

\$~4

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

+ **C.R.P. 144/2019**

JATIN DHAWAN

..... Petitioner

Through Ms G.M. Padmapriya, Advocate.

versus

NIRMAL HANDLOOM HOUSE PVT LTD
& ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

09.08.2019

1. The petitioner has filed the present petition, impugning an order dated 14.03.2019 (impugned order) passed by the learned ADJ, granting the respondents an unconditional leave to defend the suit instituted by the petitioner.
2. The petitioner has filed a suit for recovery of ₹8,72,390/- along with interest at the rate of 18% per annum.
3. The petitioner had leased the ground floor of the premises situated at K-38A, Lajpat Nagar – 2, New Delhi (hereafter ‘the premises’) to the respondents. The petitioner claims that the respondents vacated the premises and, on 10.12.2013, handed over vacant possession of the said premises to the petitioner.
4. The petitioner states that thereafter, he entered into an agreement to

lease the premises to another tenant on 17.12.2013. In terms of the agreement to lease with the said tenant, he was liable to pay rent with effect from 01.01.2014.

5. The petitioner claims that he is entitled to rent amounting to ₹2,26,800/- from the respondents as he had lost out on renting the premises with effect from 01.12.2013. The petitioner also claimed that he was entitled to penal charges amounting to ₹3,00,000/-, computed at the rate of ₹30,000/- per day in December till the vacation of the premises on 10.12.2013. In addition, the petitioner claimed a sum of ₹3,45,590/- as rent arrears.

6. The respondents had filed an application seeking leave to defend asserting that respondent no. 1 had vacated the premises on 30.11.2013. They also claimed that they had paid other amounts to the petitioner, including conversion charges of ₹38,050/ and ₹4,746.50/- and a further amount of ₹1,49,640/-. In addition, the respondents claimed that they had paid an amount of ₹1,11,152.50/- after vacating the premises and with the payment of the said amount all claims of the petitioner were settled.

7. The petitioner readily admits that the computation of the amount of ₹8,72,390/- was erroneous, thus, clearly a decree for the said amount could not be passed.

8. The learned counsel appearing for the petitioner contends that the learned ADJ should have granted conditional leave to defend and at least the amounts, which were admitted by the respondents ought to have been deposited.

9. It is apparent from the impugned order that the claims made by the petitioner could not be decreed in entirety. It also does not appear that any

amounts were admitted as payable by the respondents. The petitioner's claim for one month's rent of ₹2,26,800/- (which is in the nature of damages) and the penalty of ₹3,00,000/- were clearly disputed by the respondents. Further, the computation of the arrears was also, admittedly, erroneous.

10. Clearly, in the circumstances, the decision to grant an unconditional leave to defend cannot be faulted. The respondents ought to be given an opportunity to file a written statement and this Court is of the view that no interference with the impugned order is warranted.

11. Having stated the above, it is clarified that if any amount is admitted as payable by the respondents, the petitioner would be at liberty to apply for a partial decree to that extent.

12. The petition is dismissed with the aforesaid observations.

VIBHU BAKHRU, J

AUGUST 09, 2019

pkv