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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 1st December, 2020
+ **C.R.P. 78/2020 & CM APPLs. 30787-88/2020**
JIN KUSHAL EXPORTS AND ANR. Petitioners
Through: Dr. Rajiv Nanda & Mr. Brijesh
Pandey, Advocate. (M-9560956524)
versus
D.J. KHERA (HUF) Respondent
Through: Mr. Sayed Kamran Ali, Advocate.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present petition has been filed, challenging the impugned order dated 21st September, 2020, passed by the ADJ-03, South District, Saket Courts, by which the Id. ADJ has held that the Petitioner/Lessee would have to deposit the entire amount due in the following schedule:

“ ...

Viz a viz the service charges/hire charges which are nearly equal to that of lease money I am of the view that the same are not to be included within the rent and it is altogether a separate transaction and with regard to the said services no order under Order XV A CPC can be passed. Nonetheless it is also an agreement and Court cannot adopt a hyper technical view and let the defendant enjoy the premises or remain in occupation without payment of the agreed amount. The grievance of the defendants that such services were not provided or infact were deliberately stopped by the plaintiff can be adequately met by directing him to deposit a sum of Rs.65,000/- per month in Court rather than paying to the plaintiff. The same would serve the

interest of both the parties as well. As such defendants are directed to pay a sum of Rs.65,000/- w.e.f February, 2020 till September, 2020 within a period of one month from today in the name of the Court by way of DD or by deposit in the Court. The defendants to continue to deposit the payment @ Rs.65,000/- latest by 7th day of each month w.e.f. October, 2020 and continue to deposit during the pendency of the same without fail. This amount shall be kept in Court and shall be released at the time of final adjudication of the case.

3. Brief background of this petition is that the Petitioners and the Respondent entered into two agreements i.e. a lease agreement ('lease agreement') and an agreement for services cum furniture hire ('Hire agreement'), on 25th March, 2019, in respect of property bearing no. B-18, Swami Nagar, New Delhi-110017 (*hereinafter, "suit premises"*). As per the two agreements, the amount payable was Rs.70,000/- per month under the lease for a two year period, and Rs.50,000/- per month, initially for a year, under the Hire agreement, which was to be later increased to Rs 65,000/- per month, for another year. Admittedly, the last payment under the lease agreement was in April, 2020 and under the hire agreement, the last payment was made in February, 2020.

4. There was thus a default in payment of the amounts, after April, 2020 and February, 2020, under the respective agreements. The ground which the Petitioners/Lessee took, before the trial court, was that he was not able to enjoy the premises fully, and accordingly legal notice dated 7th March, 2020 was served to the Respondent/Lessor. The Lessor however filed a suit seeking the entire amount payable and due, along with interest. In the said suit, an application under Order XXXIX Rule 1 and 2 CPC r/w order 15A was also

filed by the Lessor. The impugned order dated 21st September 2020, which has been challenged before this court, has allowed this application.

5. Mr. Rajiv Nanda, Id. Counsel appearing for the Petitioners/Lessee, submits that the Petitioners has been unable to enjoy the peaceful possession of the premises due anti-social elements in the stilt area of the building. He further submits that the entire scheme of the agreements was to evade tax and in any event, the Petitioners were willing to pay, and the agreement is coming to an end in March 2020. He further submits that an amount of Rs.2,40,000/- of security deposit is also lying with the Lessor.

6. On the other hand Mr. Ali, Id. Counsel appearing for the Respondent/Lessor, submits that there is a forfeiture clause in the agreement which clearly provides that if there is any default in the payment, the security deposit would be liable to be forfeited, and the agreement itself shall stand terminated.

7. After perusing the record, it is clear that the Lease agreement and the Hire agreement contain the following two clauses:

Clauses in the Lease Agreement:

“10. That notwithstanding anything in this agreement if the lessee defaults in monthly payment of dues by the 1st of every month or in case any of the cheques bounce on presentation to the bank the lease agreement will be deemed to be prematurely terminated and the necessary notice in terms of law is deemed to have been served and the applicable security deposit of Rs. 2,40,000/- or Rs. 4,00,000/- as applicable will be forfeited and clause-10, 18 and clause 19 shall apply.

