

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

**RESERVED ON : 19.10.2010**

**DECIDED ON: 16.11.2010**

+ **CS(OS) 2191/2006 & I.A. No.13144/2006**

SUBHASH CHANDRA

..... Plaintiff

Through : Shri Nikhil Goel and Shri Sayid Marsook, Advocates.

versus

COTTAGE INDUSTRIES EXPOSITION LTD. AND ORS ..... Defendants

Through : Shri Rajiv Sawhney, Sr. Advocate with Shri Debashish Moitra,  
Shri Rajat Jain and Ms. Alka Dahar, Advocates.

**CORAM:**

**MR. JUSTICE S. RAVINDRA BHAT**

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|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not?  | YES |
| 3. | Whether the judgment should be reported in the Digest?                    | YES |

**MR. JUSTICE S.RAVINDRA BHAT**

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1. The plaintiff seeks a decree for possession and damages for alleged wrongful use and occupation of the premises, being C-2/9, Safdarjung Development Area, New Delhi (hereafter referred to as “the suit premises”).

2. Briefly the facts are that the plaintiff claims to be allottee of the suit property for which Perpetual Lease Deed was executed on 20.10.1967. The superior or prominent lessor was the President of India; later the lease was transferred for management to the Delhi Development Authority (DDA). The plaintiff constructed a building at his expense. It is stated that the suit premises were first leased in 1991 to National Power Transmission Corporation (NPTC) for residential purposes and subsequently leased in 1997 to the Power Grid Corporation of India, again for residential purposes, till October 2003. The suit premises were leased to the defendant

by an agreement dated 29.05.2004. The plaintiff claims that together with the lease agreement, a Power of Attorney was also executed since the plaintiff was residing in Mumbai; the Lease Deed was registered. It is stated that the Power of Attorney was executed in favor of the defendant in good faith to facilitate various works which the first defendant company were to undertake for effective use of the suit premises.

3. The plaintiff states that the suit premises were agreed to be used only for residential purposes. It is alleged that sometime in June 2006, the plaintiff became aware that the suit premises were being misused by the defendant. The defendant wrote a letter on 09.06.2006 to the plaintiff informing that Resumption Notice dated 06.06.2006 had been received from the DDA claiming that the property was being used for purposes other than those permissible in law. The plaintiff alleges that upon this, he made enquiries and was shocked to learn that the DDA had also issued an earlier notice alleging misuse and that the defendant had, without intimating the plaintiff in any manner about these developments, filed an affidavit on 28.03.2006 before the Supreme Court. The said affidavit has been produced; the same reads as follows:

“XXXXXX

XXXXXX

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**AFFIDAVIT**

*Affidavit of Sh. V.K. Sharma, s/o Late Sh. V.P. Sharma, R/o H. No. 271, Sector 40, Gurgaon, Haryana.*

*I the Deponent hereinabove do hereby solemnly affirm and declare as under:-*

- 1. That I have executed the lease for commercial use in respect of premises more particularly known as C-2/9, Safdarjung Development Area, New Delhi.*
- 2. That as per the lease document the Lessor/owner has confirmed the user of the ground floor as non residential and thus the premises were put to use accordingly.*
- 3. I state that by 30<sup>th</sup> June 2006 the premises will conform to the permitted user as per the zoning plan on that date subject to any other and further orders of the Hon'ble Supreme Court or any further notifications/bye laws.*

XXXXXX

XXXXXX

XXXXXX”

4. The plaintiff claims that the notice on 06.06.2006 by the DDA was the first one actually communicated by the defendant; the same had relied upon an order dated 20.05.2006 by the DDA cancelling the permanent lease. Upon this, it is stated that the plaintiff met the defendant

and was advised to challenge the cancellation of order of 20.05.2006. The plaintiff mentions about a W.P. No. 10449/2006 on the file of this Court, granting stay of the said notice dated 06.06.2006, resuming the premises. The plaintiff says that it caused a notice to be issued to the Defendant on 23<sup>rd</sup> June, 2006, reminding that it had to use the premises in accordance with the lease deed entered into by the parties, and granting the latter (i.e the defendant) seven days time to comply with the demand. The defendant replied, by its letter dated 29<sup>th</sup> June, 2006, stating that the premises were used for commercial purposes, but alleging that the plaintiff was pressurizing it (the Defendant) in connivance with the authority by getting notices issued. It is stated that the defendant's use of the suit premises for non residential and commercial purposes is contrary to the lease terms. The suit avers that the plaintiff held several meetings with the defendant's representatives, to resolve the issue. However, it led to no positive development. Consequently, the plaintiff got a legal notice issued, on 30<sup>th</sup> September, 2006, asking the defendant to vacate the premises, on account of misuse of the property, contrary to the arrangement. The relevant portion of the said notice – a copy of which has been produced- reads as follows:

