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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 2199/2011

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Judgment dated 20.12.2011

RAJNEESH JAIN

..... Plaintiff

Through: Mr.Asheesh Jain, Advocate

versus

PUMBKIN ACADEMY OF DIGITAL

ARTS PVT LTD & ORS

..... Defendant

Through: Mr.Sujeet Kumar Mishra, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

ORDER

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20.12.2011

G.S.SISTANI, J. (ORAL)

1. Plaintiff has filed the present suit for possession, permanent injunction, recovery towards arrears of rent, electricity dues and mesne profits.
2. While issuing summons in the suit and notice in the application on 9.9.2011, *ex parte* interim order was passed in favour of the plaintiff restraining defendants from parting with physical possession of the property bearing No.E-18, First Floor, South Extension (NDSE), Part-I, New Delhi in favour of any person other than the plaintiff and/or damaging the suit property in any manner. When the matter was listed on 24.10.2011, learned counsel or the plaintiff had stated that defendants are not using the suit premises and in case defendants

hand over possession of the suit premises to the plaintiff, plaintiff is willing to amicably resolve the matter. Learned counsel for the defendants had submitted that he had been recently engaged in the matter and he did not have proper instructions. Accordingly, the Court directed that a representative from the side of the plaintiff and the defendants shall remain present in Court on the next date i.e. 23.11.2011. On 23.11.2011, at the request of learned counsel for the defendants, the matter was adjourned to 15.12.2011. On 15.12.2011, as the arguing counsel for the defendants was stated to be indisposed, the matter was adjourned to 20.12.2011. Defendant no.2, who was also present in the Court, was directed to remain present in Court on 20.12.2011. Today, defendant no.2 is not present in Court, however, Mr.Rajinder Singh, authorized representative of the defendant, who is present in court, states that he is not aware of the facts of the case.

3. Learned counsel for the plaintiff submits that defendants are merely trying to delay the matter. Counsel further submits that after the execution of the registered lease agreement dated 17.05.2010, defendant no.1 started committing defaults, such as, one month's advance was not paid, there was delay in payment of rent, cheques were dishonoured, defendants are in arrears of electricity charges and no rent has been paid since May, 2011 onwards. Counsel next submits that despite defendants having been served on 5.10.2011 neither any written statement has been filed nor application seeking extension of time has been made, instead number of adjournments have been sought on behalf of the defendants, which is evident from the order sheets of the Court. Counsel for the plaintiff, thus, prays

that a decree be passed under the provisions of Order VIII Rule 10 CPC.

4. The facts of the case as set out in the present plaint are that the plaintiff is stated to be the absolute owner of the property bearing No.E-18, first floor, South Extn. (NDSE), Part-I, New Delhi (hereinafter referred to, as “the suit property”). Defendant no.1 through defendants no.2 and 3 had approached the plaintiff and expressed their desire to take the suit property on lease. The terms of the lease were reduced into writing and a lease deed was signed and executed on 17.05.2010 and the same was also duly registered in the office of Sub-Registrar-V on 17.05.2010 vide registration No.8231 in volume No.10141 at pages 18 – 32 dated 17.5.2010. The lease was rectified on account of certain typographical errors and rectification deed dated 08.09.2010 was executed between the parties and was duly registered with the office of Sub-Registrar on 09.09.2010 vide registration No.16606 in book no.1 volume no.10531 at pages 136 – 141. As per the agreement, defendant no.1 agreed to pay monthly rent at the rate of Rs.67,500/- per month which was to be increased to Rs.70,000/- per month w.e.f. 01.03.2011. The term of the lease was three years commencing from 01.03.2010 to 28.03.2013, which could be renewed for a further period of three years and interest-free security deposit amounting equivalent to two months’ rent i.e. Rs.1,35,000/- was to be deposited by the defendant no.1 which was to be refunded at the time of expire/ termination of the lease and upon clearance of outstanding of electricity, water, telephone bill and other charges and demands. The defendant was also to supply TDS

certificate in respect of the rents paid and in case of delay in payment of monthly rent, the plaintiff was entitled to interest @ 18% per month for the period of default. As per sub-clause (vii) of clause 4 of the lease agreement in the event of non-payment of rent or for any breach of any of the terms and conditions contained therein to be performed by the defendant, the tenancy was terminable.

5. Mr.Asheesh Jain counsel for the plaintiff submits that after the execution of the lease agreement and after taking the possession of the suit property the defendants started committing defaults one after another, defendant did not provide one month's rent in advance and there was delay in payment of rent, cheques handed over were dishonoured and the defendant was in arrears of electricity charges. To make the matter worse, in the month of May, 2011 onwards defendant no.1 stopped paying the monthly rent and electricity dues and annual conversion charges as per the terms of the lease. According to the plaint the defendant no.1 has committed the following breaches of the lease agreement as on 1.7.2011:

- a) failed to deposit one month's advance rent, adjustable towards the rent for the last month of the tenancy.
- b) failed to pay rent for the months of May, 2011 to July, 2011, therefore arrears as on that date under this head came to Rs.2,10,000/- (Rupees two lacs ten thousand only)
- c) even though defendant no.1 deducted TDS from the rent paid to the plaintiff during the Financial Year 2010-11 (Assessment Year 2011-12) and for the month of April, 2011, the same was never deposited with the Income Tax Department, which even otherwise was an offence under the Income Tax Act,

1961 apart from the other laws, in force.

