

**HIGH COURT OF DELHI**

**Bench : HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**Date of Decision: April 29, 2024**

RFA(OS) 63/2016

**ATMA RAM PROPERTIES PVT LTD       ..... Appellant**

**VERSUS**

**UNION OF INDIA & ANR       ..... Respondents**

**Legislation:**

Code of Civil Procedure, 1908, Order XXXIX Rules 1 and 2

Order XIV Rule 2

**Subject:** Appeal against the dismissal of a suit concerning recovery of misuser charges and damages imposed on the lease of a property by the Land and Development Office (L&DO), and the legal validity of such charges.

**Headnotes:**

Appeal against Dismissal of Suit – Challenge against the judgment dated 24<sup>th</sup> February 2014 and review petition dismissal dated 29<sup>th</sup> August 2014 concerning recovery of misuser charges on leased property – Appeal allowed – Single Judge dismissal set aside due to inadequate consideration of pleadings and issues framed – Appeal succeeds on grounds that the trial court failed to consider vital evidence and did not adjudicate on framed issues as mandated by Order XIV Rule 2 of CPC – Misuser charges paid under protest and without prejudice – Case remanded for retrial – [Paras 1-2, 19-22].

Lease and Misuser Charges – Dispute over legality of misuser charges levied by L&DO on appellant post purchase of leasehold property from Erstwhile Owners – Appellant contends payments were excessive, arbitrary, and not compliant with relevant regulations – [Paras 4-6, 14-16].

Pleading and Evidence – Initial judgment dismissed due to purported lack of pleadings and evidence regarding payment of charges under coercion – Appellate Court finds sufficient pleadings were indeed presented – Misuser charges questioned on validity and imposition process – Trial court failed to adjudicate on issues despite comprehensive pleadings and framed issues – [Paras 9, 14, 19].

Restoration of Suit – Appellate decision restores original suit and mandates retrial on merits, addressing all issues initially framed – [Para 21].

Decision: Judgment allowing the appeal, setting aside the initial dismissal, and restoring the suit for further proceedings. Misuser charges to be reviewed on substantive legal and factual grounds as framed in issues – [Paras 20-23].

#### **Referred Cases:**

- National Insurance Co. Ltd. Vs. Bokhara Polyfab Pvt. Ltd (2009) 1 SCO 267

Representing Advocates:

For the Appellant: Mr Amit Sethi, Ms Ekadhana Sethi, and Mr Nischay Dutt

For the Respondents: Mr Ruchir Mishra, Mr Mukesh Kr Tiwari, and Ms Reba Jena Mishra

#### **AMIT BANSAL, J.:**

1. The present appeal is directed against the judgment and decree dated 24<sup>th</sup> February 2014, passed by the learned Single Judge and the order dated 29<sup>th</sup> August 2014, dismissing the review petition filed on behalf of the Appellant/Plaintiff.

2. By way of the judgment dated 24th February 2014, the learned Single Judge dismissed the suit filed on behalf of the Appellant/Plaintiff. Subsequently, *vide* order dated 29<sup>th</sup> August 2014, the review petition filed by the Appellant was also dismissed.
3. The 'suit property' i.e., Scindia House, Connaught Circus, New Delhi, also known as the Atma Ram Mansion, is a leasehold property with the Land and Development Office ('L&DO') being the lessor.
4. The brief facts leading to the filing of the present appeal are set out below:
  - 4.1 Appellant entered into agreements dated 14<sup>th</sup> October 1978 and 31<sup>st</sup> January 1979 with Mr Khushwant Singh and Brig. Gurbux Singh (*hereinafter referred to as 'Erstwhile Owners'*) to purchase the suit property.
  - 4.2 L&DO *vide* letter dated 23<sup>rd</sup> March 1979, informed the Appellant that there were various breaches with regard to the lease of the suit property such as commercial user of the suit property and unauthorised construction thereon. Therefore, the suit property stood re-entered by the Respondents on 14<sup>th</sup> November 1973.
  - 4.3 Subsequently, L&DO raised demand letters dated 04<sup>th</sup> December 1979 and 14<sup>th</sup> March 1980 (*hereinafter collectively referred to as 'Demand Letters'*) for damages/misuser charges to the tune of Rs.42,24,065/-.
  - 4.4 Upon part-payment of the aforesaid amount by the Appellant, a supplementary lease deed was executed by the Respondents in favour of the Erstwhile Owners dated 09<sup>th</sup> April 1980. Further, *vide* letter dated 19<sup>th</sup> May 1980, the Respondents informed the Erstwhile Owners that the re-entry had been withdrawn.
  - 4.5 The Erstwhile Owners executed and registered a formal sale deed dated 31<sup>st</sup> May 1980 in favour of the Appellant in respect of the suit property. Therefore, the Appellant stepped into the shoes of the Erstwhile Owners as their successor-in-interest.
  - 4.6 The Appellant made representations dated 16<sup>th</sup> July 1980 and 10<sup>th</sup> September 1980, to L&DO stating that the Demand Letters issued for misuser charges/damages were excessive, arbitrary and not in accordance with the prevalent regulations.
  - 4.7 However, the said representations were rejected by the Respondents.
5. Consequently, the Appellant filed the suit from which the present appeal arises i.e., Suit No.1296/1981 seeking declaration that the damages/misuser