*“2. That earlier also, a notice dated 23<sup>rd</sup> June 2006 was sent to you which you had replied vide your letter dated 29<sup>th</sup> June 2006. That your letter contained statements which were not only false to your knowledge but were irresponsible. That subsequently, a suit was filed by my clients, being suit 1498 of 2006 before the Hon'ble Delhi High Court seeking a declaration that the property in question cannot be used for commercial purposes and that seeking an injunction against you from using the said property in violation of prevailing laws.*

*3. That despite such an attempt and efforts made by my client, you have neither ceased nor desisted from using the said property in violation of the prevailing laws. This action apart from illegal is also contemptuous. Accordingly, my clients specifically and expressly cancel the subject lease deed and call upon you, within fifteen working days of receipt of this notice and as per the provisions of the Transfer of property Act, 1882, to vacate the aforesaid premises (as mentioned in paragraph 1 to this notice) and handover peaceful possession, free from any encumbrance which may have been created by you, to my clients. Should you fail to comply with this notice, my client will be forced to take appropriate proceedings under the law.”*

In the circumstances, a decree for possession, with consequent decree for charges towards use and occupation of the premises, is sought.

5. The plaintiff has produced the Lease Deed entered into with the Defendant, and the Perpetual Lease Deed (dated 20-12-1967) by which the Central Government granted leasehold rights in his favour. The relevant part of the said Perpetual Lease is extracted below:

*“...II. (13) The Lease shall not without the written consent of the Lessor carry on, or permit to be carried on, on the residential plot or in any building thereon any trade or business whatsoever or use the same or permit the same to be used for any purposes other than that a private dwelling or do or suffer to be done therein any act or thing whatsoever which in the opinion of the Lessor may be a nuisance, annoyance or disturbance to the Lessor and persons living in the neighbourhood.*

*Provided that, if the Lease is desirous of using the said residential plot or the building thereon for a purpose other than that of private dwelling, the lessor may allow such change of user on such terms and conditions, including payment of additional premium and additional rent, as the lessor may in his absolute discretion determine.*

*Clause III.*

*III..... Any breach by the Lease or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed or performed, then and in any such case, it shall be lawful for the lessor, notwithstanding the waiver of any previous casue or right of re-entry upon the and take possession of the residential plot and the buildings and fixtures thereon, and thereupon this Lease and every thing herein contained shall cease and determine and the lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.”*

6. The defendant, in the written statement, does not deny about the lease deed entered into by it with the plaintiff, on 29<sup>th</sup> May, 2004, which was to be valid for 9 years. The monthly rent of ₹ 2,50,000/- was payable with effect from 1-6-2004. It also submits that in tune with the parties' agreement, an amount equal to three months' rent was retained by the plaintiff landlord, towards deposit. It is submitted that the parties always had understood that the suit premises, which is a building constructed on a 472.9 square yard plot, at Safdarjung Development Area, consisting of ground, first, second floor, driveway, front lawn and back yard. It submits that the plaintiff cannot maintain the suit, since he had acquiesced to the use of the premises for commercial purposes, which had started as far back as in 1987. It alleges that DDA had issued notices in 2005 alleging commercial use of the premises for diagnostic purposes.

