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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 203/2018**

BESTO ELECTRONICS PVT LTD & ANR Appellants
Through: Mr. Salman Khurshid, Sr. Adv. with
Ms. Nandni Sahni & Ms. Shama
Usmani, Advs.

Versus

FLAIR BUILDER PVT. LTD. Respondent
Through: Mr. Sanjeev K. Sharma & Ms.
Mumtaz Bhalla & Mr. Aayush
Malhotra, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **11.07.2018**

1. This First Appeal under Section 96(a) of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree dated 24th October, 2017 in suit being CS No.9524/2016 filed by the respondent / plaintiff against the two appellants / defendants, for ejectment after determination of tenancy of the appellants / defendants from plot No.1/2/2, village Satbari, Mehrauli, New Delhi (Khasra Nos.279-280, 285-286 and 291) ad-measuring 12037 sq. yds. with construction thereon and for recovery of *mesne profits*.
2. Notice of this appeal was issued and subject to the appellants / defendants depositing the admitted use and occupation charges, execution stayed.
3. The appellants / defendants have deposited / paid the said use and occupation charges though beyond the time granted by this Court.

4. The senior counsel for the appellants / defendants and the counsel for the respondent / plaintiff have been heard.
5. What transpires is that the appellants / defendants, though appeared in the suit for the first time on 20th February, 2017, did not file the written statement till 3rd July, 2017 when the Suit Court gave last opportunity to the appellants / defendants to file written statement on 31st July, 2017. However, on 31st July, 2017, the Presiding Officer of the Court was on leave and the suit proceedings were adjourned to 29th August, 2017. On 29th August, 2017 also, the Presiding Officer was on leave and the suit proceedings were adjourned to 24th October, 2017.
6. On 24th October, 2017, the learned ADJ dismissed the applications of the appellants / defendants under Section 8 of the Arbitration and Conciliation Act, 1996 and for review of the order dated 3rd July, 2017 to the extent directing payment of admitted amounts, and proceeded to decide the suit.
7. There is nothing in the order dated 24th October, 2017 closing the right of the appellants / defendants to file written statement or striking off the defence of the appellants / defendants or treating the suit as fit for decreeing under Order VIII Rule 10 of the CPC in terms of the dicta of this Court in *Int'l Airport Authority of India Vs. Arvind Khanna* (1995) 59 DLT 223 (DB), *Nirog Pharma Pvt. Ltd. Vs. Umesh Gupta* (2016) 235 DLT 354 and *Anil Kumar Goel Vs. Arun Kumar Goel* MANU/DE/2820/2017.
8. On the contrary, a perusal of the order dated 24th October, 2017 shows the learned ADJ to have proceeded on the premise that a judgment and decree on admissions was being passed.

9. The counsel for the respondent / plaintiff also though states that there is no order striking off the defence of the appellants / defendants or closing the right of the appellants / defendants to file written statement, contends that the admissions relied upon by the learned ADJ are those contained in the application under Section 8 of the Arbitration Act.

10. The counsel for the respondent / plaintiff has at this stage interrupted the dictation to draw attention to the order dated 8th June, 2017 in the suit and to the application filed by the appellants / defendants for review of the order but therefrom also it cannot be said that there has been any order or stage where the learned ADJ has applied mind to proceed in the suit under Order VIII Rule 10 of the CPC and whereunder the suit has been decreed.

11. Though the counsel for the respondent / plaintiff has contended that the relationship of landlord and tenant is admitted and the rent is above Rs.3,500/- per month and the appellants / defendants have no defence to the suit but the fact remains that the Suit Court has not followed the procedure prescribed in the CPC and which deviation by the Suit Court is found to have resulted in injury to the appellants / defendants. Though the Court is permitted to cut short the procedure and to do substantial justice but proceedings in a suit are governed by the procedure prescribed in the CPC and if such procedure is deviated, causing injury or deprivation to any party, then certainly in exercise of appellate powers intervention is required. It is well nigh possible that the Suit Court, if had considered the matter under Order VIII Rule 10 of the CPC, may have granted an opportunity to the appellants / defendants to file written statement or even if had closed the

right to file written statement, may have on the parameters enunciated in judgments aforesaid not deemed it a fit case for disposal under Order VIII Rule 10 and relegated the respondent / plaintiff to evidence. Thus such deviation of procedure by the Suit Court requires appellate jurisdiction to be exercised.

12. The appeal is allowed.

13. The order dated 24th October, 2017 to the extent impugns the decree for ejectment passed against the appellants / defendants is set aside and the suit is remitted to the Court of Additional District Judge (ADJ)-01, District South, Saket Courts, New Delhi for proceeding with effect from the stage of dismissal of the applications of the appellants / defendants under Section 8 of the Arbitration Act and for review of the order dated 3rd July, 2017 in accordance with law.

14. In the facts no costs.

15. However, the appellants / defendants, who are stated to have paid the amount of Rs.6,50,000/- per month till the month of July, 2018, are directed to, till further orders of the Suit Court, continue to pay to the respondent / plaintiff a sum of Rs.6,50,000/- per month, in advance for each month, by the 10th day of the month, commencing from the month of August, 2018 and cautioned of consequences for violation of the said order.

No costs.

16. Decree sheet be prepared.

17. The amounts deposited by the appellants / defendants in this Court together with interest, if any, accrued thereon are also ordered to be unconditionally released to the respondent / plaintiff.

18. The trial court record requisitioned in this Court be forthwith returned.

RAJIV SAHAI ENDLAW, J

JULY 11, 2018

‘gsr’..