2020 Ex. PW1/8, calculations Ex. PW1/9, whatsapp chats and affidavit under Section 65B of the Evidence Act Ex. PW1/10 & Ex. PW1/11. She also proved the mediation failure report dated 25.09.2021 Ex. PW1/12. She was also cross examined at length.

6.1 The plaintiffs further examined Sh. Taranjeet Singh Bhatia as PW2, who also tendered his evidence by way of affidavit Ex. PW2/A and affidavit regarding compliance under Section 65B of the Evidence Act in respect of electronic data Ex. PW2/1. He was also cross examined at length.

6.2 The defendant examined Sh. Sanjeev Arora as DW1, who is the Chief Financial Controller of the defendant. He tendered his evidence by way of affidavit Ex. RW1/A. He proved

the board resolution dated 17.02.2021 Ex. RW1/1, email dated 31.08.2020 Ex. RW1/1B, closure challans dated 28.09.2020, 29.09.2020, 30.09.2020 & 01.10.2020 Ex. RW1/2 (colly), email exchanged between the defendant's representative and PNG supplier Ex. RW1/3 (colly), whatsapp chat between the representatives of parties along with photographs Ex. RW1/4 (colly). He also proved the demand drafts Ex. RW1/5, water bills Ex. RW1/6, electricity bills Ex. RW1/7, copy of whatsapp messages 31.01.2021 Ex. RW1/8. He further proved legal notice dated 15.04.2021 Ex. RW1/9, email dated 18.04.2021 Ex. RW1/10 and transcript of the conversation Ex. RW1/11. He was also cross examined at length.

6.3 Defendant has also examined Sh. Munish Bhatnagar, Legal Manager as DW2, who has relied upon the documents of DW1 i.e. Ex. RW1/1 to Ex. RW1/10. Certificate under Section 65-B of Evidence Act Ex. RW2/A. He was also cross examined at length.

7. I have heard arguments advanced by Ld. Counsel for parties and carefully perused the record and also gone through written notes of arguments filed by both the sides.

Issue no(s).1 to 4

8. All these issues framed above are interconnected and thus are being taken up together.

9. The claim of the plaintiffs of Rs. 1,52,77,020/- consist of outstanding rent of Rs. 1,34,52,000/- up to October 2021 and

interest @18% per annum from the date it became due and payable calculated at Rs. 18,25,020/-. Further perusal of the claim as submitted by the plaintiffs, it is seen that the outstanding rent is claimed for 19 months from April 2020 to October 2021 at the rate of Rs. 7,08,000/- per month (Rs. 6,00,000/- rent and GST @ 18% amounting to Rs. 1,08,000/-) amounting to Rs. 1,34,52,000/-. It is the contention of the plaintiff that lease deed in question does not permit the defendant to adjust security towards rent. It is argued on behalf of plaintiffs by Id. Counsel that plea taken by the defendants in various communication is that offer of possession subject to refund/adjustment of security amount is deemed to be return of possession. Seeking to adjust unpaid rent against security deposit and insistence of refund of security deposit while offering possession of suit property can in no manner be termed as handing over the possession to the plaintiffs. It is argued that defendant is in breach of the terms of Lease Deed Ex.PW-1/1 by not paying rent on time and cannot insist on refund of security while offering the possession of suit property.

10. The defendant, *per contra* claimed that in continuation of earlier letter of termination of tenancy, the lease was terminated w.e.f 06/10/2020. It was contention of the defendant that after termination of tenancy of the suit property, the defendant through legal notice dated 15.04.2021 Ex.RW-1/9 offered to the plaintiff to adjust Security amount of Rs. 31,50,000/- and another sum of Rs. 9,77,710/- for which Demand Drafts were prepared and copies were shared with the plaintiff. It was argued on behalf of defendant by Id. Counsel for defendant that aforesaid sum was the outstanding rent up to the date when the suit property was vacated

by the defendant and keys were offered to the plaintiff.

11. The first relevant issue is to be considered as to whether the defendant has right to foreclose the lease deed Ex.PW-1/1 before expiry of its term and if such termination of tenancy was justified. The relevant clause 5.1 of the Lease agreement dated 31.05.2013 Ex.PW-1/1 is reproduced hereunder: -

5.1. After the expiry of lock-in period of initial 3 years of this deed, LESSEE shall have a right to terminate the Deed at any time by giving 3 (three) months notice in writing to LESSORS.