charges imposed on the Appellant are void and illegal. Further, the Appellant sought recovery of the damages/misuser charges to the tune of Rs.10,04,236.25/-.

6. During the pendency of the suit, the Appellant filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC') seeking an interim injunction in order to restrain the Respondents/Defendants from recovering the aforesaid amounts or adopting coercive measures, such as re-entry, cancellation of lease or dispossession. *Vide* interim order dated 23<sup>rd</sup> February 1982, a restraint order was passed against the Respondents restraining them from taking any action in nature of forfeiture of the lease.
7. Subsequently, the Appellant paid the outstanding dues as claimed by the Respondents with regard to the suit property. Accordingly, an amendment application was filed by the Appellant seeking enhancement of recovery of the damages/misuser charges from Rs.10,04,236.25/- to Rs.42,24,065.25/-, which was allowed *vide* order dated 07<sup>th</sup> January 2003.
8. In the year 2006, the suit came to be renumbered as CS(OS) No.147/2006.
9. By way of the impugned judgement dated 24<sup>th</sup> February 2014, the learned Single Judge dismissed the suit stating that the Appellant had neither made necessary pleadings nor led any evidence in support of its contention that the Appellant had paid misuser charges under coercion and without prejudice to its rights and contentions. The relevant extracts from the impugned judgement have been set out below:

*"7. Though the counsel for the plaintiff agrees that in view of the judgment supra of the Division Bench, the challenge made by the plaintiff on the ground of the defendants under the lease terms being not authorized to recover any charges/ damages for misuser does not survive but contends that the plaintiff has challenged the demand also on the grounds of, (i) the approval required under the Perpetual Lease, for change of use and for construction, being of the Chief Commissioner, Delhi and whose successor is not the L&DO but the Lt. Governor of Delhi; and, (ii) on the ground of the L&DO itself vide its orders dated 30th March, 1971 and 24th November, 1975 having condoned some breaches without providing for any payment therefor.*

***8. The counsel however admits that the said grounds have not been pleaded in the plaint. He however contends that he has in***

*his written submissions urged the said grounds and to which no response has been given.*

...

10. *There is another aspect of the matter, the plaintiff has already paid the amount of which recovery is sought. The plaintiff claims to have paid the same without prejudice to its rights and contentions. **The questions, whether the payment was without prejudice and/or under any coercion and whether the plaintiff has derived any benefits from such payments and whether those benefits are also to be reversed once the plaintiff is seeking back the amount so paid, are all questions which can be adjudicated only by recording evidence. The Supreme Court in National Insurance Co. Ltd. vs. Bokhara Polyfab Pvt. Ltd (2009) 1 SCO 267 has held that the questions, whether there was any coercion or not, is a question of fact and cannot be decided without trial.***
11. *The plaintiff in the present case has chosen not to lead any evidence and thus the said question also cannot be decided.*
12. *No merit is thus found in the suit, which is dismissed.  
However no costs.”  
[Emphasis is ours]*
10. Subsequently, Review Petition No.393/2014 was filed on behalf of the Appellant before the learned Single Judge, which came to be dismissed *vide* order dated 29<sup>th</sup> August 2014.
11. Learned counsel appearing on behalf of the Appellant submits that once comprehensive issues had been framed by the Court in terms of Order XIV Rule 2 of the CPC, it was obligatory to give a finding on all the issues. Therefore, he submits that the impugned order is erroneous, as the suit filed by the appellant has been dismissed without giving any finding on the issues framed. He has drawn our attention to the letters/representations made by the Appellant on 16<sup>th</sup> July 1980 and 10<sup>th</sup> September 1980, wherein the Appellant had categorically stated that the misuser charges had been paid without prejudice to the rights and contentions of the Appellant and the same ought to be reviewed by the Respondents.
12. *Per Contra*, counsel appearing on behalf of the Respondents submits that the Appellant paid the misuser charges seeking withdrawal of re-entry. Subsequently, once the misuser charges were paid and the re-entry order by

the Respondents was withdrawn, the Appellants could not seek to recover the misuser charges.

