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

+ O.M.P.(I) 538/2015 & I.A. No.4956/2016

MR. PREHLAD SINGH SETHI Petitioner
Through Mr.Anil Airi, Sr. Adv.with Mr.Ravi
Chandna, Mr.Aman Madan,
Mr.Bindiya L.Airi & Mr.Ishan
Khanna, Advs.
versus

DIVINE INFRACON PVT. LTD. Respondent
Through Mr.Kirti Uppal, Sr. Adv. with Mr.Jai
Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER
% **26.05.2016**

On 14th November, 2011 Petitioner and the Respondent had entered into a Hoteliers-Buyer Agreement for the said premises namely Apartment No. 1010 and 1010 A admeasuring 1104 sq. ft., built up area admeasuring 2208 sq. ft. super area at the 10th floor on a multi storied building situated at Plot of Land No. 4, Sector 13, Dwarka, New Delhi- 110075.

Respondent through its Director namely Sh. Satish Kumar Pahwa had represented to the Petitioner that the Hoteliers Buyer Agreement would be followed up with a Lease Agreement for rental/lease purposes with immediate effect. Lease agreement was entered into between the Petitioner and the Respondent.

Sale Deed duly registered with the Office of the Sub Registrar of Assurances, Basai Darapur, Delhi. By registered sale deed dated 14th August April, 2014, the rights, title and entitlement of the said premises were conveyed in favour of the Petitioner by the Respondent.

On 11th November, 2014 addendum was introduced for the Lease Agreement. In November, 2014 Respondent had handed over a total of 36 post-dated cheques @ Rs. 5,04,000/- per month to the Petitioner, which were duly encashed by the Petitioner towards rent for the period of 3 years which ended on 14th November, 2014, on presentation of the last cheque.

On 15th November, 2014 next of rent cycle commences with increase in rent @ 15% i.e. Rs.5,79,600/- per month. Respondent provides only 5 advance cheques till March 2015 as against the stipulated 36 advance cheques.

On 15th April, 2015 petitioner addressed a letter to the Respondent and raised the issue of non-fulfilment of terms of the Lease Agreement by the Respondent. On 25th April, 2015 petitioner again addressed a letter to the Respondent and raising the issue of non-fulfilment of terms of the Lease Agreement by the Respondent and only providing 5 cheques till March 2015. On 27th May, 2015 petitioner sent a legal notice to the Respondent regarding the non-fulfilment and violation of the terms of the Lease Agreement by the Respondent. Hence the present petition is filed.

On 20th January, 2016 learned counsel for the petitioner accepted the keys of the suit premises offered by the respondent without prejudice. However, it was returned to the counsel for the respondent subsequently mainly on the reason that the keys does not pertain to the suit property. It is merely an apartment in the hotel. The main key has not been supplied by

the respondent. It was also informed that huge amount is due. However, the respondent has failed to pay the same. Even the Director of the respondent was called as the said fact was recorded and the key was duly returned to the learned counsel for the respondent as recorded in the order dated 30th March, 2016. Despite of the direction passed by the Court, the Director of the respondent did not appear on 21st April, 2016. The cost was imposed. The same was also not paid. The application was also filed by the respondent for waiver of the cost. Not only the respondent has also filed separate application to refer the dispute to the arbitrator for adjudication and the petitioner in the meanwhile is free to use the apartment or to put his own lock.

The prayer of in this application is strongly opposed by the learned counsel for the petitioner who submits that as far as use of the apartment is concerned, there is hardly any chance as there is no access to the apartment. With regard to the dispute to be referred to the arbitrator for adjudication, the petitioner submits that the appropriate step will be taken in this regard.

After hearing learned counsel for both the parties, admittedly the respondent has not paid the arrears of rent from the month of April to September, 2015 @ Rs.3,15,00,000/- per month as well as for remaining period. The said amount is admitted in the agreement. Counsel for the respondent has not denied the said fact that the amount has not been paid by the respondent. Under these circumstances, the respondent is directed to deposit the said the arrears of rent for the month of April to September, 2015 @ Rs.5,79,600/- per month as well as remaining period of rent with the Registrar General of this Court within four weeks.

The petition is accordingly disposed of.

Learned counsel for the respondent has offered to hand over the possession of the suit property. However, learned counsel for the petitioner is not ready in view of the agreement executed between the parties as there is no access to the apartment in the hotel.

MANMOHAN SINGH, J.

MAY 26, 2016/vp