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

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Decision delivered on: 22.03.2024+ **FAO(OS) (COMM) 51/2024 & CM APPL. 15867/2024**

M/S COSMOS INFRABUILD PRIVATE LIMITED Appellant
Through: Mr Achal Gupta, Mr Vipin Singh and
Mr Sunil Tiwari, Advs.

versus

M/S KALYAN JEWELLERS INDIA LIMITED Respondent
Through: Mr Amit Anand Tiwari, Sr Adv. with
Mr Arjun Garg, Mr Aakash Nandolia,
Ms Devyani Gupta and Ms Sagun
Srivastava, Advs.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal is directed against the order dated 02.02.2024 passed by the learned Single Judge in I.A. 17963/2023 and I.A. 20655/2023 in CS (COMM) 645/2023.
2. Via the impugned order, the learned Single Judge allowed the application of the respondent/plaintiff/lessee [I.A. 17963/2023] and restrained the appellant/defendant/lessor from interfering with the respondent's/plaintiff's/lessee's possession of the property described as No. 24, Pusa Road, Rajinder Nagar, Near Karol Bagh Railway Station, New Delhi, 110005 [in short, "suit property"].



2.1 The learned Single Judge also dismissed the appellant's/defendant's/lessor's application [I.A. 20655/2023] for vacation of the ex-parte injunction granted *via* order dated 15.09.2023, restraining the appellant/defendant/lessor from blocking the respondent's/plaintiff's/lessee's access to the suit property and also from disconnecting water and electricity supply to the suit property.

3. The central issue that arises for consideration is: whether the Single Judge erred in restraining the appellant/defendant/lessor from interfering with the respondent's/plaintiff's/lessee's possession of the suit property, given the agreement arrived at between the disputants.

4. Against the backdrop of this central issue, the following dates and events, which are not in dispute, must be noticed.

4.1 On 17.09.2013, disputants entered into an agreement to lease [hereafter referred to as the "first lease agreement"] whereby, the appellant/defendant/lessor granted to the respondent/plaintiff/lessee, on lease, carpet area ad measuring 1,6025 sq. ft. carpet area in the suit property comprising basement and 5 floors.

4.2 As per the terms of the first lease agreement, the tenure of the lease was fifteen (15) years beginning from the commencement date indicated therein, with a lock-in period of five (5) years.

4.3 Furthermore, the respondent/plaintiff/lessee was required to pay lease rent at the rate of Rs.25,00,000/- per month.

4.4 In addition, thereto, the respondent/plaintiff/lessee was also obligated to furnish an interest-free refundable security deposit to secure the performance of obligations under the first lease agreement amounting to Rs.3,00,00,000/-, i.e., an amount equivalent to twelve (12) months of lease



rent.

4.5 The record indicates that the first lease agreement was terminated on 14.09.2019. This is apparent upon perusal of communication dated 14.09.2019 addressed by the respondent/plaintiff/lessee to the appellant/defendant/lessor.

4.6 As per an agreement arrived at between the parties, the refundable security deposit amounting to Rs.3,00,00,000/-, paid under the first lease agreement by the respondent/plaintiff/lessee, was to be adjusted towards lease rent for the period spanning between 01.09.2019 and 28.02.2020, which would come to Rs. 1,50,00,000/-. The remaining amount i.e., Rs. 1,50,00,000/- was to be adjusted towards restoration and repair of the damaged floors that had been vacated, i.e., the basement, second floor, and third floor.

4.7 Thus, the respondent/plaintiff/lessee was, concededly, not refunded any amount paid towards the refundable security deposit under the first lease agreement.

4.8 In the communication dated 02.12.2019, addressed by the respondent/plaintiff/lessee to the appellant/defendant/lessor, the respondent/plaintiff/lessee notes that the parties had agreed that the lease should continue, subject to the terms set out in the said communication.

4.9. The terms set out *via* this communication enabled a temporary arrangement for leasing till a new lease agreement was executed.

5. On 06.01.2020, the disputants entered into a fresh lease deed [hereafter, “second lease agreement”].

5.1 The second lease agreement was arrived at *qua* a lesser portion of the suit property. It entailed letting out the ground floor and first floor [in short,



“subject premises”] of the suit property, admeasuring 8759 sq. ft.