- d) Defendant No.1 was in arrears with the electricity department i.e. BSES Rajdhani Power Ltd. On inquiry from the Department, the plaintiff found out that as on that date an amount in excess of Rs.67,520/- was already in arrears against the electricity meter installed at the suit property and being used by the Defendant at the suit property.

6. It is next contended by Mr.Asheesh Jain that in view of the breaches committed by defendant no.1 with respect to the provisions of lease agreement, the plaintiff was forced to send a written notice dated 01.07.2011 in terms of clause 4 Sub-clause 7(b) of the lease agreement to defendant no.1, calling upon defendant no.1 to rectify the above mentioned breaches/ defaults of the lease agreement and to clear all dues. The said notice was sent by registered AD post and UPC at the registered address of the defendant, company. The said notices were duly served on the defendants on 05.07.2011. The acknowledgment card has been placed on record. Since the breaches were not rectified, the plaintiff terminated the lease of the suit property by a legal notice dated 23.07.2011 and called upon the defendant to hand over vacant peaceful possession of the suit property, clear the arrears of rent @ Rs.70,000/- per month with interest @18% per annum. Defendants were also called upon to either supply TDS certificate of the amount deducted amount as TDS from the rent paid during the assessment year 2011-12 or in the alternate pay a sum of Rs.81,250/- towards TDS deducted during the financial year 2010-11. Defendants were also called upon to clear

the electricity dues and pay the conversion charges. Legal notice was duly served on the defendant. The proof of issuing the notice and the AD cover, as proof of service, has been placed on record.

7. Counsel for the plaintiff in the above circumstances prays that in the absence of any written statement, the facts stated in the plaint are deemed to be admitted and decree be passed in terms of Order 8 Rule 10 of the Code of Civil Procedure. Counsel further submits that even otherwise this is a fit case for exercising the option under Order 12 Rule 6 CPC, as the registered lease agreement is not disputed. Copies of two legal notices issued have been placed on record along with the proof of issuance of the notices and the AD card as proof of service. Counsel next submits that since the lease is registered and the defendants have been paying the rent in the past as well to the plaintiff, they acknowledged the plaintiff to be the owner and landlord of the suit property. It is also submitted that since the rent being over Rs.3,500/-, this court should pass a decree.
8. Counsel for the defendant submits that he has filed the written statement in the Registry along with the application for extension of time, however, the same is not on record.
9. It may be noticed that during the hearing of the matter, an option was given to the defendant that in case the defendants clear the electricity dues, which are over Rs.60,000/- and also to pay the arrears of rent as also the conversion charges and hand over TDS certificate within a reasonable time, the defendants would be permitted to enjoy the suit property in terms of the lease. The plaintiff who is also present in person was agreeable that the defendants may continue till the

term of the lease. The option has not been accepted by the counsel for the defendant. Counsel for the defendant submits that in view of the facts of this case and the fact that since there is no application under Order 12 Rule 6 CPC, counsel for the defendant submits that no decree can be passed.

10. I have heard counsel for the parties and considered their rival submissions.
11. It is trite law that a decree can be passed under Order 12 Rule 6 CPC on the basis of pleadings and documents and no specific application is necessary.
12. It is trite law that a Court can pass a judgment under Order XII Rule 6 CPC on the basis of statement made by the parties and not only on the pleadings but also *de hors* the pleadings that is either in any document or even in the statement recorded in the Court. In the case of ***ITDC Ltd. v. M/s Chander Pal Sood & Son***, reported at 2000 DLT 337 (DB), a Division Bench of this Court while interpreting the provisions of Order XII Rule 6 CPC has held in para 17 that “.... *Order XII Rule 6 of the Code gives a very wide discretion to the Court. Under this Rule the Court may at any stage of the suit either on the application of any party or of its own motion and without discrimination of any other question between the parties can make such order giving such judgment as it thinks fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing.*” (Also see ***Rajiv Srivastava v. Sanjit Tuli and Anr.***, 119 (2005) DLT 202 (DB).
13. In the case at hand summons were issued to the defendants on

09.09.2011. In compliance of the provisions of Order 39 Rule 3 CPC, copies of the plaint, application and documents were sent to the defendants by speed post on 09.09.2011 and postal receipts are also placed on record. As per the service report defendants No.1 and 2 were served on 24.09.2011. The defendants have failed to file their written statement within the prescribed period of 30 days. There is no application seeking condonation of delay in filing the written statement.

14. Having regard to the averments made in the plaint of which there is no denial, the documents placed on record and the fact that defendants have failed to file their written statement within the time allowed, this is a fit case to pass a decree under Order VIII Rule 10 CPC. Accordingly, present suit is decreed in favour of the plaintiff and against the defendants in respect of the property bearing No.E-18, First Floor, South Extension (NDSE), Part-I, New Delhi.
15. Counsel for the plaintiff submits that plaintiff does not press prayer (d) of the plaint for future damages @Rs.15,000/- per day and prays that the suit may be decreed for damages/ mesne profit @Rs.70,000/- per month, provided the rent is paid @70,000/-, per month, as per the terms of the lease. Ordered accordingly. Decree-sheet be drawn up accordingly.

I.A. 14332-14333/2011

16. In view of order passed in the suit, applications stand disposed of.

G.S.SISTANI,J

DECEMBER 20, 2011 ssn