.....

“19. That the lease is commencing on 01.04.2019, and expires on 31.03.2021, and the necessary

notice in terms of law is deemed to have been served by the lessor to the lessee by virtue of this clause in this agreement. No further notice would be required to be served by the lessor to the lessee on expiry of this lease period on 31.03.2021. The lessee has agreed to handover vacant and peaceful possession of the said premises on or before 31.03.2021, otherwise the lessee shall pay a penal rent of Rs. 15,000/- (Rs. Fifteen Thousand only) per day w.e.f. 01.04.2021. The penal rent of Rs. 15000/- per day shall also apply in case this clause comes into force after premature termination of the agreement and the second party does not vacate the premises after premature termination of the agreement. The Lessee may seek an extension beyond 01.04.2021, subject to the sole discretion of the Lessor, provided the Lessee confirms the terms of extension on or before 28.02.2021.

xxx"

Clauses in the Hire Agreement:

"18. That notwithstanding anything in this Services Agreement in case any of the cheques bounce on presentation to the bank or the cheques are dishonoured due to any other reason, the Lease Agreement dated 25th March, 2019 and this services cum Furniture Hire Agreement both will be deemed to be prematurely terminated and the necessary notice in terms of law is deemed to have been served and the security deposit of Rs.400,000/- (Rupees four Lac only) will be forfeited.

19. That this Agreement is for a period of 23 months and there is a lock in period of 23 months ending 31.03.2021 in case the Second Party vacates the said Premises prior to 31.03.2021 deposit of Rs.4,00,000/- shall stand forfeited. Hence this Service agreement is for total period of 23 months for which cheques have been handed over by Pavtira Singh."

8. The above clauses show that if there is any default, the agreements get prematurely terminated and the security deposit could also be forfeited. The question as to which of the parties is in default is to be determined in the suit. But at least insofar as payments by the Lessee is concerned, the admitted position is that there has been non-payment since April 2020 under the Lease Agreement, and non-payment since February 2020 under the Hire Agreement. The impugned order passed by the Trial Court directed the Lessee to deposit the entire payment within a period of one month with the Court. The said one month period has also lapsed. The Respondent/ Lessor claims that he has forfeited Rs.2,40,000/-. This issue is not being gone into currently, and would be the subject matter of adjudication in the suit. However, insofar as the non-payment of the amounts is concerned, there is no justification.

9. The tenure of the lease is till March 2021. Thus only a few months are left. The outbreak of pandemic since March, 2020, could have been a reason for delay in the payments and hence considering the extenuating circumstances that are generally prevailing, the Court considers it appropriate to give time to the Lessee to pay the amounts. The trial court has directed deposit in the Court. However, the same would not serve any purpose. The Lessor is a senior citizen and ought not to be deprived of his monthly income which in any case has been considerably delayed.

10. Considering the overall facts and circumstances, it is directed that the payments shall be made by the Lessee to the Lessor strictly, in accordance with the schedule below:

Under Lease agreement:

Lease agreement : Amount payable since May, 2020 – Rs.70,000 for 8 months.

Under Hire agreement:

Services cum Furniture Hire Agreement: Amount payable since March, 2020 – Rs.65,000 for 10 months.

The total amount due is Rs.12,10,000/-. The same shall be paid to the Respondent/ Lessor in the following manner:

- Rs.7 lakhs by 25th December, 2020
- Rs.5 lakhs by 10th January, 2021.

11. The monthly amounts payable, from the month of January 2021, shall be paid on or before the 7th of every month. If there is any default in these payments, for every month an additional amount of Rs.10,000/- would be payable since the months of default i.e., May 2020 and March 2020 under the respective agreements. All payments shall be made by the way of a Demand Draft in favour of the Respondent/Lessor. Subject to the above payments being made, the defence of the Petitioners shall not be struck off by the trial court.

12. The above observations, and the observations in the impugned order, are only for the purposes of deciding the interim applications, and shall have no bearing on the final decision in the suit filed by the Respondent/Lessor.

13. This petition, and all pending applications, are disposed of in these terms. If there is any violation or non-payment, the Lessor/Respondent is at liberty to move an appropriate application.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 1, 2020

Rahul/Ak