5.2 The commencement date for the second lease agreement was 01.03.2020.

5.3 The tenure of the second lease agreement was for six (6) years, beginning from the date of commencement stipulated therein, with a lock-in period of eighteen (18) months.

5.4 For the first three (3) years, the respondent/plaintiff/lessee was required to pay a monthly rent of Rs. 17,00,000/- per month in addition to Goods and Services Tax [GST].

5.5 For the remaining part of the tenure, i.e., three (3) years, the respondent/plaintiff/lessee was required to pay an enhanced lease rent equivalent to the last paid rent along with 15% of the last paid rent per month, cumulatively.

5.6 The respondent/plaintiff/lessee, under the second lease agreement, was also required to deposit Rs. 1,70,00,000/-, equivalent to ten (10) months of lease rent, as security deposit.

6. Furthermore, through a communication dated 29.03.2021, the respondent/plaintiff/lessee was agreeable to pay the appellant/defendant/lessor Rs. 80,00,000/- towards additional security deposit, recoverable at the rate of Rs. 1,00,000/- per month for three (3) years, commencing from 01.04.2023. The balance amount was to be refunded to the respondent/plaintiff/lessee at the time of the expiry of lease.

6.1 Pertinently, the appellant/defendant/lessor does not dispute the receipt of Rs. 80,00,000/-.

7. Notably, the respondent/plaintiff/lessee categorizes the said payment as an additional amount paid towards security deposit; an aspect which the



appellant/defendant/lessor contests.

8. Be that as it may, admittedly, in the second lease agreement two significant modifications were made *via* a modification agreement dated 11.02.2022. First, the lease rent was enhanced from Rs.17,00,000/- per month to Rs.19,00,000/- per month with effect from 01.03.2022. Second, the respondent/plaintiff/lessee undertook to pay, on the execution of the modification agreement, a further amount of Rs. 50,00,000/- towards interest-free refundable security deposit. The modification agreement notes that this would take the total refundable security deposit under the second lease agreement to Rs. 3,00,00,000/-.

9. It is not disputed by the appellant/defendant/lessor that the top-up amount, i.e., Rs.1,30,00,000/- was paid. This meant that the appellant/defendant/lessor, under the second lease agreement, retained with him, Rs. 3,00,00,000/- towards interest-free refundable security deposit.

10. Although the tenure of the second lease agreement was six (6) years, the respondent/plaintiff/lessee *via* communication dated 15.06.2023, conveyed its decision to terminate the lease w.e.f. 14.09.2023.

10.1 The respondent/plaintiff/lessee also indicated to the appellant/defendant/lessor that it was ready and willing to handover possession of the subject premises.

10.2 The communication dated 15.06.2023 also states that the appellant/defendant/lessor should return the refundable security deposit of Rs. 3,08,54,000/- [after making adjustment for rent payable during the notice period] while receiving possession of the subject premises.

11. It is this issue that has disrupted the smooth handing over of the subject premises by the respondent/plaintiff/lessee.



12. It is the appellant's/defendant's/lessor's case that no amount, whatsoever, is refundable to the respondent/plaintiff/lessee towards the security deposit as the cost of restoration and repair of the subject premises is far more than the amount held over by the appellant/defendant/lessor as security deposit.

12.1 In this context, the appellant/defendant/lessor relies on the estimate given by Prabhatam Buildwell Ltd. [in short, "Prabhatam"] on 03.07.2023.

12.2 As per the estimate submitted by Prabhatam, the estimated cost for restoring the subject premises would be nearly Rs.5,10,11,400/- [inclusive of GST].

13. What is not in dispute is that the respondent/plaintiff/lessee followed up with the appellant/defendant/lessor for a refund of Rs.3,08,54,000/- *via* communication dated 23.08.2023.

13.1 It also needs to be noted that the respondent/plaintiff/lessee, *via* the very same communication, denied that any damage was done to the premises.

14. The record discloses that the appellant/defendant/lessor continued to assert its point of view that the respondent/plaintiff/lessee had to pay restoration costs. This was communicated by the appellant/defendant/lessor *via* a letter dated 04.09.2023.

