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

% ***Date of decision:* 11.01.2019**

+ **CS(COMM) 883/2017**

SHRI VISHAL OHRI Plaintiff

Through Mr.Karan Gupta, Adv.

Versus

M/S ARYAN RETREATS AND VENTURES

PRIVATE LIMITED Defendant

Through None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

IA No.11149/2018

This application is filed by the defendant for setting aside the ex parte order passed on 17.5.2018. None has appeared for the defendant. This application is accordingly dismissed.

CS(COMM) 883/2017

1. This is a suit for recovery of possession and arrears of rent in respect of the suit property no. M-52, Market Block, Greater Kailash-II, New Delhi-110048 consisting of only basement, ground and front mezzanine floor total measuring 4000 sq. ft., (*herein after referred to as the "suit property"*). Other connected relief is also sought.

2. Notice to the present suit was issued to the defendant on 21.12.2017. Thereafter, the defendant was proceeded *ex-parte* by this court on 17.05.2018.

3. For the disposal of this present suit, it would be necessary to examine the facts of the case in brief.

4. The plaintiff being the absolute owner of the M-52, Market Block, Greater Kailash-II, New Delhi-110048 consisting of basement, ground, first and second floor was approached by the defendant company for taking the suit property on lease, consisting of only basement, ground and front mezzanine floor total measuring 4000 sq. ft., for running a restaurant/bar. Thereafter, on 25.05.2016 the parties entered into a lease agreement whereby the defendant took the said portion of the suit property on rent for 9 years. As per the terms and conditions of the lease deed it was agreed between the parties that the rent would be in three rental trenches of three years each (i.e. Rent of Rs. 5,50,000/- for the first year, rent of Rs. 6,00,000/- for the second and third year, rent of Rs. 6,90,000/- for fourth, fifth and sixth year and rent of Rs. 7,93,500/- for the remaining years). It was further agreed between the parties that the defendant shall also deposit a total security amount of Rs. 36 lakhs. The defendant paid a partial security deposit of Rs. 18 lakhs. It was agreed that the remaining balance (i.e. Rs. 18 lakhs) shall be paid on or before 01.07.2016 failing which the defendant would be liable to pay interest @24% per annum.

5. The defendant paid the rent for the month of April, May, 2016, and partial rent of Rs. 3 lakhs for the month of June, 2016. At the time of making the partial payment the defendant assured that the partial rent (i.e. Rs. 2.5 lakhs) and balance security deposit of Rs. 18 lakhs will be paid shortly.

Despite various reminders the defendant failed to pay the said amounts and also failed to pay the rent for the month of July, 2016, totalling the amount to be Rs. 26 lakhs.

6. The plaintiff issued a legal notice dated 04.08.2016 to the defendant for payment of Rs. 26.5 lakhs. Thereafter, on 01.09.2016 the security guard employed with the defendant approached the plaintiff and stated that the defendant is not traceable and has also not cleared his salary to which he is constrained to leave the suit property by handing over the keys to the plaintiff. The plaintiff approached the defendants' officials and came to know that the defendant is not in the position to pay the outstanding amount. It was further communicated to the plaintiff that the said outstanding amount (i.e. Rs. 26 lakhs) shall be adjusted from the partial security deposit of Rs. 18 lakhs already deposited with the plaintiff.

7. It was then communicated by the defendant to the plaintiff that the remaining balance amount (i.e. after adjustment of Rs. 18 lakhs) shall be cleared within the period of 2-3 days. Pursuant to the above communication the defendant partly paid an amount of Rs. 4 lakhs towards electricity dues of the suit property.

8. After various reminders the defendant again failed to clear the outstanding amount of the plaintiff. The plaintiff filed a civil suit for recovery of Rs. 8,67,500/- against the defendant. Defendant also preferred a suit for permanent and mandatory injunction against the plaintiff. The court restrained the plaintiff from interfering with the access of the defendant to the suit property.

9. On 25.07.2017, the plaintiff called upon the defendant to collect the keys to the suit property and abide by the terms and condition of the lease

deed dated 25.05.2016 including payment of all outstanding dues. That on 27.07.2017, the defendant received the keys from the plaintiff and undertook to abide by the terms and conditions of the lease deed between the parties.

10. The defendant again defaulted in making the payment of the outstanding liabilities including electricity and water charges. The plaintiff again issued a legal notice to make the outstanding payment by the defendant to which no reply was filed. Thereafter the said lease deed was terminated making the defendant an unauthorized occupant of the suit property.

11. Hence, this suit is filed by the plaintiff for recovery of possession and arrears of rent to the sum of Rs. 1,06,40,000/- for the period of June.2016 to December,2017 with means profit @ Rs. 60,000/- per day use of the suit property till vacant possession.

12. It is pertinent to mention that this court has already passed a partial decree under Order 12 Rule 6 with respect to the recovery of possession of the suit property dated 17.05.2018. Hence, the suit is only limited to arrears of rent and mense profit with respect to the suit property. The plaintiff has filed his *Ex-parte* evidence by way of affidavit as PW1.