12. The clause above makes it clear that if the lessee-defendant intends to terminate the lease, it can do so by giving three months notice in writing to the lessor-plaintiffs. The following documents tendered by the plaintiffs would reveal chronology of events leading to termination of tenancy: -

- i. Letter dated 15.06.2020 sent by the defendant to the plaintiffs giving notice of termination of unregistered Lease deed with respect to the suit property. It was indicated in this letter that the defendant intends to hand over the possession of the suit property on or before 30.06.2020. Further, in this letter, 15 days' notice as per section 106 of the Transfer of Property Act, 1882 was given.
- ii. The plaintiff in response to the aforesaid letter dated 15.06.2020 sent a Letter dated 17.06.2020 to the defendant *inter-alia* stating that as per clause 5 of the lease deed, three months notice is required to be given for terminating lease and on vacation, suit property be brought in same

condition. Further, the security would be refunded only after settlement of bills and other dues. The outstanding rent was also demanded.

- iii. Subsequently, another Letter dated 06.07.2020 Ex. PW 1/5 was sent by the defendant to the plaintiff giving notice of termination of Lease deed serving 3 Months legal notice. This document is important from the viewpoint that a clear notice of termination of lease was given.
- iv. In response to the above, Letter dated 08.07.2020 Ex. PW 1/6 was sent by the plaintiff to the defendant. This letter in the headline line Re: acknowledges the notice dated 06.07.2020 and it would be useful to reproduce the contents of this letter as under:-

Sir,

You are aware that the subject mentioned premises have been let out to you vide registered lease deed dated 30.5.2013 for a period of 9 years from 1.1.2013. In terms of the lease in case you want to vacate you are required to give a mandatory 3 month notice. Since the notice has been received by us on 6.7.2020, the said period would end on 31.10.,2020, since 3 months would take us to the first week of October, thereby triggering payment of rent for the said month. In case you choose to vacate prior thereto, you requested to pay rent, till 31.10.2020. Further, despite many requests you have failed to pay outstanding rent. You are requested to clear the outstanding rent amounting to Rs. 24,00,000/- along with GST forthwith. Further prior to vacating the premises you are requested to restore the same as they were at the time of letting them out to you and also clear all dues such as water, electricity and other charges.

13. It is evident from the correspondence(s) between the parties as discussed above, that there was clear communication about termination of tenancy of the suit property and the only disagreement was regarding the effective date either being 06.10.2020 or 31.10.2020.

14. Coming further, after determination of the tenancy as above, in accordance with the Lease deed, now the aspect is to be considered about the obligation of the defendant to handover the vacant possession of the suit property on the determined date. At this juncture, it is relevant to refer Section 108 of the Transfer of Property Act (TPA) which provides Rights and duties of lessor and lessee. For the instant case, sub-clause (m) and (q) is extracted below:-

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:—

(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;

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

Thus, the lessee-defendant was duty bound to keep the suit property in good condition and on determination of the lease bound to put the lessor-plaintiffs into possession of the property. It

is well settled that the landlord cannot refuse to take over the possession of the suit property upon determination of lease on the ground that the property has been damaged or not restored to its original position. It is equally well settled that in the event of refusal of landlord to take possession offered by the tenant, the possession shall be deemed to have been delivered to the landlord and the landlord shall not be liable to pay the rent thereafter. This issue has been elaborately considered by Hon'ble High Court of Delhi in a case titled as *H.S. Bedi v. National Highway Authority of India*, vide judgment dated 14.05.20145 reported as 2015 SCC OnLine Del 9524, (2015) 220 DLT 179 : (2015) 151 DRJ 248 : (2015) 2 Civ LT 577. Hon'ble Court in this case gave consideration to the cases *A.C. Raman v. Muthavally Seydali's Son Valiyakath Kaithakkal Kunhi Bara Haji*, AIR 1953 Madras 996, *Raja Laxman Singh v. State of Rajasthan*, AIR 1988 Rajasthan 44, *Onida Finance Limited v. Malini Khanna*, 2002 (3) AD (Delhi) 231, *Uberoisons (Machines) Ltd. v. Samtel Color Ltd.*, 2003 (69) DRJ 523, *Tamil Nadu Handloom Weavers Society v. Harbans Lal Gupta*, 2009 (107) DRJ 418 (DB), *Tikka Brijinder Singh Bedi v. Metso Minerals (New Delhi) Pvt. Ltd.*, (2010) 114 DRJ 653, *Kamal mangla v. Tata finance ltd.*, 2011 ILR 3 Delhi 682, *Associated Journal Limited v. ICRA Ltd.*, MANU/DE/0851/2012 and eventually summarized the jurisprudence in paragraph 10 of the judgment as under:-