14.1 Correspondence on the issue of refund and restoration continued to be exchanged between the disputants, an aspect which is reflected in the communications dated 13.09.2023 and 14.09.2023.

15. We may note that there are three letters dated 13.09.2023, one that emanated from the respondent/plaintiff/lessee and the other two (2) which were addressed by the appellant/defendant/lessor to the



respondent/plaintiff/lessee.

16. Since there was no resolution, the respondent/plaintiff/lessee filed a suit for permanent injunction. The said suit came up before the learned Single Judge for the first time on 15.09.2023.

17. The learned Single Judge, as noted above, on 15.09.2023, passed an ex-parte injunction restraining the appellant/defendant/lessor from blocking the respondent's/plaintiff's/lessee's access to the suit property at any given time or from interfering with its possession in any manner whatsoever. The appellant/defendant/lessor was also restrained by the Court from disconnecting water and electricity supplied to the suit premises.

18. The appellant/defendant/lessor, on being served with the ex-parte order, moved the Court under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 [in short, "CPC"], for setting aside the ex-parte injunction granted to the respondent/plaintiff/lessee *via* order dated 15.09.2023. This application was numbered as I.A.No.20655/2023. The said application was filed in and about 05.10.2023.

18.1 Furthermore, the appellant/defendant/lessor also challenged the order dated 15.09.2023 before a coordinate Bench of this Court [FAO (OS) (COMM) 2/2024.]

18.2 The appeal was disposed of with a direction that the applications of the appellant/defendant/lessor and the respondent/plaintiff/lessee under Order XXXIX Rule 4 and Order XXXIX Rules 1 and 2 of the CPC respectively be decided and disposed of expeditiously, preferably within three (3) weeks.

19. In and about 30.10.2023, the appellant/defendant/lessor also filed its written statement, wherein all defences and objections *qua* the suit filed by



the respondent/plaintiff/lessee were raised.

20. The record shows that the learned Single Judge attempted to intercede in the matter to find a viable solution as it had become, metaphorically speaking, a chicken and egg situation.

21. The respondent/plaintiff/lessee, based on the terms of the second lease agreement, refused to handover vacant possession of the subject premises unless it was refunded the security amount made over to the appellant/defendant/lessor in terms of the second lease agreement.

21.1 The appellant/defendant/lessor, on the other hand, sought to contend that since the restoration charges that would be incurred would be much more than the amount retained as security deposit, nothing was payable to the respondent/plaintiff/lessee.

21.2 It is in this context that the learned Single Judge, ultimately, passed the impugned order, having regard to the peculiar terms and conditions obtaining in the second lease agreement. This is reflected in Clause 6 of the second lease agreement. For convenience, the said clause is extracted hereafter:

“6. *Security Deposit:*

In order to secure performance of its obligations under this Lease Deed, the Lessee shall be deposited [sic] with the Lessor, an amount equivalent to 10 months Lease Rent the amount being Rs.1,70,00,000 (Rupees One Crore Seventy Lakhs Only) within 2 (two) days on the execution of this Lease Deed by way of interest-free refundable security deposit ('Security Deposit') for the Said Premises.

Upon expiry of this Lease Deed or early determination of this Lease Deed, the Lessee shall handover peaceful vacant possession of the Said Premises as per the terms of this Deed, and, the Lessor shall simultaneously refund the Security Deposit at the time of receipt of the vacant possession. The refund of Security Deposit shall be subject to deductions if any, to arrears in rent, service tax, unpaid electricity charges upto date of hand-over, unpaid water charges upto date of handover. Further, in the event of a



default by the Lessor in refunding this Security Deposit, the Lessee shall also have a right to use the Said Premises free of payment of Lease Rent, till actual refund of Security Deposit and interest accrued on the delay in refund of the Security Deposit and such holding over of the possession of the Said Premises shall not be deemed as trespass or illegal possession by the Parties. In the event of any repairs or demolition or removal of any temporary structures inside the Said Premises shall be done by the Lessee at its costs or otherwise the parties shall mutually and amicably arrive at a cost in this regard at the time of vacating the building or expiry of the lease.”

