



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

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*Reserved on: 23^d March, 2026
Pronounced on: 21st May, 2026*

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RFA 32/2023 & CM APPL. 1770/2023

1. **TANNIA RIKHY**

W/o Late Dr. Aneil Dilip Singh Rikhy
R/o SMR House, 4, Basant Lok,
Community Centre, Vasant Vihar, New Delhi.

2. **MR. SHAUN S. RIKHY**

S/o Late Dr. Aneil Dilip Singh Rikhy
R/o SMR House, 4, Basant Lok,
Community Centre, Vasant Vihar, New Delhi.

3. **MR. MANICK HARPAL RIKHY**

S/o Late Dr. Aneil Dilip Singh Rikhy,
R/o SMR House, 4, Basant Lok,
Community Centre, Vasant Vihar, New Delhi.

.....Appellants

Through: Appearance not given.
versus

SUNRIDER INDIA PVT. LTD.

Plot No. 495, Udyog Vihar,
Phase-III, Gurgaon, Haryana.

.....Respondent

Through: Mr. Nihit Nagpal, Mr. Vaibhav
Mehra, Mr. Vikrant Rana and
Ms. Lucy Rana, Adv.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



- 1. Regular First Appeal** under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been preferred by the *Appellants/Defendants* against the Judgment and Decree dated **21.09.2022**, whereby the learned District Judge *has decreed the Suit for Recovery filed by the Plaintiff/Respondent in its favour for a sum of Rs.5,53,077/- along with interest @ 9.03% per annum*, with effect from, 31.01.2014 till its realization.
- 2.** The Plaintiff, a Company registered under Companies Act, 1956 had filed a *Suit for Recovery bearing No. CS 56966/2016 for recovery of Rs.5,53,077/- along with interest @ 18% per annum*, through Sh. Ajay Gupta, Regional Manager, India Operation, who was duly authorised to file the said Suit, *vide* Resolution dated **30.05.2014**.
- 3.** It was the case of the Plaintiff Company that it had entered into a Lease Deed dated **28.08.2006** with the Defendants, in respect of Property bearing 2nd Floor, SMR House, Building No.04, Basant Lok, Community Centre, Vasant Vihar, New Delhi, (*hereinafter referred to as suit property*), *for a period of three years, at a monthly rent of Rs.1,75,000/-*. The Lease was extendable for another period of three years, subject to increase of rent by 15% on the last paid rent and on execution of a fresh Registered Lease Deed, between the parties.
- 4.** In terms of the first Lease Deed dated **28.08.2006**, the Plaintiff deposited a sum of Rs.10,50,000/- as interest free refundable security deposit, *vide* Cheque No.486817 dated 28.08.2006, with the Defendants, who were liable to return the same to the Plaintiff after deducting the dues, if any, at the time of handing over the vacant possession of the Suit Property.



5. The Plaintiff also paid rent for a period of six months of Rs.10,50,000/- in advance to the Defendants, at the time of execution of Lease Deed dated **28.08.2006**, which was to be adjusted on a *pro-rata* basis.

6. Furthermore, as per the terms of the Lease Deed dated **28.08.2006**, the liability of present and future rates, taxes, impositions and outgoing of whatsoever nature, were to be paid by the Defendants. The word “*outgoing*” suggested a wide range of levies and was not only confined to tax on the property.

7. The Defendants *vide* un-dated Letter along with Debit Notes dated **19.07.2008** for the previous year ending on **31.03.2008** and for the period from 01.04.2008 to June, 2008, sought Service Tax from the Plaintiff, at the rate of 12.36%. They informed the Plaintiff that renting of immovable property has been brought under the ambit of Service Tax, with effect from **01.06.2007** by virtue of implementation of the Finance Act, 2007. The Defendants, requested the Plaintiff to expedite the payment of Service Tax with immediate effect, so as to enable the Defendants to deposit the same with Government Authorities.

8. The Plaintiff sent a Reply, *vide* its Letter dated **12.08.2008**, stating that the Service Tax imposed on renting of immovable property, is levied on rent that is received in the hands of the Lessor. It did not envisage that the Tenant would be burdened with this new tax.

9. Furthermore, the registered Lease Deed entered between the Plaintiff and the Defendants, made it quite clear that all taxes relating to the leased premises, shall be borne by the Defendants and the Plaintiff shall have no obligation to pay the same, irrespective of any variation in the rates thereof,



or the imposition of any new tax or levy thereon. There was no response to the Plaintiff's Letter dated **12.08.2008**, for about six months.