10. Summary of Principles of law:

From the analysis of the above decisions and the provisions with which we are concerned, the following principles emerge:-

10.1. Determination of lease - Section 111 of the Transfer of Property Act provides various modes of determination of lease such as determination by efflux of time [Section 111(a)]; expiry of the period of notice of termination [Section 111(h)]; express

surrender [Section 111(e)] and implied surrender [section 111(f)].

10.2. Obligations of the landlord and the tenant upon determination of lease - The tenant is bound to handover the vacant and peaceful possession of the tenanted premises to the landlord upon determination of lease [under Section 108(q)].

10.3. Duty of tenant to restore the tenanted premises -The tenant is bound to restore the tenanted premises in the same condition in which it was taken.[Section 108(B)(m)].

10.4. Remedy of landlord in the event of non-restoration by the tenant - In the event of non-restoration of the tenanted premises to their original condition, the remedy of the landlord is to adjust the damages in the security deposit or sue the tenant for damages after taking over of the possession.

10.5. Landlord cannot refuse to take over the possession upon determination of lease and offer of possession by the tenant - The landlord, upon determination lease and offer of possession by the tenant, cannot refuse to take over the possession on the ground that the property has been damaged or not restored to its original condition.

10.6. Consequences of the landlord refusing to take the possession offered by the tenant - In the event of refusal of the landlord to take the possession offered by the tenant, the possession shall be deemed to have been delivered to the landlord and the tenant shall not be liable to pay the rent thereafter.

10.7. Consequences of the tenant refusing to handover the possession - If the landlord is ready to accept the possession but the tenant refuses/fails to handover the possession, the liability of the tenant to pay the rent shall continue till the handing over of the possession.

10.8. Remedy of tenant in case of non-refund of security deposit by the landlord – The tenant cannot refuse to hand over the possession till the security deposit is refunded. In the event of non- refund of security deposit by the landlord, the remedy of the tenant is to sue the landlord for refund of security deposit after handing over the possession.

15. In the instant case, it is the claim of the defendant that the defendant has expressed its desire to vacate the suit property by giving Termination Notice Ex.PW-1/5 indicating the tentative date for handing over possession of the suit property. The defendant claimed that after vacating the suit property, it has sent pictures of vacant suit property over WhatsApp to the defendant Ex. RW1/4

on 06.10.2020 but the plaintiff took no steps to take the possession of the suit property. The objection of the plaintiff was that the suit property was damaged, some goods were lying in basement and outstanding arrears of rent were not paid. At this juncture, it is relevant to refer to cross examination of Sh. Taranjeet Singh Bhatia (PW-2) on 19.05.2022, the relevant extract is reproduced as under: -

It is correct that on 06.10.2020, photos were sent by the defendant after vacation of premises. Vol. There were goods in the basement and the building was in dilapidated shape. It is correct to suggest that I have not stated the factum of existence of goods in the basement and the condition of the building being in dilapidated shape. Vol. I had stated that the building is in dilapidated shape and from the photographs sent by defendant, it was clearly visible that the goods of the defendant were there in the building.

16. In the above deposition though it is alleged by PW-2 that there were goods in the basement and the building was dilapidated shape but this claim is not backed up by any credible evidence pointing out as to which pictures were, this witness was referring to depose that goods were lying in the basement and the condition of building was dilapidated. The plaintiffs have not lead any evidence to substantiate the claim that there were goods in the basement and the building was dilapidated shape.

17. Ms. Ameet Bhatia was examined as PW-1 but in cross examination she mostly has deposed that the management and affairs of the suit property was looked after by her husband. Therefore, in these premises, the deposition of Sh. Taranjeet Singh

Bhatia PW-2 assumes significance. In the cross examination of PW-2 on 19.05.2022, it was admitted that there was a meeting held on 09.10.2020 with the representatives of defendants. The following part of the deposition dated 19.05.2022 is relevant:-

The defendant before the meeting on 09.10.2020 had sent me a whatsapp which I had replied and in the office on 09.10.2020, they placed before me the cancelled demand draft, amount I do not remember which I did not accept, since not as per my entitlement of the dues. The way of talk of the defendant was very bad. I was told to settle the matter. When I told them that if defendant would not pay my due amount, I will go to the court. On this, defendant threatened me that they have a team of lawyers and are not scared of litigation. I then came back. It is wrong to suggest that the story narrated by me above is afterthought which was even not mentioned in the plaint or any complaint. I was never offered the keys of the premises till date.

