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

\+ **FAO(OS) 172/2017**

% **Date of decision : 14th September, 2017**

M/S REGENT WATCH & JEWELLERY CO PVT LTD
..... Appellant

Through : Mr. Chandra Shekhar Yadav, Adv.

versus

M/S ITC LTD & ORS ..... Respondents

Through : Mr. Kirti Uppal, Sr. Adv. with Mr. Adarsh Aggarwal, Mr. Sidharth Chopra and Mr. Akram Khan, Advs.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The appellant before us assails an order dated 3rd May, 2017 whereby an application being IA No.18833/2015, filed by the plaintiff/respondent herein praying for the release of an amount deposited by the defendant/appellant herein, was granted.

2. It is undisputed that the appellant herein was the licensee of the respondent in a shop in the Shopping Arcade of the ITC Maurya Hotel, Diplomatic Enclave, Sardar Patel Marg, New Delhi under the

license deed dated 1st July, 2003. The period of the license came to an end on 1st July, 2006 which was extended up to 30th June, 2009. The appellant claims that it was permitted to occupy the premises thereafter based on some oral arrangement between the parties.

3. Disputes arose with regard to the recovery of possession as well as the amount of the license fee.

4. Apprehending dispossession, the appellant initiated ***OMP No. 1154/2013 M/s Regent Watch & Jewellery Co. Pvt. Ltd. v. M/s ITC Ltd***. In these proceedings, on the 25th November, 2013, an offer was made on behalf of the appellant to deposit the outstanding license fee in court within five days. As a consequence, notice was issued in this OMP. In subsequent proceedings held on 10th February, 2013, while the respondent claimed monetary liability in the amount of Rs.71,45,914.68, it appears that the appellant was admitting outstanding liability to the tune of Rs.59,56,388.57. In this background, on 10th February, 2014, the learned Single Judge observed that there would be no question of entertaining the petition for grant of discretionary relief, if the default of payment of license fee persisted. As a last and final opportunity, the appellant was granted three weeks time to make the said deposit of arrears failing which, it was directed that the petition filed by the appellant shall be liable to be dismissed without any further notice.

5. We are informed that the appellant failed to make the deposit and OMP No. 1154/2013 came to be dismissed by the court on the 14th of March, 2013.

6. The respondent separately filed a suit being CS(OS) 4004/2017 praying for recovery of possession/damages/*mesne profits*/misuser charges as well as mandatory and permanent injunction. In this suit, on the 14th of January, 2015, the appellant sought extension of time to file its written statement and also sought modification of a previous order in this regard. At the same time, the parties entered into an agreement resulting in appointment of a local commissioner to visit the licensed premises and prepare an inventory of the goods of the appellant and, subject to the confirmation of the deposit of Rs.45 lakhs by the appellant with the Registrar General of this court, to hand over the inventorised goods to the appellant/defendant. The deposit of Rs.45 lakhs, as and when made, was directed to be kept in a fixed deposit receipt.

7. The learned Single Judge had further directed that in case the amount of Rs.45 lakhs was not deposited with this court, the local commissioner was permitted to removed the inventoried goods to a place of safe custody.

8. It appears that as a result thereof, that on the 20th of January, 2015, the amount of Rs. 45 lakhs was deposited by the appellant/defendant vide DD No. 353059 dated 19th January, 2015 drawn on Kotak Mahindra Bank, CP, Outer Ring Road, Delhi before the Registrar General of this court and goods (worth Rupees Twelve Crores) as inventoried by the local commissioner, were handed over to the appellant/defendant.

9. On or about the 7th of September, 2015, the respondent/plaintiff filed IA No. 18833/2015 praying for release of the amount of Rs.45

lakhs with accrued interest to be adjusted with recovery of dues of the plaintiff/respondent.

10. Learned counsel for the appellant has drawn our attention to an order dated 11th January, 2017 passed by the learned Single Judge on this application wherein, after hearing the same for some time, it was observed that the application would be decided at the time of framing of issues.

11. The application, however, came to be listed on 3rd May, 2017 when it was taken up for consideration and allowed. By this order, the learned Single Judge noted the aforenoticed factual background and the details of the litigation including the proceedings in OMP No. 1154/2013 as well as the admission regarding the arrears in those proceedings. After so noting, the learned Single Judge also noted the admission of the appellant permitting the amount of Rs.45 lakhs regarding the ownership of the premises by the respondent as well as the relationship of licensee and licensor between the parties and that the premises could be vacated on the 21st of October, 2015 (we are informed that the correct date of vacation was 20th January, 2015 in the proceedings in OMP 1154/2013) as also the admission of the arrears of license fee after making observation to this effect. The learned Single Judge thereafter by the order dated 3rd May, 2017 directed release of the amount of Rs.45 lakhs upon its giving an undertaking to the effect that "*this amount shall be kept alive and in case at the time of disposal of the suit this amount is found not payable to the plaintiff, he will make good this amount to the defendant with interest*."

12. The aforesaid order passed in IA No. 18833/2015 has been challenged by the appellant/defendant before us contending that there was no warrant for changing the direction made on 11th January, 2017 that the application would be taken up at the time of framing of issues. The appellant has drawn our attention to the order recorded on 3rd May, 2017 in the suit wherein, delay in filing the written statement was condoned ,subject to payment of costs and the respondent/plaintiff was granted time to file replication. It is submitted that the matter was adjourned for admission/denial of documents and the stage of framing of issues has not arisen. The second ground on which the challenge to the order dated 3rd May, 2017 is premised, is that the order on the application directing the release of the amount wold tantamount to passing of a decree.

13. We are unable to appreciate any merit in either of these submissions. So far as the submission that the court had to wait for framing of issues before considering the application is concerned, we are unable to agree with learned counsel. In fact, there was no need for postponing consideration of the application on the 11th January, 2017, on the innocuous prayer contained in the application, and the same could have been considered and orders passed thereon on that very date.

14. There is no legal prohibition to the court taking up and preponing the date of hearing in an application.

15. So far as the submission that the order passed on IA No. 18833/2015 would tantamount to a decree is concerned, we have extracted in italics above the clear direction by the court requiring the

respondent/defendant to give an undertaking that in case at the time of '*disposal of the suit'*, the amount was found not payable to the plaintiff/respondent, it would make good the amount to the appellant/defendant with interest. Clearly, the court had passed an interim order which was subject to final adjudication in the suit.

16. Mr. Kirti Uppal, learned senior counsel who appears for the respondent has also made an objection that the order dated 3rd May, 2017 is not an appealable order. *Prima facie*, there appears to be substance in this submission, however, given the fact that extensive submissions have been made before us, we have recorded the above order.

17. This appeal is clearly devoid of any merit and is hereby dismissed.

18. No order as to costs.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 14, 2017/kr