13. I have heard the learned counsel for the plaintiff and have examined the contents of the plaint, the documents placed on record.

14. The plaintiff has led his own evidence by filing an affidavit by way of evidence as PW 1 where he has affirmed the content of the plaint to be true and correct. In his evidence he has stated that he is the absolute owner of the suit property consisting of basement, ground, first and second floor. It is further stated that defendant a registered company approached the plaintiff for lease of the suit property consisting of only basement, ground and front mezzanine floor admeasuring 4000sq. ft for opening a restaurant/bar. The

certificate of incorporation of the defendant company is marked and exhibited as Ex PW1/1. Thereafter, the defendant and the plaintiff entered into a lease agreement dated 25.05.2016 for a period of 9 years wherein it was agreed that the defendant would pay rent of the suit property in three rental trenches of three years each (i.e. Rent of Rs. 5,50,000/- for the first year, rent of Rs. 6,00,000/- for the second and third year, rent of Rs. 6,90,000/- for fourth, fifth and sixth year and rent of Rs. 7,93,500/- for the remaining years). The same was incorporated as clause 6 of the lease deed. The lease agreement dated 25.5.2016 is marked and exhibited as Ex.PW 1/5. It was also agreed that the defendant shall deposit a refundable sum of Rs. 36,00,000/- as security to which the defendant partly deposited Rs. 18 lakhs and agreed to pay the balance amount of Rs. 18 lakhs on or before 01.06.2016 failing which the defendant was liable to pay interest @ 24% per annum. The bank account statement of the plaintiff is marked and exhibited as Ex. PW1/9. It is also stated that on 03.07.2016 the defendant handed over the cheque of Rs. 18 lakhs towards the payment of the balance security deposit which was when present was dishonoured. Thereafter, plaintiff issued a legal notice dated 04.08.2016 for payment of Rs. 26.5 lakhs which is marked and exhibited as Ex. PW1/10. Thereafter, the plaintiff travelled abroad from 28.06.2016 to 30.08.2016 and on return was approached by the security guard employed by the defendant with the keys of the suit property stating that the defendant was not traceable. Plaintiff ticket and passport is marked and exhibited as Ex. PW1/11 and Ex. PW 1/12. The statement of security guard dated 01.09.2016 is marked and exhibited as Ex. PW1/13. The plaintiff approached the defendants' official Mr. Samad and Mr. Avinash and came to know that the director of the defendant company

Mr.Dhruv Sood is prosecuted in other matter and hence, the defendant company is not in the financial position to carry the business anymore. It was further discussed that the plaintiff can adjust the outstanding amount from the deposited security amount of Rs. 18 lakhs. FIR copy dated 19.09.2016 and various order passed against Mr. Dhruv Sood are marked and exhibited as Ex. PW1/16 and Ex. PW 1/17. It was further agreed that after adjustment the balance amount shall be paid by the defendant. Due to another failure on part of the defendant the plaintiff issued another notice dated 02.11.2016. Various litigation was filed between the defendant and the plaintiff due to which on 20.07.2017 the plaintiff was restrained from interfering with the access of the defendant to the suit property in the civil suit filed by the defendant being suit no. 25886/2016. The plaint/applications of suit No. 25886/2016 is marked and exhibited as Ex. PW 1/26 to Ex. 1/38. Putting the entire dispute to rest, the plaintiff vide letter 25.06.2017 called the defendant to collect the keys to the suit property and abide by the terms and condition of the lease deed dated 25.05.2016 and clear the outstanding dues. The letter dated 25.06.2017 is marked and exhibited as Ex. PW 1/39. In pursuant to the aforesaid letter dated 25.06.2017 the suit property was handed over to the plaintiff on 27.06.2017. The receipt of keys and possession of the suit property is marked and exhibited as Ex. PW 1/40. The defendant again defaulted in paying the rent to the plaintiff and also failed to pay the remaining security deposit of Rs. 18 lakhs. A reminder letter dated 02.08.2017 followed by reminders dated 25.08.2017 and 01.09.2017 was issued by the plaintiff and a legal notice dated 18.10.2017. The same is marked and exhibited as Ex. PW 1/42 to Ex. PW 1/45.

15. A perusal of the pleadings and the evidence on record makes it clear that there is a relationship of landlord and tenant as per the lease deed dated 25.05.2016 wherein, the defendant is paying rent to the plaintiff with respect to the suit property. It is further established that the defendant has failed to pay the outstanding amount of Rs. 1,06,40,000/- to the plaintiff as rent of the suit property for the period from June 2016 to December 2017.

16. Hence, a decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.1,06,40,000/-. The plaintiff shall also be entitled to *pendente lite* interest @ 10% per annum from the date of filing of the suit till the decree. The plaintiff shall also be entitled to future interest @ 10% per annum from the date of decree till recovery. The plaintiff shall also be entitled to cost.

17. The suit is accordingly disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JANUARY 11, 2019/ss

Corrected and released on:04.02.2019