18. Per Contra, evidence has been adduced by Mr. Sanjeev Arora, DW-1 (the defendant) in the form of Whatsapp chat between the parties Ex. RW-1/4 about sending photographs and messages on and about 06.10.2020. It transpires that based on these photographs, there was discussion between the parties about repair of building to be done before possession is given. It is the contention of the defendant that the plaintiff could not point out any claim of repairs. In the cross examination, this witness withstood all the suggestions and did not crumble.

19. It has also been argued on behalf of defendant by Id. Counsel that earlier on 08.10.2020, a meeting was held between the plaintiff's representative and the defendant's representative wherein the defendant's representative had offered the possession of the premises to the plaintiff's representative. The said offer of possession was declined by the plaintiff's representative stating

that the dues were to be cleared and the building was to be repaired. The said averment is evident from the *Whatsapp chat* between the plaintiff's representative, Taranjeet Bhatia and the representative of the defendant, Mr. Prateek Jain which has been tendered as Ex. RW-1/4 (colly). The relevant part of the same is reproduced herein below:

[06.10.2020, 07:42 PM] Taranjeet Bhatia: Yes all need to be repaired already mentioned it to Mr. Sanjeev Arora about it thks
[08.10.2020, 12:38 pm] Taranjeet Bhatia: Pls on inside u call me and tell me to meet and than settle now u are sending me draft copy. Pls I have to take rent till end of oct and repair of building has to be done in the whole building before u give us possession thks.

20. The set of evidence above suggests that at the time of vacating suit property in the first week of October 2020 by the defendant, there was active interaction between the parties. The non willingness of the plaintiff to take possession until unless repairs are carried out goes against them because as held in *H S Bedi (Supra)*, the landlord cannot refuse taking of possession once the tenancy is terminated. Further, it is borne out from the record that the suit property was vacated in October 2020 relying upon evidence that by 06.10.2020 the PNG connection was got disconnected Ex. RW-1/3 which indicates that the suit property was vacated by the defendant in October 2020. It has been argued by the defendant that it was running a Pizza hut from the suit property which cannot be run without Gas (PNG). The defendant further argued that the utility bills for the period when the suti property was occupied were progressively paid. Water bill for the

period September 2020 was paid Ex. RW-1/6 and Electricity bill even for further were paid Ex. RW-1/7. It was further contended that evidence has been placed on record exhibiting relocation/closure of machinery Ex. RW-1/3.

21. Now, again adverting to the evidence adduced by the plaintiffs in support of claim that the defendant continued in possession after October 2020 i.e. after expiry of period of notice of termination of tenancy. The documentary evidence tendered by the plaintiffs pertaining to post October 2020 consists of letter dated 09.11.2020 Ex. PW-1/7 and legal notice dated 28.11.2020 Ex. PW-1/8. It transpires from both these communications that there is no willingness expressed by the plaintiff to take possession of the suit property. On the contrary, it is evident that the plaintiffs continued to contend that unless arrears of rent are paid, repairs are done and utility bills are paid, the possession cannot be taken.

22. Further, it manifest from record that the plaintiffs had also admitted in their Whatsapp chats Ex.RW-1/8 with Mr. Sanjeev Arora on 19.01.2021 and 12.09.2021 that defendant had vacated the suit property, the relevant Whatsapp messages are reproduced as under:for ready reference:-

[19.01.2021, 10:58:43 AM] Tarun Bhatia LL Basant Lok: Pls on inside u call me and tell me to meet and than settle now u ae sending me draft copy pls I have to take rent till end of oct and repair of building has to done in the whole building before u give us possession thks.

[12/09/21, 7:26:14 PM] Taran Bhatia LL. Busant Lok: Sir, We have learnt that our premises hearing No 41 basant lok. Vasant vihar which is in your possession vide Registered Lease Deed is

in a dilapidated state due to non-maintenance by your Company. The lessee and your callous attitude. This is to further bring to your notice. as we have been informed, that due to continuous rain for last 2 days there is water logging on the roof of the building as a result of which there is leakage through the ceiling and the lanterns are cracking up. Due to, the aforesaid there is very high risk of an accident that may be caused which, God forbid, may result in casualty and loss of property. You are notified that in view of the the fact and circumstances whereof the building continues to be in your possession and management, in case of any such happening you/ your management will be fully responsible for such mismanagement and carelessness which may result in such accident and your Company will be squarely responsible for such damage including the cost and expense incurred to fix it.