10. Thereafter, the Plaintiff received a Legal Notice dated **24.02.2009**, from the Advocates on behalf of the Defendants, asking the Plaintiff to clear the arrears of Service Tax and on their failure to do so, the Defendants shall terminate the Lease Deed and initiate appropriate legal proceedings for recovery of the outstanding Service Tax.

11. The Plaintiff through their Reply dated **04.03.2009**, clarified that the Plaintiff has no liability to pay Service Tax or clear the arrears of service tax, under the registered Lease Deed dated 28.08.2006. It was also pointed out that Section 68 of the Finance Act provides that Service Tax is liable to be paid by the person providing services in relation to renting of immovable property. Further, Section 67(2) of the Finance Act also provide that rent received by the Defendants, is deemed to be inclusive of service tax.

12. The Plaintiff further claimed that it had not violated any terms of the Lease Deed dated **28.08.2006** and the Defendants had no right to terminate the said Lease Deed. Further, the Legal Notice dated **24.02.2009** was in violation of the terms of Lease Deed. The Defendants were, thereafter, advised to withdraw the uncalled Legal Notice dated **24.02.2009**, within a period of one week.

13. Subsequently, on expiry of the Lease Deed dated **28.08.2006** on **15.08.2009**, a fresh second Lease Deed dated **07.09.2009** was executed between the Plaintiff and the Defendants, for a period of three years commencing from **16.08.2009**, at a monthly rent of Rs.2,01,250/-, subject to deduction of tax as per law. There was a mutual understanding between the



parties that the Plaintiff shall not be liable towards any service tax for the period prior to **07.09.2009** and all the Service Tax liability, if any, had been waived by the Defendant. It was specifically mentioned in the Lease Deed that the amount of Rs.10,50,000/-, which was given to the Defendants as interest free security deposit in August 2006, would be handed over to the Plaintiff, when they vacated the Suit Property.

14. The Plaintiff also paid rent for a period of three months amounting to Rs.6,03,750/-, in advance to the Defendants at the time of execution of the Lease Deed dated **07.09.2009**, which was to be adjusted on a *pro-rata* basis.

15. It was further claimed that the Security Deposit of Rs.10,50,000/- given under the second Lease Deed dated **07.09.2009** cannot be used for adjusting the alleged dues. Any amount allegedly accrued under the Lease Deed dated **28.08.2006** stood waived and the Defendants were estopped from claiming any amount towards service tax.

16. The Plaintiff, thereafter, received another Legal Notice dated **22.02.2012** from Advocates on behalf of the Defendants after a period of three years from the earlier Legal Notice dated **24.02.2009**, asking the Plaintiff to pay *the outstanding service tax amounting to Rs.11,85,361/- with interest @ 18% per annum within two weeks of receipt of the said Notice.* There was no mention of the earlier expired Lease Deed dated **28.08.2006**, but only to Clause 7 of the registered second Lease Deed dated **07.09.2009**.

17. The plaintiff claimed that no amount was due from the Plaintiff in respect of Lease Deed dated **28.08.2006**. The said demand was unjustified as no service tax was payable by the Plaintiff prior to **15.08.2009** under Lease Deed dated **28.08.2006**.



18. Furthermore, it was claimed that substantial amount of alleged Service Tax from the Plaintiff, was for the period starting from 01.06.2007 to 15.08.2009, which was barred by limitation at the time of serving Legal Notice dated **22.02.2012**.

19. Reliance was placed on Pundlik Jalam Patil vs. Executive Engineer, Jalgaon Medium Project & Ors. (2008) 17 SCC 448 and Rajender Singh & Ors vs. Santa Singh & Ors., (1973) 2 SCC 705.

20. The Plaintiff thus, claimed that the alleged liability of service tax, is not only legally permissible, but is also time barred. Any deduction from the Security Deposit given by the Plaintiff under the Lease Deed dated **07.09.2009**, is against the settled principles of Law.

21. The Plaintiff further asserted that the Amount of Rs.11,85,361/-, has been incorrectly calculated. The Plaintiff was willing to pay the Service Tax with effect from **16.08.2009** in terms of Clause 7 of the Lease Deed dated 07.09.2009 at the rate of 10.3% per annum, without prejudice to the rights and contentions of the Plaintiff, but it is not liable to pay any interest thereon. The Defendants were requested to withdraw their uncalled Legal Notice dated **22.02.2012**.