13. We have heard the counsel for the parties and examined the record of the case.
14. A perusal of the plaint would show that the Appellant had specifically pleaded that the Respondents had issued an office order dated 10<sup>th</sup> April 1971, after obtaining an opinion from the then Attorney General of India, to the effect that the flats above the shops in 'Connaught Place' area could be used for non-residential purposes. In fact, the office order dated 10<sup>th</sup> April 1971 was filed along with the plaint. [*Reference may be made to Para 12 and 14 of the plaint*]
15. Along with the plaint, the Appellant had filed a representation dated 16<sup>th</sup> July 1980 [*Exhibit D-22*], which demonstrates that it was the case of the Appellant that the payments towards misuser charges were made without prejudice to its rights and contentions. The relevant extracts of the representation dated 16<sup>th</sup> July 1980, made on behalf of the Appellant are set out below:

*"As you are aware we have already paid without prejudice a sum of Rs.10,04,236.25 in instalments towards the said damages of Rs. 42,24,063.25. We would request you, and we are confident that the entire issue would be reviewed and settled by you before 15.9.1990 when the next instalment of the misuse/damages/penalty charges falls due for payment.*

*In the circumstances aforesaid, we would request you to reexamine the issue regarding the levy and quantum of damages fixed by you and particularly with reference to the points enumerated hereinabove."*

16. Along with the plaint, the Appellant filed yet another representation dated 10<sup>th</sup> September 1980 [*Exhibit P-7*], wherein the Appellant had specifically stated that the damages levied by the Respondents were not in accordance with the specific instructions issued by the Ministry of Works and Housing and therefore, re-consideration was sought.
17. Both the aforesaid representations were duly received and replied to by the Respondents *vide* letters dated 23<sup>rd</sup> August 1980 and 11<sup>th</sup> August 1981.
18. In the present case, based on the pleadings of the parties, the following issues had been framed:

- "1. Whether the defendants/Defendant No.2 have no right to levy and claim any damages/ misuse charges on account of alleged breaches of perpetual lease by the plaintiff. OPP*
- 2. Whether the plaintiff has no right to reagitate about imposition of damages and seek its recovery after having undertaken to pay the same. OPD*
- 3. Whether the plaintiff is entitled for decree of declaration to the effect that the damages/ misuse charges so imposed by defendants are illegal, void and unenforceable. OPP*
- 4. Whether the plaintiff is entitled for decree of perpetual injunction thereby restraining the defendants from imposing and recovering in any manner any damages/misuse charges in future by adopting coercive measures or otherwise.*
- 5. Whether the plaintiff is entitled for recovery of Rs.42,24,062.25/- from the defendants.*
- 6. Whether the plaintiff is entitled to any interest on the amount of Rs.42,24,062.25/- if so, at what rate and for what period?  
OPP*
- 7. Relief."*
19. The fact that the aforesaid issues had been framed in the suit, would necessarily mean that the plaint contained the requisite pleadings. Therefore, in our view, the Single Judge fell into error by holding that there were no pleadings with regard to the non-applicability of the misuser charges. Further, the impugned order failed to consider the aforesaid representations wherein the Appellant had categorically stated that the misuser charges were wrongly levied and hence the Appellant was not liable to pay the same. Therefore, in our view, the suit could not have been dismissed on the ground that no evidence was led by the Appellant/Plaintiff.
20. It has rightly been contended on behalf of the counsel for the Appellant that once issues had been framed in the suit, having regard to the pleadings at hand in terms of the mandate of Order XIV Rule 2, the Court had to answer all the issues framed and the suit could not have been dismissed in a summary manner.
21. In view of the discussion above, the present appeal is allowed, the impugned judgement dated 24<sup>th</sup> February 2014 and the order dated 29<sup>th</sup> August 2014 in the Review Petition are set aside. The suit filed by the appellant is restored to its original number.

22. The suit will be listed before the Roster Bench on 21<sup>st</sup> May 2024.
23. The appeal, along with pending applications, if any, stands disposed of.

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