7. The defendant relies on a letter written to the plaintiff, at the commencement of the lease deed, in 2004, where according to it, he (the plaintiff) was aware about the commercial use that

the premises would be put to (by the defendant), for show room purposes, and had, for that end, authorized it to apply for conversion of the leasehold purpose, to the concerned authorities. It is stated that the plaintiff also executed a Power of Attorney document in favour of the defendant's representative, for this purpose. The said letter (which is undated) reads as follows:

*"Cottage Industries Exposition Ltd.,*

*Date :*

*To.*

*Mr. Subash C. Nishat  
1705/6, Staller Tower,  
Lohandwala Complex,  
Andheri (West)  
Mumbai – 400 053*

*Sub : Lease Agreement dated 20<sup>th</sup> April 2004 in respect of C-2/9, Safdarjung Development Area, New Delhi.*

*Sir,*

*Your attention is drawn to the aforesaid Lease Agreement, wherein, we have taken on lease the entire premises known as C-2/9, S.D.A. New Delhi.*

*We now intend to use the aforesaid demised premises for commercial use. We, further, confirm and undertake that by using the premises for commercial use, we shall be responsible for dealing with the concerned authorities.*

*We, therefore, request that you may kindly permit us for using the same, in view of the above, for commercial use. Any proportionate increase to house tax because of commercial use will be our responsibility.*

*That the aforesaid letter shall remain valid for the entire period of lease i.e. 9 years and also the extension period of six years and shall be considered as a part and parcel of this Lease Agreement and the lease Deed to be registered in terms of this Agreement.*

*Yours faithfully,*

*For COTTAGE INDUSTRIES EXPOSITION LTD.,*

*Sd/-*

*[V.K. SHARMA]*

*AUTHORISED SIGNATORY "*

8. The written statement further avers that by an order dated 16<sup>th</sup> February, 2006, the Supreme Court directed the Municipal Corporation of Delhi (hereafter MCD) to identify properties on 80 feet wide roads and publish a list of such roads. It also directed occupiers of such properties to file Affidavits, and by a further order dated 15<sup>th</sup> November, 2006 granted permission to owner occupiers who had earlier filed

affidavits to continue the commercial establishment till final disposal of the case before it. It is alleged that the property was later declared as a commercial stretch and the defendant has filed all the necessary documents with the MCD for registration as such. The defendant expresses awareness about the notice issued by DDA, but further states that the plaintiff and it (the defendant) held joint sessions to evolve a common strategy to deal with the issue. However, it says that the plaintiff stealthily went ahead and filed a writ petition before this court, without impleading it (the defendant) in the proceeding.

9. Issues were framed on 17<sup>th</sup> November, 2009, and parties were directed to proceed to trial. The defendant, thereafter moved an application IA 16819/2009 for leave to place its documents on record. That application was allowed on 26<sup>th</sup> July, 2010; certified copies of the plaintiff's documents in a previous suit between the parties (Suit No. 1498/2006) were also permitted to be filed. The parties were heard on that date, and the defendant's authorized representative was asked to be present in court, on 23<sup>rd</sup> September, 2010. On that date, the case was posted for orders, to 27<sup>th</sup> September, 2010. On the latter date, adjournment was sought on the ground that the defendant's counsel had to leave the town suddenly. The court clarified in its order, that the parties had been heard on 23<sup>rd</sup> September, 2010, and that the defendant's counsel had sought to secure instructions. In the circumstances, when the matter was listed on 19<sup>th</sup> October, 2010, a learned senior counsel appeared and wished to make submissions; it was also stated that an application for rejection of the plaint had been moved. The court, in these circumstances, stated in its order that the parties had made submissions, and therefore, reserved the case for orders. The defendant had also filed an affidavit, dated 8<sup>th</sup> October, 2010, in the meanwhile, annexing copies of various documents, including policies relating to land use and mixed land use.

10. The plaintiff argued that the materials on record are sufficient to enable the court to draw a decree for possession. It is urged, in this context, that the defendant has admitted to the execution of the lease, as also to the conditions contained in the Perpetual Lease Deed, and the further fact that the DDA had issued a notice in May, 2006, alleging misuse of the premises, and cancelling leasehold rights. It is urged that the defendant admitted to the misuse, when it filed an affidavit before the Supreme Court, stating that it would comply with the court's directions, in the final judgment. It is submitted that the plea about the parties having agreed for commercial use of the premises, is unfounded, since the lease deed incorporates all terms and conditions. The plaintiff says that the defendant had represented that it would secure permission to commercial use of the premises, but did not do so, and that consequently, the plaintiff had to face termination of the lease and re-entry by the DDA. The misuse of the premises having been admitted, the plaintiff was entitled to and did terminate the lease, through notice dated 30<sup>th</sup> September, 2006, and sought for vacation of the premises. The receipt of that notice too is not denied. In the circumstances, submits the plaintiff, the decree sought for should be granted.

