

# **M/S Espire Infolabs Pvt Ltd vs Sadhana Foundation on 9 December, 2019**

**Equivalent citations: AIRONLINE 2019 SC 1947**

**Author: Deepak Gupta**

**Bench: Deepak Gupta, S. Abdul Nazeer**

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 9265 OF 2019  
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 3885 OF 2018)

M/S ESPIRE INFOLABS PVT LTD

...APPELLANT(S)

Versus

SADHANA FOUNDATION

...RESPONDENT(S)

JUDGMENT

Deepak Gupta, J.

Leave granted.

2. The present appeal arises from a claim of the landlord – respondent herein, claiming rent for the period 01.11.2015 to 31.01.2017. We may point out that another petition was filed by the landlord claiming rent for the period 01.01.2013 to 30.10.2015. The landlord claimed rent @ Rs.18,43,900/- per month relying upon the lease deed dated 01.01.2013. The stand of the tenant – appellant herein, is that, in fact, there was a subsequent registered lease deed dated 01.09.2015 which is effective from 01.03.2015 in which the rent is @ Rs.7,50,000/- per month. In addition thereto, it is claimed that as per Clause 1(c) of the registered lease deed dated 01.09.2015, the tenant was entitled to spend an amount of Rs.9 crores for developing the infrastructure in the tenanted premises and was entitled to adjust the same against the rent.

3. In the eviction petition the Rent Controller determined the provisional rent @ Rs.7,50,000/- per month. The Punjab and Haryana High Court confirmed the order of the Rent Controller and the SLP filed against the same was dismissed by this Court. As far as the registered lease deed of 2015 is concerned, Clause 1(c) of the same reads as follows:-“1(c) In order to avoid any dispute it is hereby agreed by and between the parties to these presents, that as mentioned hereinabove, the Lessor had handed over the said premises to the Lessee or bareshell basis and THE LESSEE has agreed to do all the internal work in the Demised Premises including furnitures and fixtures, air conditioning, lighting, flooring, false ceiling, bathroom etc. so as to bring it to the standard of an International Class IT Office. It has been agreed between the Lessor and the Lessee that the Lessee shall bear the cost of the same which shall be approximately 9 Crores. This amount will be payable by the Lessor to the Lessee and the Lessee shall adjust the same from the rent due to the Lessor till the entire amount is paid. Hence the Lessee will not be liable to pay any rent to the Lessor unless it has recovered the entire amount of approximately 9 Crores from the rent due to Lessor.” After the first petition was decided, the second petition was filed claiming rent for the period, 01.11.2015 to 31.01.2017. The Rent Controller again fixed the provisional rent @ Rs.7.50 lakhs per month and the High Court relying upon the earlier orders has upheld the same. This order is in challenge before us.

4. Mr. Maninder Singh, learned senior counsel for the appellant submits that as per Clause 1(c), the tenant is entitled to adjust the amount payable to the landlord and that by now more than Rs. 3 crores have been paid, and in case the entire amount is paid, the appellant will have no way of recovering this amount, if it is finally held that the tenant is entitled to adjust the rent against the amount spent. He also urged that in the earlier petition the tenant had not placed on record any material to show the amount of money spent for developing the infrastructure but in this petition such material has been placed on record. He also made various other submissions with regard to the relationship between the parties but we are not going into the same. On the other hand, Mr. Prashant Bhushan, learned counsel appearing for the respondent submits that the lease deed of 2013 should be relied upon and cannot be ignored at this stage. He further submits that even if rent of Rs.7.50 lakhs has to be paid, the respondent Trust cannot be deprived of this rent. He also submits that the second lease deed was executed on behalf of the Trust by one Shri Ajay Sharma. According to him, Ajay Sharma is the same person who had signed the lease deed of 2013 and Ajay Sharma was removed as the Trustee of the Trust much before the lease deed of 2015 was executed and registered. On the other hand, Mr. Maninder Singh contends that, in fact, Ajay Sharma's removal is not proper and he is fully empowered to execute and register the sale deed.

5. There are various disputed issues involved. At the outset, we may note that the lease deed of 2013 relied upon by the landlord is an unregistered one, and we are not sure if it is properly stamped and, therefore, at this stage the said lease deed cannot be relied upon, being inadmissible in evidence. The first issue is whether the lease deed of 2013 or the lease deed of 2015 will govern the rights of the parties. The second issue is whether Shri Ajay Sharma was a trustee and entitled to execute the lease deed of 2015. The third issue would be that even if the lease deed of 2015 governs the rights of the parties, what amount has been spent by the appellant. Here, it would be pertinent to add that whereas in the first petition the appellant had led no evidence to show that he had spent any amount, in this petition some material has been placed on record. However, all this will have to be tested by leading evidence. We are of the view that all these contentious issues cannot be decided

at this stage. Evidence will have to be led by the parties to prove their case. Equities must be balanced at this stage, and we feel that the equities must be balanced in such a manner that when the final petition is decided both the parties should not be put to loss.

6. In view of the above, we dispose of this appeal with the following directions :□

(i) That after the period of the first eviction petition in which it has been held that Rs.7.50 lakhs per month should be paid by the tenant as provisional rent, we direct that w.e.f. 01.11.2015, the tenant shall be liable to pay rent @ Rs.3.75 lakhs per month;

(ii) This order shall be complied with till the proceedings are finally disposed of by the Rent Controller and the landlord shall not be required to file any separate eviction petition for the subsequent periods;

(iii) We direct that the tenant shall deposit rent @ Rs.3.75 lakhs per month from 01.11.2015 till 30.11.2019, after adjusting any payment which may have been made by 31.01.2020.

(v) The tenant shall also furnish tangible surety in a sum of Rs.3 crores to the Rent Controller so that if the case is decided against the tenant, the landlord does not have to run after him to collect the money.

(vi) The Rent Controller is directed to take up the matter on an urgent basis and, if necessary, try the same on day□to□day basis and dispose of the same within 6 months from today.

7. With the above directions, the Civil Appeal stands disposed of. Pending application(s) if any, shall also stand disposed of.

.....J. (S. ABDUL NAZEER) .....J. (DEEPAK GUPTA) New Delhi  
December 09, 2019