[Emphasis is ours]

22. As would be evident upon perusal of Clause 6 of the second lease agreement, the appellant/defendant i.e., the lessor is obligated to refund the security deposit at the time of receipt of the vacant possession of the premises. The refund of the security deposit is subject to specific deductions listed out therein. These are i) rent, ii) service tax, iii) unpaid electricity charges [until the date of handover], iv) water charges [until the date of handover].

22.1 This part of Clause 6 presents no difficulty.

22.2 The difficult part, and something peculiar to the instant arrangement obtaining between the parties, is contained in the latter part of clause 6, which makes the refund of the security deposit a prerequisite for handing over possession of the subject premises.

22.3 The latter part of Clause 6 states that in the event the appellant/defendant/lessor defaults in refunding the security deposit, the respondent/plaintiff/lessee will have the right to use the premises without payment of lease rent, till the security deposit along with interest accrued [for the delayed period] is refunded to the respondent/plaintiff/lessee.

22.4 The said part of clause 6 also provides that if the respondent/plaintiff/lessee were to, in such circumstances, hold over the



property, it would not be treated as trespass or illegal possession of the subject premises.

22.5 Furthermore, the last limb of Clause 6 provides that in case repairs, demolition, or removal of temporary structures at the premises are to be carried out, the same would have to be carried out by the respondent/plaintiff/lessee at its own cost or costs as is mutually and amicably agreed to by the disputants at the time of vacation of the subject premises by the respondent/plaintiff/lessee, or at the expiry of the lease tenure.

23. It is the submission of Mr Achal Gupta, learned counsel, who appears on behalf of the appellant/defendant/lessor, that a plain reading of the last part of the said clause, to which we have referred above, would show that the appellant/defendant/lessor is entitled to adjust the amounts that would have to be incurred to restore the premises against the security deposit made over by the respondent/plaintiff/lessee.

24. Mr Amit Anand Tiwari, learned senior counsel, who appears on behalf of the respondent/plaintiff/lessee, on the other hand, says that the last limb of Clause 6 does not concern adjustments that have to be made against security deposit.

25. Mr Tiwari contends that the adjustments that can be made vis à vis security deposit are provided expressly in Clause 6 of the second lease agreement, and these adjustments are limited to arrears concerning rent, service tax, unpaid water charges, and electricity charges. Insofar as the expenses pertaining to repairs, demolition, and removals are concerned, Mr Tiwari says that those would be costs that are incurred by the respondent/plaintiff/lessee on its own or costs that are mutually and



amicably agreed to by the disputants.

26. Mr Tiwari submits that insofar as restoration is concerned, the respondent/plaintiff/lessee has already undertaken steps for restoring the subject premises. Mr Tiwari contends that apart from usual wear and tear, the respondent/plaintiff/lessee is not required to bear the burden of expenses of the kind that the appellant/defendant/lessor has in mind.

26.1 In this regard, Mr Tiwari has drawn our attention to the estimate submitted by Prabhatam.

26.2 It is, therefore, Mr Tiwari's contention that the appellant/defendant/lessor is erroneously conflating the upgradation of the subject premises with restoring it on an '*as is where is*' basis.

27. Before we proceed further, we may note that the learned Single Judge has indicated that the amount refundable by the appellant/defendant/lessor, towards security deposit, after adjusting the rent for three (3) months from the date of termination notice and GST, would be approximately Rs.2,30,00,000/-.

27.1 In reaching this conclusion, the learned Single Judge has adjusted rent for the period commencing from the date on which the termination notice was given, i.e., 15.06.2023, and the date of termination of the lease, i.e., 14.09.2023.

28. Having heard learned counsel for the parties and perused the record, we are of the view that the way Clause 6 of the second lease agreement is framed, in plain terms, gives the respondent/plaintiff/lessee the right to use the premises till such time the security deposit is made over by the appellant/defendant/lessor to the respondent/plaintiff/lessee. As noticed above, the contestation between the disputants is what can be adjusted



against the security deposit under the second lease agreement. The respondent/plaintiff/lessee says, and in our view, quite correctly, that only arrears towards rent, service tax, unpaid electricity and water charges can be adjusted.

29. The reason that we have come to this conclusion is that, although the marginal heading of Clause 6 adverts to the security deposit, there is a clear disjunct between those expenses which can be straightaway adjusted against the security deposit and those *qua* which quantification is required to be made, i.e., costs that may have to be incurred concerning repairs, demolition or removal of any of the temporary structures.