11. The defendant opposes the plaintiff's argument, and submits that there is no unambiguous admission which entitles the court to decree the suit, either in part or for all the reliefs. It is submitted that the court has frame issues for trial, and consequently, the defendant should be permitted to raise all objections and defences in support of its case. It is urged that these include the plaintiff's acquiescence in the use of the premises for commercial purposes, and also that the parties had agreed as a condition of the lease that the premises would be used for show room purposes. The defendants point out that the Lease Deed executed between the parties does not specifically limit the use of the premises for residential purposes. In the circumstances, the fact that it had filed an affidavit in the Supreme Court, as a without prejudice measure, ought not to be construed to its disadvantage, since it has the right to lead evidence on all aspects, including the fact that the parties agreed to commercial use of the premises.

12. The defendant further submits that the materials now placed on the record now show that it has been paying charges to the MCD, towards use, on annual basis. Also, the latest MCD policy for land use, based on Master Plan 2021 applicable to Delhi, is relied on to say that under Para 10.12, the premises can support mixed land use. The defendant also argues that it has obtained registration under the Shops and Establishment Act, for commercial use of the premises, which is also a relevant fact. It is lastly urged that the defendant has not defaulted in paying the agreed rent, of ₹ 2,50,000/- and that the lease is valid and subsisting till 2013.

13. The Court is conscious that the question for drawing a decree on admission has to be viewed in this case, in the backdrop of the circumstance that issues were framed, and some of them are based on possible defenses, such as to whether similar notices had been issued, in respect of the suit premises, alleging misuse, earlier. The defendant has also urged that the premises were let out for commercial purposes, and the plaintiff had previously received such notices.

14. The main question here is whether the defendant's pleading about the commercial use, and its having filed an affidavit in the Supreme Court, stating that the user would confirm to the zoning plan as on 30<sup>th</sup> June, 2006, is an unambiguous admission enabling a decree in the suit. It has at the same time, placed on record copies of notifications issued by the MCD and DDA, dated 14<sup>th</sup> September, 2006, and 15<sup>th</sup> September 2006, notifying commercial streets, and mixed land use regulations.

15. The court notices that the defendant did indeed, undertake to the Supreme Court, in its affidavit that the land user was commercial. At the same time, the affidavit also stated that the lease had been agreed for commercial use. Significantly, the lease deed between the parties, in this case, expressly does not spell out the purpose for which they are let out. In these circumstances, the fact that the defendant concededly wrote a letter – perhaps contemporaneously with the execution of the lease, stating that the use of the premises would be commercial, assumes some significance. The materials now placed on record include notifications which state that Aurobindo Marg is a notified commercial street. The

conditions for mixed land use on such street, are clarified in Para 10.3.2 of the said Notification. In the circumstances the defendant, in this court's opinion has a plea which it ought to be granted an opportunity to establish in the trial.

16. Rulings of this court and the law declared by the Supreme Court have reiterated that for a court to decree a suit in part (or in whole) the concerned litigant must make an unambiguous admission which renders the exercise of a full blown trial redundant and unnecessary. The court should be cautious that not all kinds of defences, but those which can stand the test of law, should be allowed to go to trial. In this case, the omission in the lease deed between the parties, about the use of the premises, the letter of the defendant, stating that the premises would be converted, and the subsequent regulations, and its allegations about having paid annual charges to the MCD and the authorities, for permission to use the property for non-residential factors are possible defences on which issues have been struck; some documents have also been placed on record. This court is also conscious that the lease was for a period of nine years, and is based on a registered document. These factors, in the court's view cannot be ignored, and the two facts, i.e. the lease termination letter, dated 30<sup>th</sup> September, 2006 and the affidavit filed by the defendant, be held to be relevant. In the totality of circumstances, the court is therefore, of the view that the trial in the suit should proceed, as the written statement does not contain unqualified and unambiguous admissions, entitling the plaintiff to a decree for possession.

17. The parties are directed to be present before the Joint Registrar on 29<sup>th</sup> November, 2010, for further directions to enable them to lead oral evidence. The suit shall be listed before the Court, after evidence is recorded, on 16<sup>th</sup> May, 2011.

16<sup>th</sup> November, 2010

**(S.RAVINDRA B HAT)**  
**JUDGE**