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

+ C.R.P. 152/2016

SANGEET SETH & ANR

Through

..... Petitioner

Mr.Pankaj Kumar, Mr.Prayag Singh,
Ms.Shailja and Mr.Sandeep, Advs.

versus

M/S WEISS ROHLIG INDIA PRIVATE LIMITED..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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19.09.2016

C.R.P. 152/2016 & CM No.34159/2016

1. By the present petition the petitioner seeks to impugn the order dated 25.7.2016 by which on an application filed by the petitioner under Order 37 Rule 3 (5) CPC conditional leave to defend was granted subject to payment of 60% of security deposit amount. The brief facts which led to filing of the suit are that the respondent filed a suit for recovery of Rs.10,30,560/- against the petitioner. The bone of contention is a lease entered into by the petitioner/landlord with the respondent/tenant regarding a premises bearing No.Unit 62B, 6th Floor Himalaya House, 23 K.G.Marg, New Delhi vide lease deed dated 20.01.2010. One of the terms of the lease was that it would be for a period of 5 years on a monthly rent of Rs.1,71,760/-. An amount of Rs.10,30,560/- being equivalent of six months rent was given as interest free refundable security deposit. The lease had a lock-in period of 60 months.
2. The respondent's case is that on 20.11.2012 a fire took place in the

Himalaya House on account of which the entire office was destroyed and ceased to be useful. The respondent vide letter dated 21.11.2012 intimated the same to the petitioners and terminated the lease. As the petitioner did not refund the security deposit the present suit has been filed.

3. The trial court has vide the impugned order noted the controversy between the parties, the terms and conditions of the lease agreement, the contention of the petitioner about existence of an arbitration clause and granted conditional leave to defend to the petitioner subject to deposit of 60% of the security deposit of Rs.10,50,560/- which were to be deposited by way of an FDR.

4. Learned counsel appearing for the petitioner impugns the said judgment relying upon the judgment of the Supreme Court in ***Defiance Knitting Industries (P) Ltd. vs. Jay Arts, (2006) 8 SCC 25*** where the Supreme Court held that while granting leave to defend, in a case where the court entertains a genuine doubt on the question as to whether defence is genuine or sham or whether it raises a triable issue or not, the court may impose conditions in granting leave to defend. Learned counsel has also relied upon the terms and conditions of the lease to submit that the termination notice issued by the respondent dated 21.11.2012 is contrary to the terms of the lease as in case of fire accident he was obliged to give 45 days time to the petitioner to rectify the defect. Reliance is placed on Clause 24 of the lease deed which reads as under:-

“24. If the Demised Premises or any part thereof are destroyed or damages or due to an event of Force Majeure condition continues to exist for a period beyond 45 (forty-five) days from the date of its first occurrence the LESSEE shall have the option of determining the LESSORS without any prior notice or

payment in lieu of the notice and the security deposit shall be refunded by the LESSORS to the LESSEE, immediately. For this period of 45 (forty-five) days no lease rent will be paid by the LESSEE to the LESSORS. In case the LESSEE wants to retain the Demised Premises, then the rent would have to be paid after 45 (forty-five) days of the occurrence of Force Majeure conditions.”

5. In my opinion, there is no material ground to interfere with the discretion exercised by the court. This court is not exercising appellate power in the present case. There was a fire in the premises and the suit premises could not become usable. The respondent hence terminated the lease deed. It would be a case which would fall within the category which has been relied upon by the learned counsel for the petitioner as stated in the case of *Defiance Knitting Industries (P) Ltd. vs. Jay Arts (supra)* i.e. where it is not clear whether the defence is genuine or a sham or whether it raises a triable issue or not. There is no ground to interfere with the impugned order. Present petition is dismissed.

JAYANT NATH, J

SEPTEMBER 19, 2016

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