22. It was further claimed that the Plaintiff cannot be compelled to pay Service Tax for the period prior to **16.08.2009**.

23. In the facts and circumstances as well as oral talks between the parties, the Plaintiff was informed that the Defendants were willing to withdraw their Legal Notice dated **22.02.2012**, subject to the Plaintiff clearing the Service Tax for the period with effect from **16.08.2009** till July, 2012, amounting to Rs.7,61,185/-, within one week of the said Legal Notice.



However, it was mentioned that the said withdrawal is without prejudice to the rights of the Defendants to claim Service Tax for the period prior to August, 2009 and any interest or damages for which appropriate legal proceedings may be initiated by the Defendants.

24. The Plaintiff further claimed that in terms of the Legal Notice dated **22.02.2012**, the Defendants were not claiming Service Tax for the period prior to August, 2009. In any case, even if it is accepted that the Defendants had reserved their right to initiate appropriate legal proceeding, the Defendants failed to initiate such proceedings against the Plaintiff and thus, their claim has become time barred. The deduction of alleged Service Tax liability for the period from 01.06.2007 to 15.08.2009, from the security deposit of the Plaintiff is not permitted in the facts of the present case, as well as under law.

25. The Plaintiff, thereafter, paid the service tax of Rs.7,52,463/- *vide* Cheque dated **28.07.2012**, drawn in favour of Defendants namely, *Mrs. Tannia Riky, Shaun Sundershan Rikhy and and Manik Rikhy*, towards Service Tax for the period commencing from 16.08.2009 till date. The amount of Rs.6,03,750/- less the Tax Deducted at Source (TDS) in the name of all the Defendants was also paid *vide* Cheque dated **05.09.2012**, towards advance rent for a period of three months.

26. Subsequently, the Plaintiff vacated the Suit Property and *handed over the vacant possession of the same to the Defendants on 30.12.2013*. The Plaintiff claimed that after adjusting all the amounts towards Service Tax, Rent, Jal Board dues, a sum of Rs.9,48,218/- was due and payable by the Defendants to the Plaintiff. However, the Defendants allegedly withheld an



amount of Rs.5,53,077/- towards Service Tax for the period from 01.06.2007 till 15.08.2009 and returned a sum of Rs.3,95,141/- to the Plaintiff through Cheque dated **10.01.2014**. The Plaintiff, thereafter, wrote a Letter dated **30.01.2014** to the Defendants protesting against the alleged wrongful deduction.

27. The Plaintiff thereafter, filed a Suit for Recovery against the Defendants for recovery of Rs.5,53,077/- along with interest at the rate of 18% per annum.

28. The **Defendants** in their **Written Statements** denied all the allegations made by the Plaintiff in the Plaint. It was claimed that since the Plaintiff was refusing to pay the dues relating to Service Tax, the parties had oral exchanges but to no avail and finally, when the Plaintiff did not pay the due Service Tax, the Defendants deducted the same from the security amount and the balance amount was duly returned to the Plaintiff.

29. It is was further asserted that there is no merit in the Suit filed by the Plaintiff, which is liable to be dismissed.

30. The **Learned Trial Court framed the following issues on 21.07.2018:**

“1. Whether defendant was entitled to adjustment the security amount of the plaintiff towards service tax as alleged? OPD

2. Whether the rent paid by the defendant is inclusive of service tax? OPP

3. Whether defendant is liable to refund the service tax amount of Rs.5,53,077/-, adjusted towards security amount? OPP



4. *Whether the defendant waived off the service tax liability of the plaintiff prior to 15 August, 2009 of plaintiff is liable to pay after it? OPP*

5. *Whether plaintiff is entitled to recovery of suit amount as prayed? OPP*

6. *Whether the plaintiff is entitled for the interest over the suit amount, if so, at what rate and for what period.? OPP*

7. *Relief.”*

31. The Plaintiff examined **PW-1 Mr. Ajay Gupta, Regional Manager, India Operations**, who proved the requisite Documents that is Ex.PW-1/1 to PW-1/27.

32. **Defendant No. 1, Mrs. Tanya Rekhi** examined herself as **DW-1** and deposed on similar lines, as the defence taken by her in the Written Statement.