29.1 The two parts of clause 6 do not seem to meld.

30. The cost concerning repairs, demolition, or removal of temporary structures is to be incurred by the respondent/plaintiff/lessee. The disputants are also given leeway to arrive at a mutually acceptable amount that would have to be incurred for carrying out repairs, demolition, or even removal of any temporary structure.

31. A plain reading of the last limb of Clause 6 of the second lease agreement shows that the expenses *qua* restoration, repair, demolition, or removal of any temporary structure cannot be adjusted against the security deposit retained by the appellant/defendant/lessor as they could require quantification, which would then fall in the realm of adjudication, as in this case. As noted above, the learned Single Judge has quantified the refundable security deposit at Rs. 2,30,00,000/- Therefore, in any event, the appellant/defendant/lessor can hold over Rs.70,00,000/- which was deductible towards rent and GST for the three-months between the date of termination notice and the date of termination of the lease.



32. The next logical issue, therefore, which arises for consideration is: can the respondent/plaintiff/lessee hold over the subject premises after 14.09.2023 because the appellant/defendant/lessor refuses to make over the amount retained towards security deposit?

33. It is Mr Tiwari's submission that as per the learned Single Judge's order, Rs.2,30,00,000/- is what the appellant/defendant/lessor is required to remit to the respondent/plaintiff/lessee if it is to be called upon to vacate the subject premises.

34. To be noted, at one stage, Mr Tiwari had indicated that if the appellant/defendant/lessor were to refund Rs.1,75,00,000/- to the respondent/plaintiff/lessee, the respondent/plaintiff/lessee would vacate the subject premises.

35. Mr Gupta, based on the instructions, rejected the offer made on behalf of the respondent/plaintiff/lessee.

35.1 Mr Gupta instead submitted that the appellant/defendant/lessor was willing to deposit Rs.1,75,00,000/- with the Registry of this Court.

35.2 Mr Tiwari rejected the offer as according to him, this amount should straight away be paid to the respondent/plaintiff/lessee.

36. Mr Tiwari emphasized that since the respondent/plaintiff/lessee has taken steps to restore the premises to their original position by carrying out minor repairs and painting on the inside of the subject premises, it is only fair that the appellant/defendant/lessor makes over Rs. 1,75,00,000/- to the respondent/plaintiff/lessee if it wants the respondent/plaintiff/lessee to vacate the suit property.

37. On the other hand, Mr Gupta submitted that, in any event, since the respondent/plaintiff/lessee is not in a position to hand over the premises



even up until today, lease rent will continue to run and, therefore, the amount that would have to be remitted to the respondent/plaintiff/lessee would, accordingly, get scaled down.

38. As noted above, the arrangement that obtains between the parties is peculiar which allows the respondent/plaintiff/lessee to hold over the subject premises till such time the appellant/defendant/lessor fails to make over the security deposit.

38.1 In this context, we may note that Mr Tiwari also points out that when the first lease agreement was entered into between the disputants, what was given to the respondent/plaintiff/lessee was a bare-bone structure and, therefore, the respondent/plaintiff/lessee had to incur substantial expenses to make the suit property fit for its business purposes.

39. It is, therefore, Mr Tiwari's contention that this aspect would have to be borne in mind while appreciating the framework of Clause 6.

40. Since the disputants were not able to agree to a practical way forward, in our opinion, no interference is called for with the impugned order as on a plain reading of Clause 6, the Court could not have arrived at any other conclusion. The parties will get their rights settled in the suit that is pending adjudication before the learned Single Judge or in appropriate proceedings that they may wish to institute for adjudicating their respective rights.

41. At this stage, we may also note that the appellant/defendant/lessor has not paid costs of the applications, as assessed by the learned Single Judge. The learned Single Judge had assessed the cost at Rs.75,000/-.

41.1 Mr Gupta, on instructions of Mr Ravindra Gupta, Director of the appellant/defendant/lessor, who is present in Court, says that costs will be paid within the next two (2) weeks.



- 41.2 It is ordered accordingly.
42. The appeal is disposed of in the aforesaid terms.
43. Consequently, the pending application shall stand closed.
44. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 22, 2024

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