Regards,

Mrs Ameet Bhatia & Mrs. Prakash Kaur Bhatia"

23. It is the argument of the Id. Counsel for defendant that defendant continued to make efforts to persuade the plaintiff to take Keys of the suit property. For this purpose, a meeting between the plaintiff's representative and the defendant's representative was held on 02.12.2021 at the office of defendant in order to amicably resolve the matter. During this meeting, the representative of the plaintiffs candidly admitted that the keys were, in fact, offered to them which they themselves refused. Further, even during the meeting he refused to accept the keys but insisted to adjust the rent against the security deposit until and unless the entire building is repaired by the defendants. During the course of arguments, some excerpts from this conversation are produced below: (Copy of transcript has been exhibited as Ex. RW1/11 along with evidence affidavit of DW1)

Mr. Varun Prabhakar (DIL) (07:56): Right. To mera point aapke saamne ye hai ki lets say, humne aapko termination diya, meri jo understanding hai ki 8 taarikh tak khaali ho chuka tha, that has been intimated to you. Ab na your point is ki aapne November me

khaali kiya ya December me khaali kiya, aap ye kah rahe hai right?
Andar se jab khaali hua tha, aapko chaabhi kab offer kari gai thi ki
chaabhi le lo?

Mr. Taran Bhatia (08:14): Chabhi mere ko jab offer kari gai thi
that was in February.

Mr. Varun Prabhakar (DIL) (08:53): Bhatia ji mai ek simple sa
word bolta hu, dekho aap ek experienced aadmi hai. Business aap
bhi karte hai, abhi bhi aapne Jaipuria ji ko phone kiya tha ki ji meri
chaabhi de do. Chaabhi nahi de rahe. Koi kirayedaar.....

Mr. Taran Bhatia (09:04): Maine to boa hi nahi ki chaabhi de do,
mujhe chaabhi chahiye hi nahi, jab tak mera, unhone kaha
“(inaudible 09:07) ki tu chaabhi toh le le” Maine kaha mai chaabhi
kyo lunga jab tak mera hissab nakki nahi hoga. Maine unko abhi
yahi baat boli.

Mr. Varun Prabhakar (DIL) (09:13): Matlab to ye point aapka
hai, aapki condition aap laga rahe ho ki bhai jab tak hisaab nahi
hoga mai chaabhi nahi lunga.

Mr. Taran Bhatia (09:18): Mai chaabhi nahi lunga jab tak....

Mr. Varun Prabhakar (DIL) (09:18): Possession nahi lunga.....

24. It is contended on behalf of the defendant that the plaintiff further reiterated its precondition to accepting of keys of the suit property, the relevant extract of the conversation is reproduced as under:-

Mr. Varun Prabhakar (DIL) (12:36): To Bhatia ji 1 second, sir

ab wo I think puraani discussion hai, koi fayda nahi, lets be close it now, sir kyo itna hum isko track kar rahe hai. Ek Bhatia ji mai ki aapki baat samajh gya, ki aap ye bol rahe ho ki jab tak solution nahi, tab tak chaabhi nahi lunga.

Mr. Taran Bhatia (12:47): Hanji

Mr. Varun Prabhakar (DIL) (12:47): Ye appki point clear hai yaha pe.

Mr. Tarun Bhatia (12:49): 100% clear hai

Mr. Varun Prabhakar (DIL) (12:50): Clear hai. Ab maan ke chaliye aapko dispute humaare ek saal tak chalta rahta hai, aap tab tak nahi lenge chaabhi?

Mr. Taran Bhatia (12:55): Sir, jo court decide karegi. sir jis time mai court me jaunga us time dekhenge na kya or matlab kya cheez hot hai.

Mr. Varun Prabhakar (DIL) (13:03): Matlab aap court se hi, agar aap court jo agar kahega ki chaabhi le lo tah bhi aap loge nahi to aap nahi loge chaabhi.