33. The **Learned District Judge** after considering the rival evidence, concluded that the Service Tax was not envisioned when the parties entered into the first Lease Deed dated **28.08.2006** and was introduced subsequently, by the Finance Act, 2007.

34. It was further observed that the Defendants had waived their claim of Service Tax for the period commencing from 01.06.2007 till 15.08.2009, and therefore, they could not subsequently seek adjustment of Service Tax for the aforesaid period from the security deposit. It was thus, **held that the Defendants were liable to refund Rs.5,53,077/-, to the Plaintiff.**



35. The Suit for Recovery was decreed in favour of the plaintiff and the Defendants were directed to refund the said sum along with interest at the rate of 9.03% with effect from 31.01.2014 till the date of realisation.

36. *Aggrieved by the aforesaid Judgment and Decree, the Defendants have preferred the present Regular First Appeal under Section 96 read with Order XLI Rule 1.*

37. The **grounds of challenge** are that the Learned District Judge has failed to appreciate the fact that non-initiation of recovery proceedings for due Service Tax for the period prior to 16.08.2009, did not take away the right of the Defendants to recover the Service Tax, even though the Demand Letter was withdrawn through Letter dated **20.07.2012** Ex.PW-1/13.

38. The Defendants had a Right to file a Suit in order to recover the Service Tax dues and the same did not get extinguished. The Defendants were within the right to recover the dues from the security deposit of the Plaintiff, in terms of Lease Deed dated **28.08.2006** Ex.PW-1/4 and it continued to remain intact even under the second Lease Dated **07.09.2009** Ex.PW-1/10.

39. The continuation or extension of lease and a covenant in the fresh lease was acknowledged by the Plaintiff, who agreed to pay the Service Tax. In fact, the Plaintiff was a tenant and recipient of the service and the liability to pay service tax for the past dues was therefore, upon the Plaintiff himself.

40. For the benefit of the Plaintiff, the Defendants had paid the requisite amount of Service Tax while availing the Amnesty Scheme (VCES) that came their way mainly to avoid penal consequences. The Defendants



through Letter dated **20.07.2012** Ex.PW-1/13, had reserved their rights to seek Service Tax payable for the period prior to 16.08.2009.

41. It has been erroneously noted that the Defendants had abandoned their claim of Service Tax from the Plaintiff. The Plaintiff himself has admitted to what they call a mutual understanding that they would not be held liable for Service Tax. It is not being appreciated that the same was admittedly a continuation or extension of the earlier Lease Deed dated **28.08.2006** and the Defendants' Right to recover Service Tax due for the previous period, was also in continuity. The right was without seeking recourse to law, which remained intact and therefore, the Service Tax had been rightly deducted from the security deposit.

42. The Learned District Judge has also not considered that Plaintiff Company has an annual turn-over of more than 21 million USD and is a privately owned multi-level marketing Company, headquartered at 1625 Abalone Ave, Torrance, CA 90501, United States, California; involved in manufacturing and direct selling of beauty, health, food and household products. It is claimed that they entered into the second Lease Deed dated **07.09.2009**, apparently to escape the liability to pay the Service Tax amounting to Rs.12,68,277/-, against which only Rs.5,53,077/- was paid under the Amnesty Scheme.

43. *The Prayer is therefore, made that the impugned Judgement be set aside.*

44. *The Plaintiff/Respondent in its Written Submissions, has submitted the explanations on the same lines, as the grounds of the Plaint and re-iterated its assertions of no liability to pay Service Tax under the first Lease Deed. It*



claimed that the Suit filed by the Plaintiff for Recovery of Rs.5,53,077/- along with the interest, has been rightly Decreed in its favour.

45. *Thus, a prayer is made that the present appeal, be dismissed.*

Submissions heard and record perused.

46. The controversy in the present case, pertains to recovery of Service Tax from the plaintiff under the first Lease Deed, in the absence of any clause imposing the liability on the plaintiff. The Defendants had deduced an amount of Rs.5,53,077/- from the security deposit of the Plaintiff, towards Service Tax dues. *The question, which arises, is whether learned District Judge has rightly directed the Defendants to refund this amount, which had been deducted from the security amount of the Plaintiff towards service tax for the period 01.06.2007 till 15.08.2009, under the first lease Deed.*

47. Admittedly, the Parties had entered into a Lease Deed dated **28.08.2006** Ex.PW-1/4 for a period of three years, in which there was no Clause in respect of the Service Tax, which in fact, got leviable subsequently after the enactment of Finance Act, 2007. At the time when parties had entered into the said Lease Deed, the Finance Act, 2007 had not come into effect, which explains the absence of any provision in the Lease Deed dated **28.08.2006** with regards to Service Tax. According to the express terms of the first Lease Deed, liability to pay all the leviable taxes was on the Landlord.

