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

\+ CS(COMM) 755/2017

MRS. MAHDU GUPTA & ANR ..... Plaintiffs

Through Mr.Sanjeev Saraswat, Ms. Mukti Chaudhry, Ms. Niharica Khanna and Ms. Tejaswini, Advs.

versus

STEPUP FOOD CORPS & OTHERS ..... Defendants

Through Mr.Shubhendu Kaushik, Adv. for D-2.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% **19.12.2018**

IA No. 17390/2018

This application is filed under Order 23 Rule 3 CPC on behalf of the plaintiffs and defendant No.2. The parties have settled the matter before the Delhi High Court Mediation and Conciliation Centre and have entered into a settlement agreement dated 01.10.2018.

The terms and conditions of the settlement are legal and valid

The application is allowed.

IA No. 17515/2018

This application is filed under Order 23 Rule 3 CPC on behalf of the plaintiffs and defendants No.5 and 6. The parties have settled the matter before the Delhi High Court Mediation and Conciliation Centre and have entered into a settlement agreement dated 18.09.2018.

The terms and conditions of the settlement are legal and valid

The application is allowed.

CS(COMM) 755/2017

1. Present suit is filed for possession, ejectment, recovery of arrears and mesne profits and damages. The case of the plaintiffs is that they are the owners of the property situated at 48, Janpath, New Delhi having an area approximately 7500 sq. ft. The plaintiffs and defendants had entered into an agreement for taking on lease the suit property for a period of 9 years at a monthly rent of Rs.20 lakhs plus applicable service tax on 30.11.2015. An addendum was executed on 11.04.2016. As per the plaint, the defendants have not paid the rents from January 2017 till the date of filing of the suit. The suit seeks a decree for a sum of Rs.1,60,00,000/- being the arrears of rent w.e.f. January 2017 to August 2017, a decree of a sum of Rs.60 lakhs being the rent in lieu of the notice period. A decree is also sought for a sum of Rs.3 crores being the rent for the remaining lock in period in addition to the amount payable to the plaintiffs. A decree for the outstanding electricity and water charges is also sought. Subsequent to the filing of the suit, pursuant to the orders of this court dated 07.03.2018, the plaintiffs received possession through the Local Commissioner on 10.03.2018.

2. In view of IA No. 17390/2018 being allowed, a decree is passed in favour of the plaintiffs and against defendant No. 2 in terms of the settlement agreement dated 01.10.2018.

3. Learned counsel for plaintiffs states that in terms of the settlement agreement dated 18.09.2018, defendants No. 5 and 6 have to pay a sum of Rs.40 lakhs being their share of the dues of the plaintiffs. It has also been agreed that in the event the cheques given by defendants No. 5 and 6 are

encahsed on the due dates and a total payment of Rs.20 lakhs stands paid to the plaintiffs on the due dates, defendants No. 5 and 6 shall not be liable to pay the balance amount of Rs. 20 lakhs and the cheques issued by them dated 30.11.2018 shall be returned by the plaintiffs to defendants No. 5 and 6. Learned counsel for the plaintiffs confirms having received the sum of Rs.20 lakhs from defendants No. 5 and 6 in terms of the settlement agreement. There are certain steps to be taken in terms of the settlement agreement dated 18.09.2018.

4. The suit is accordingly decreed in favour of the plaintiffs and against defendants No. 5 and 6 in terms of the settlement agreement dated 18.09.2018.

5. Learned counsel for the plaintiffs states that defendant No. 1 is a partnership firm of which defendants No. 2 to 6 were the partners. She submits that defendants No. 3 and 4 despite having been referred to the Delhi High Court Mediation Conciliation Centre, have not appeared before the Mediation Centre and they have filed their written statement beyond the period of 120 days. Defendants No. 3 and 4 were served on 17.11.2017 and filed their written statement on 04.04.2018. As the written statement has been filed beyond the period of 120 days, it is submitted that the written statement of defendants No. 3 and 4 cannot be taken on record.

6. Keeping in view the fact that the written statement has been filed by defendants No. 3 and 4 beyond the period of 120 days, the written statement is struck off the record. As the said defendants are not appearing in court, they are proceeded ex parte.

7. Keeping in view that there is no written statement of the defendants on record, it is a fit case to pass a decree under Order 8 Rule 10 CPC.

8. The parties were referred to the Delhi High Court Mediation and Conciliation Centre. The plaintiffs have entered into the settlement agreement with defendant No. 2 and defendants No. 5 & 6 respectively before the Mediation Centre. The said settlement agreements clearly record that defendants No. 1 is a partnership firm and that defendant No. 2 had represented himself to be the Managing Director and chief partner of defendant No. 1 and that defendants No. 3 to 6 were the partners of defendant No.1. It is stated that the partnership business was shared by the partners in the ratio as stated in the settlement agreements which reads follows:-

S.No.	Particulars	Percentage
i.	Defendant No.2	30%
ii.	Defendant No. 3	25%
iii.	Defendant No. 5	25%
iv.	Defendant No. 5	10%
v.	Defendant No. 6	10%

9. This fact has been admitted by defendants No. 2, 5 and 6. Based on this, defendant No. 2 had agreed to pay the sum of Rs.60 lakhs towards satisfaction of all the claims of the plaintiffs against defendant No. 2. Similarly, defendants No. 5 and 6 had agreed to pay a sum of Rs.40 lakhs towards full and final satisfaction of the claim of the plaintiffs against defendant No. 5 and 6. I may only note that as per the settlement agreement in case timely payment are made by the said defendants to the plaintiffs, certain discounts were being given to the said defendants. Hence, defendant No. 2, 5 and 6 have acknowledged their liability to pay to the plaintiffs. As per the settlements, a total sum of Rs.1crore is the admitted liability of defendants No. 2, 5 and 6 towards the plaintiffs. Admittedly, the share of

defendants No. 2, 5 and 6 was 50% of the partnership business, namely, defendant No.1. The share of defendants No. 3 and 4 comes to 50% i.e. Rs.1,00,00,000/-

10. As the submissions of the learned counsel for the plaintiff are un-rebutted, it is clear that a decree is liable to be passed in favour of the plaintiffs and against defendants No. 3 and 4 for 50% of the said stated amount.

11. Keeping in view the above, a decree is passed in favour of the plaintiffs and against defendants No. 3 and 4 under Order 8 Rule 10 CPC for Rs.1,00,00,000/-.

12. As per the settlement agreements, defendants No. 2, 4 and 5 have agreed to allow the plaintiffs to dispose of the goods lying at the suit premises towards satisfaction of the dues of the said defendants. Accordingly, on the same basis, the plaintiffs may sell the goods belonging to defendant No. 1 in terms of the settlement agreement with defendants No.2, 4 & 5. The plaintiffs would also be entitled to adjust the pending security.

13. The suit stands disposed of.

14. All pending applications also stand disposed of.

15. As the matter has been settled before the Mediation Centre, the plaintiffs shall be entitled to refund of the full court fees under Section 16 of the Court fees Act.

JAYANT NATH, J

DECEMBER 19, 2018
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