Mr. Taran Bhatia(13:07): Sir abhi mai chaabhi aise nahi /lunga jab tak meri (inaudible 13:10) demand will not be cleared. will not take the keys. The reason is if I take the keys, I know the damages of the building is too high. I cannot claim that...

Mr. Varun Prabhakar (DIL) (13:17): Sir how much is the damage sir

Mr. Taran Bhatia(13:20): Sir approximately 30 lakh rupees sir.

Mr. Varun Prabhakar (DIL) (13:22): Aapki puri building ka damuge 30 lakh hai?

Mr. Taran Bhatia(13:24): Sir that is the building I got which is the..

Mr. Varun Prabhakar (DIL) (13:25): Sir aapke paas koi documentary kuch hai aapke paas aisa ki...

Mr. Taran Bhatia(13:27): Sir mai karwa deta hu architect se, jis din mai possession lunga na aapko sab dikha dunga usko sir building me kitne damages aaye, mai aapko dikhaunga.

25. It transpires from the above that representatives of the plaintiffs was offered the possession of the suit Property which was refused by him on the pretext of damage to the suit property whereas no evidence has been adduced by the plaintiffs about damage to the suit property except bald statements of the plaintiff.

26. It is trite law that a landlord cannot refuse to accept possession of the suit property on the ground that property has been damaged. Therefore, on careful consideration of rival contentions of the parties and applying the well settled principles of law and following the dictum given in *H.S Bedi case (supra)*, it is established on record that defendant's lease determined in the month of October, 2020 when the defendant offered the possession to the landlord-plaintiff who deliberately chose not to take the possession, therefore, the possession of the suit property is deemed to have been delivered to the landlord-plaintiff who is not entitled to the rent thereafter. The plaintiffs by not coming forward to take unconditional possession from the defendant cannot make it actionable for recovery of rent for the period after vacation of the suit property by the defendant. There is no challenge to the claim of the defendant that all utility bills of the period when the suit property was under control of the defendant has been paid. Under these circumstances, the plaintiff is entitled to rent for the period April, 2020 to October, 2020 (07 months) @ Rs. 6.0 lakhs per month and applicable GST @ 18% after deduction of TDS as per prescribed provision.

27. In nutshell, the findings on each issue to begin with issue no. 4; whether the defendant had given termination notice to the plaintiffs and timely vacated the premises and had offered to give the keys of the vacated premises to the plaintiff which the plaintiff refused to accept based on the discussion above is decided in the favour of the defendant and against the plaintiffs. Now, the issue no. 1 whether the plaintiffs are entitled to recovery of a sum of Rs. 1,52,77,020/- and issue no. 3 whether the plaintiffs are entitled to equitable relief of mandatory injunction directing the defendant to pay Rs. 6.0 lacs + GST to the plaintiffs per month on account of rent as prayed is decided partly in the favour of the plaintiffs because it is borne out of record that the plaintiffs are entitled to rent from April 2020 to October 2020 as per Lease Deed along with applicable GST. Lastly issue no. 2, whether the plaintiffs are entitled to interest, if so, at what rate and for which period has to be considered on equitable basis because the plaintiffs are having a security deposit of Rs. 31,50,000/- which was to be adjusted against the outstanding dues, therefore the plaintiffs would be entitled to interest only on the amount which exceeds the above amount of security deposit and becomes payable. The period would be from the date of filing of the suit till its realization and it would be just if the rate of interest is 12% per annum. Accordingly, issue no.1 to 4 are accordingly decided.

Relief:-

28. In view of above discussions on all the issues as well as issue wise findings, the suit of the plaintiffs is partly decreed and the plaintiff is entitled to arrears of rent for the period w.e.f. April,

2020 to October, 2020 @ Rs. 6.0 lakhs per month and applicable GST @18% after deduction of TDS as per prescribed provisions. The amount so becoming due would be adjusted against the security deposit of Rs. 31,50,000/- and the balance amount shall be paid by the defendant including interest @12% from the date of filing of suit till its realization.

29. Keeping in view provisions as contained in Section 35 and Section 35A of CPC, more particularly in the given facts of the case, on the principal of equity, no order as to costs and both the parties shall bear their own costs.

30. Decree sheet be prepared accordingly.

31. File be consigned to record room.

Digitally signed
by VINEETA
GOYAL
Date:
2023.06.09
18:34:20
+0530

Pronounced in the open Court
on **09.06.2023**.

(VINEETA GOYAL)
District Judge (Commercial-03)
Patiala House, New Delhi