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

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Date of Order: 12.11.2018

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CM (M) No.1366/2018

KAWALJEET BANSAL

..... Petitioner

Through: Dr. Anurag Kumar Agarwal,
Adv. and Mr. Umesh Mishra,
Adv.

versus

KAVITA JAIN & ORS

..... Respondents

Through: Mr. Shiv C. Garg, Adv. and Mr.
G. Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

CM APPL. 46769/2018 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The order dated 08.10.2018 passed by the Court of learned Additional District Judge-03, (Central) Tis Hazari Courts, Delhi ('ADJ') dismissing the application of the petitioner under Section 151 of the Code of Civil Procedure, 1908 ('CPC') for a direction to the respondent to deposit the conversion charges/parking charges qua the tenanted premises is the subject

matter of challenge in this petition under Article 227 of the Constitution of India.

4. Admittedly, the petitioner/defendant has taken the premises in question on rent from the respondent by a registered lease deed dated 24.05.2017 for a period of nine years with a lock-in-period of four years. The clause 8 of the Lease deed reads as under:-

“If any service tax ever imposed by MCD or any other authority, it will be the liability of the Second Party/Tenant and the conversion and parking tax if applicable then the same shall be paid and borne by the first party/lessors.

5. The learned counsel for the petitioner contends that the respondents have not deposited the complete conversion charges with the MCD. He submits that in case, conversion charges and parking charges are not deposited, the property in question is likely to be sealed by the MCD and the petitioner would suffer an irreparable loss and injury. The learned ‘ADJ’ has dismissed the application by impugned order observing that *“The property is of the plaintiffs and it is for the plaintiffs to take a call whether to deposit the conversion charges/parking charges or not. It is for the plaintiffs to take a call as to whether they would like to have their property converted into a commercial one by deposit of the requisite charges. This essentially depends on the personal volition of the plaintiffs. It is no doubt correct that clause 8 of the lease deed speaks of*

liability of plaintiffs to pay conversion/parking tax, if applicable. However, to my mind, such a clause is not enforceable as it depends on personal volition of plaintiffs. In the event of breach of the terms of the contract, the aggrieved party may sue for damages. Secondly, at the time when the property was taken on rent, the notification dt. 22.06.2007 was already in force. If this was so, the point is that the defendant had taken premises knowing fully well that no conversion charges qua the tenanted premises which was being taken on rent for commercial activities had been paid.”

6. In my considered view, the learned ‘ADJ’ has rightly dismissed the application of the petitioner. The property is owned by the respondent and it is for him to take the call to pay the conversion and parking charges in order to secure the benefits. The petitioner/tenant cannot compel the landlord/respondent to make the payment of conversion/parking charges to the Local Authority. This is particularly when the property was demised to the petitioner on lease, the notification dated 22.06.2007 was already in force. Unfortunately, the petitioner has not annexed its copy with the petition, when it has been referred to by the learned ‘ADJ’ in the impugned order. The word “if” mentioned in Clause 8 of the lease deed as referred hereinbefore with regard to applicability of conversion and parking charges indicate uncertainty of the clause and hence, it is not enforceable u/s 29 of the Indian Contracts Act, 1872.

7. Further, the said clause 8 in the lease deed is in the nature of the Respondent's own volition and such a clause can't be enforced in a court of law. Section 14 of the Specific Relief Act, 1963 (SRA) lays down specific cases where contracts are not enforceable in law. At this stage, it would be relevant to refer to the section :-

“14. Contracts not specifically enforceable.—

(1) The following contracts cannot be specifically enforced, namely:—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

.....”

A bare perusal of Section 14(1)(b) of the SRA is sufficient to observe that contracts that are dependent on the personal qualifications or volitions of the parties are categorically unenforceable.

8. In the case at hand, a sole reading of the Clause 8 of the Lease deed indicates that the onus on the respondent to pay the conversion and parking charges is in the nature of the respondent's personal volition. The respondent is the owner of the said property and the choice of whether to pay the parking

and conversion charges with respect to his property lies with him and the Court cannot compel the Respondent to pay these charges. However, that being said, the Petitioner is still not left remediless and he still can, if he suffers any loss due to the breach of the said clause, file a suit for damages.

9. In view of this discussion, I do not find any illegality or infirmity in the order. The petition is dismissed with no order as to costs.

VINOD GOEL, J.

NOVEMBER 12, 2018

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