48. After expiry of first Lease Deed dated **28.08.2006**, the Plaintiff and Defendant entered into a second Lease Deed dated **07.09.2009** for a period of three years commencing from 07.09.2009 with a monthly rent of Rs.2,01,250/-, wherein the security amount of Rs.10,50,000/- given at the



time of execution of the first Lease Deed was carried forwarded. There was a Clause in regard to the Service Tax, which was specifically introduced. In this Lease Deed, the covenant pertaining to Service Tax was specifically indicated in Clause 7 which read as “*if service tax on rental payments is imposed by the prevailing Rules and Regulation of the Indian Law, such Service Tax shall be the obligation of the LESSEE*”. **It was thus, specifically agreed that the Service Tax shall be payable by the Plaintiff.**

49. Several letters were exchanged between the Parties during the period of 2008 to 2009, but the Plaintiff remained firm in denying the liability to pay Service Tax under the first Lease Deed. There was no consensus, as the Plaintiff was vehement about not being liable to pay the Service Tax.

50. Firstly, admittedly, in the first Lease Deed dated **28.08.2006**, there was no covenant in the said Lease Deed imposing any liability on the Plaintiff to pay any kind of Service Tax.

51. Secondly, the Defendants have tried to justify the recovery of Service Tax under the first Lease Deed, by asserting that at the time of entering into the second Lease Deed, *there was an oral understanding that the tenant would clear the previous dues*. However, there is no evidence whatsoever, in regard to this alleged oral understanding. In fact, had there been any such understanding for payment of the Service Tax under the first Lease Deed, nothing prevented the parties to incorporate a Clause in this regard, in said Lease Deed. In fact, in the second Lease Deed it was categorically mentioned regarding Service Tax, but there was no mention or reference regarding any liability under the first Lease Deed.



52. At this stage, it would also be pertinent to refer to Letter of Defendants dated **20.02.2012**, PW-1/11, wherein the demand for total Service Tax of Rs.11,85,361/- with interest @ 18% within two weeks was made. Herein, again the Plaintiff replied through Letter dated **07.03.2012** Ex.PW-1/12, wherein it categorically undertook to deposit the Service Tax for the period commencing from 16.08.2009 till date, as per second Lease Deed.

53. The Plaintiff thus, paid Service Tax amounting to Rs.7,61,185/- for the aforesaid period, leaving a balance of Rs.5,44,335/- for the period commencing from 01.06.2007 to 15.08.2009.

54. Significantly, the Defendants *vide* Letter dated **20.07.2012** Ex.PW-1/13 had withdrawn to pursue its claim of Service Tax for the said period, *without prejudice to their rights to claim Service Tax for this period, which may be permitted by law by initiating appropriate legal proceedings.* Despite having reserved this Right, at no point of time, did the Defendants initiate any legal proceedings against the Plaintiff.

55. **Thirdly**, the Defendants, at the time when the Suit Property was vacated, chose to deduct a sum of Rs.5,53,007/-, claiming it to be outstanding liability towards Service Tax for the period commencing from 01.06.2007 to 15.08.2009.

56. Significantly, Suit Property got vacated on **30.12.2013** and the Service Tax pertaining to the period from 01.06.2006 to 15.08.2009, was patently barred, on the date the alleged deduction was made. Likewise, the Suit was filed on **21.07.2014**, *at which time the claim for Service Tax for the said period, was patently barred by limitation.*



57. The Defendants could not have deducted the amount of Rs. 5,53,077/- as Service Tax, from the security amount, when they have not been able to prove that the liability to pay the Service Tax for the relevant period, was of the Plaintiff. Also, the said claim had become time barred.

58. The Learned District Judge has therefore, rightly decreed the Suit of the Plaintiff for Rs.5,53,077/- along with interest @ 9.03% per annum, w.e.f. 31.01.2014 till its realization, towards the unlawful deduction of this amount from the security refundable to the Plaintiff.

59. In view of the aforesaid discussion, there is no merit in the present Appeal, which is hereby, **dismissed**, along with pending Applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 21, 2026/R