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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 537/2016 & IA No.6233/2016 (u/O XV-A along with
O/XXXIX R-10 CPC).

LAXMAN INDUSTRIES LTD. Plaintiff

Through: Ms. Shrey Mehra for Mr. Sanjiv
Kakra, Advs.

versus

FAHRENHEIT AUTOMOBILES PVT LTD. Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.12.2018**

1. The plaintiff instituted this suit against the defendant no.1 Fahrenheit Automobiles Pvt. Ltd. only, (i) for ejectment from immovable property; (ii) for recovery of arrears of rent; and, (iii) for *mesne* profits.
2. Summons of the suit and notice of the application under Order XVA of the Code of Civil Procedure, 1908 (CPC) were issued to the defendant no.1, the then sole defendant and counsel appeared for the defendant and the parties referred to Mediation Cell of this Court. Mediation remained unsuccessful. The defendant neither filed written statement nor appeared thereafter and vide order dated 10th August, 2017, the right of the defendant to file written statement was closed and the defendant proceeded against *ex parte* and the plaintiff relegated to *ex parte* evidence. The plaintiff, instead of leading *ex parte* evidence, applied for amendment of the plaint and for addition of defendants no.2&3 namely Sumit Nanda and Kunal Ramchandani, being the directors of the defendant no.1 and notice of which application was ordered to be issued to the then sole defendant and the proposed defendants as well.

Notice remained unserved. Vide order dated 14th March, 2018, order of issuance of notice to the proposed defendants was discharged and the defendant no.1 having been *ex parte* earlier, the applications were allowed and the defendants no.2&3 impleaded and the amended plaint taken on record and summons of the suit issued to the newly impleaded defendants. Vide order dated 4th July, 2018, the defendant no.3 was held liable to be proceeded against *ex parte* and the defendant no.2 ordered to be served by publication which has been effected. None appeared/appears for any of the defendants.

3. The defendant no.1 is already *ex parte* as aforesaid and the defendants no.2&3 are also now proceeded against *ex parte*.

4. The need to relegate the plaintiff to *ex parte* evidence has been considered in the light of the suit being a commercial suit.

5. The defendant no.1 was a tenant under the plaintiff under a registered lease deed commencing from 1st August, 2008 for a period of five years till 31st July, 2013 at a rent of Rs.11,51,000/- per month to be increased by 20% after every three years with an option for renewal for a further terms of four years i.e. till 31st July, 2017. Though upon expiry of said lease, the option for renewal was not exercised, but the defendant no.1 kept paying rent as per terms of aforesaid lease and was last paying rent of Rs.16,57,440/- per month.

6. It is the case of the plaintiff that the defendant no.1 failed to pay the rent from 1st February, 2016 and the term of lease having expired, is also liable to vacate the premises. It is also the case of the plaintiff that the defendants no.2&3 being the directors of the defendant no.1 stood guarantee

for payment of dues under the said lease deed and an amount of Rs.33,14,880/- is due towards arrears of rent and an amount of Rs.36,00,000/- is due towards *mesne*

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profits. The plaintiff has also claimed interest and future *mesne* profits.

7. In view of the registered lease deed between the parties placed by the plaintiff on record, the need to relegate the plaintiff to *ex parte* evidence is not felt.

8. However the plaintiff, without proof of entitlement to enhanced rate of *mesne* profits, would be entitled to *mesne* profits at the rate of last paid rent only i.e. at Rs.16,57,440/- only.

9. A decree is accordingly passed in favour of the plaintiff and jointly and severally against the defendants, (i) of ejectment of defendants from 68/3, Najafgarh Road, New Delhi as described in prayer paragraph (a) of the plaint; and, (ii) of recovery of arrears of rent/*mesne* profits/damages from use and occupation w.e.f. 1st February, 2016 till the date of recovery of possession @ Rs.16,57,440/- per month.

10. The counsel for the plaintiff having not assisted during the hearing, no costs.

11. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

DECEMBER 03, 2018

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