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

+ **CS(OS) 1047/2012**

M/S PRIYNAK FINANCIAL SERVICES PVT LTD

..... Plaintiff

Through: **Mr. Mohinder Madan and Ms.
Rashmi Singh, Advocates**

versus

AURA INSTITUTIONS PVT LTD & ANR

..... Defendant

Through:

+ **CS(OS) 1411/2012**

M/S PRIYANK FINANCIAL SERVICES PVT LTD

..... Plaintiff

Through: **Mr. Mohinder Madan and Ms.
Rashmi Singh, Advocates**

versus

AURA GREEN IMPEX PVT LTD & ANR

..... Defendant

Through:

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

**ORDER
30.07.2013**

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The aforesaid two suits have been preferred by the plaintiff against two different companies who are defendant no.1 in the two suits. The

defendant no.2 in the suits Mr. Harshavardhan Reddy, director of defendant no.1 is common in both the suits. Both the defendant companies are owned and controlled by defendant no.2. The two suits have been preferred for similar relief for recovery of possession, damages, mesne profits and injunction.

The plaintiff entered into two lease agreements. The lease agreement entered into in respect of the premises bearing no.M-17/115, second floor, situated at Outer Circle, Connaught Place, New Delhi admeasuring about 3250 sq. ft. for a period of three years from 15.02.2010 to 14.02.2013 on a monthly rent of Rs.1,25,000/- per month exclusive of electricity and water charges and other taxes/levies, service tax etc. is the subject matter of CS(OS) No.1047/2012.

The subject matter of CS(OS) No.1411/2012 is the premises let out by the plaintiff to defendant no.1 in the said suit bearing no.M-17, Middle Circle, Ground Floor, Connaught Place, New Delhi admeasuring about 1800 sq. ft. for a period of six years from 01.02.2011 to 31.01.2017 with lock in period of three years i.e. upto 31.01.2014. This agreement also provided for increase in rent of 15% after the expiry of the first three year period. The rent of the premises as aforesaid was Rs.2 lacs per month exclusive of electricity and water charges and other taxes/levies, service tax etc.

The case of the plaintiff in both the suits is that the respective defendants have not paid rent since July 2011 and they have fallen in arrears of rent thereafter. The further case of the plaintiff is that, in respect of the premises covered under CS(OS) No. 1411/2012, the defendant has not paid full rent for the period February 2011 to June 2011 and there are arrears to the tune of Rs.One lac per month for the said period, i.e. Rs.5 lacs.

In these circumstances, the plaintiff claims that both the aforesaid leases were terminated by service of notice dated 06.03.2012 in respect of the premises covered by CS(OS) No.1047/2012 and 07.04.2012 in respect of premises covered by CS(OS) No.1411/2012. However, the said defendants did not vacate the premises and did not pay up the accumulated arrears of rent. It is in these circumstances that the two suits have been preferred.

Upon service of summons in the two suits, the defendants in the respective suits have filed a one page written submission. However, no written statement has been filed traversing the averments made in the two complaints. The only written submission of the defendants in the two suits is that the complaint is not clear about the address and location of the suit premises and that the plaintiff has not filed the site plan of the suit premises. The defendants have also raised an issue that the plaintiff has not produced the documents pertaining to the ownership.

In view of the stand taken by the defendant in the written submission, the court vide order dated 25.02.2013 directed that the statement of Mr. Harshavardhan Reddy, Director/Authorised Signatory of the defendant companies be recorded. Accordingly, the statement of Mr. Reddy, the authorised signatory of defendant no.2 in both the cases were recorded on 26.02.2013, which is found on the record of CS(OS) No.1411/2012. In his statement, the defendant no.2 has, *inter alia*, stated that he does not know if the defendant company has paid the rent since July 2011.

The submission of learned counsel for the plaintiff is that since no written statement has been filed by the defendants in the two suits, the plaintiff is entitled to judgment in terms of Order 8 Rule 10 CPC.

From the statement of defendant no.2 recorded under Order 8 Rule 10 CPC, it is evident that the defendants in the two suits admit to have been inducted as a tenant in the respective premises. The rate of rent has not been disputed by the said defendants. The premises have since been vacated by the defendants on 07.03.2013 and the keys were delivered before the court. Accordingly, the suit, insofar as the relief of possession and injunction is concerned, has become infructuous. The only issue is with regard to the payment of rent/damages/occupation charges.

Since no written statement has been filed and the averments made in the plaint have gone unrebutted, this is a fit case for passing a decree under Order 10 Rule 8 CPC.

The submission regarding the identity of the tenanted premises not being clear on account of the site plan not being filed has no merit, particularly since the same stands vacated and surrendered on 07.03.2013. The plaintiff is not obliged to prove its ownership in a suit for ejectment of a tenant. Therefore, this objection of the defendants has no merit either.

The issue whether the two leases were duly terminated by the plaintiff loses its significance since the premises stand vacated and the plaintiff is not pressing for damages at a higher rate than the rate at which the rent was payable. As aforesaid, the defendants have not disputed the plaintiff's claim that the rent has not been paid since July 2011. Accordingly, the plaintiff is entitled to decree for unpaid rent for the period 01.07.2011 to 07.03.2013 at the same rate at which the rent was payable for the two premises.

Accordingly, the outstanding rent payable by the defendant in respect of the suit premises covered by CS(OS) No.1047/2012 comes to Rs.25 lacs @ Rs.1.25 lacs for 20 months i.e. from 01.07.2011 to 28.02.2013. The

plaintiff has given up the rent for 7 days. Similarly, the outstanding rent payable by the defendant in respect of the suit premises covered by CS(OS) No.1411/2012 comes to Rs.40 lacs @ Rs.2 lacs for 20 months i.e. from 01.07.2011 to 28.02.2013. Accordingly, CS(OS) No.1047/2012 is decreed by passing a money decree in favour of the plaintiff in the sum of Rs.25 lacs. CS(OS) No.1411/2012 is decreed by passing a money decree in favour of the plaintiff in the sum of Rs.40 lacs towards outstanding rent for 20 months i.e. 01.07.2011 to 28.02.2013. In addition, the plaintiff is entitled to arrears of rent @ Rs.One lac per month from February 2011 to June 2011 i.e. Rs.5 lacs.

The plaintiff shall be entitled to interest @ 12% p.a. from the date of filing of the suit till realisation. While fixing the rate of interest, the court is conscious of the fact that a part of the period for which rent/damages have been computed falls beyond the date of filing of the suit. The decree for interest is restricted only from the date of filing of the suit and the rate of interest is also restricted to 12% simple interest for this reason. The plaintiff shall be entitled to costs.

Separate decrees be drawn up, subject to the plaintiff making up the shortfall in the court fee, if any.



VIPIN SANGHI, J

JULY 30, 2013

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