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

+ **RFA (OS) (COMM) 9/2020 & CM 13926/2020 & CM 13927/2020 & CM 13928/2020 & CM 13929/2020**

SHREEVED CONSULTANCY LLP & ORS. ...Appellants
Through: Mr.Vijay Choudhary, Advocate.

versus

M/S. FRIENDS MOTELS PVT. LTD.Respondent
Through: Mr.Shankar Kumar Jha, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **02.07.2020**

HEARD THROUGH VIDEO CONFERENCING

CM 13927/2020 (Exemption) & CM 13928/2020 (Exemption)

Allowed, subject to all just exceptions.

RFA (OS) (COMM) 9/2020 & CM 13926/2020 (Stay) & CM 13929/2020 (seeking permission for filing consolidated court fee)

1. This appeal is directed against the judgment and order dated 15.01.2020, passed by the learned Single Judge in CS (COMM.) 140/2019, instituted by the respondent/plaintiff praying *inter alia* for a decree of possession in respect of a built-up premises on plot No.104, Babar Road, New Delhi, measuring 18,000 sq.ft., comprising of basement, ground floor, first floor, second floor, third floor and four rooms in the 'Annexe' block, for a money decree for the arrears of rent to the tune of Rs.1,20,17,858/- till realization, damages and a decree for payment of the unpaid electricity and water bills, service tax, TDS etc. besides *pendente lite* and future interest.

2. By the impugned judgment dated 15.01.2020, the learned Single Judge has decreed the suit in favour of the respondent/plaintiff and against the appellants/defendants who have been directed to handover vacant peaceful possession of the suit premises within one month from the date of the decree. Further, a decree has been passed against the appellants/defendants directing them to clear the arrears of rent for the months of September, October and November, 2018 @ Rs.18,00,000/- per month. The appellants have been directed to pay damages to the respondent/plaintiff for the use and occupation of the subject premises from December, 2018, when the lease deed was terminated, @ Rs.18,00,000/- per month till realization along with interest @9% per annum. Arrears of electricity dues have also been directed to be paid by the appellants/defendants till 30.04.2019, when at the request of the respondent/plaintiff, the electricity of the premises was got disconnected. The water dues have been directed to be paid up to the date of handing over possession, besides clearing statutory dues including TDS, licence fee, guesthouse fee, GST etc. The learned Single Judge has clarified that while paying the aforesaid amounts, the appellants/defendants would be entitled to deduct a sum of Rs.1,08,00,000/- which is lying with the respondent/plaintiff, towards security deposit.

3. Mr. Vijay Choudhary, learned counsel for the appellants/defendants submits that the learned Single Judge has erred in passing the impugned judgment without taking into consideration the fact that in response to the plaint, the appellants/defendants had filed a written statement on 09.08.2019.

4. We may note that the summons in the suit were served on the appellant No.1 on 13.04.2019, which fact remains undisputed, whereas the written statement was filed on 117th day i.e. after the expiry of 90 days, the period permissible in law. For reasons best known to the appellants, no application for condonation of delay was filed along with the written statement. Instead, the

same came to be filed after 20 days, on 28.08.2019. Pertinently, till the date the impugned order came to be passed, the said application was not on the record and on enquiring from learned counsel for the appellants/defendants, he had stated before the learned Single Judge that objections had been raised by the Registry but no steps were taken either to take back the application from the Registry or remove the objections and re-file the same.

5. In view of the aforesaid position, we see no reason to accept the submission made by learned counsel for the appellants that the written statement even though filed after the expiry of 90 days, but before 120 days, ought to have been taken into consideration. It is only in the event a defendant is able to make out sufficient cause or demonstrate any extraordinary circumstances does the Court condone a delay beyond the maximum period of 90 days. The appellants/defendants have miserably failed to demonstrate any such circumstances for the court to have condoned the delay beyond 90 days.

6. As for the merits of the case, it is not in dispute that the appellants/defendants are in default in respect of the rent payable to the respondent/plaintiff @ Rs.18,00,000/- per month from the month of September, 2018 onwards. Even after the respondent/plaintiff had served a legal notice on them on 27.11.2018 granting the appellants a period of 15 days to clear the arrears of rent, the appellants did not make good the default. As a result, the appellants would have to be treated as tenants at sufferance with effect from 14.12.2018. Thereafter, the subject suit for possession and damages, etc. came to be instituted by the respondent/plaintiff in February, 2019.

7. After taking into consideration the relevant clauses of the lease deed dated 22.05.2017, executed by the parties which was duly registered on 25.05.2017, the learned Single Judge has rightly observed that the appellants have breached the material terms and conditions of the lease deed by defaulting in paying the monthly rent from September, 2018. Though they had an

opportunity to cure the said defect within 15 days from the date of receipt of the legal notice dated 27.11.2018, served on them on 28.11.2018, the appellants did not take any steps to remedy the breach.

8. Further, the plea taken on behalf of the appellants/defendants that the respondent/plaintiff had applied to the civic authorities for installation of a meter for recording domestic consumption instead of commercial consumption as required for running a Guest House, the same is not sustainable in the light of the fact that the appellants/defendants have not been able to demonstrate that they had approached the respondent/plaintiff before executing the lease deed or immediately after occupying the premises demanding that an electricity meter for commercial consumption be installed at the premises. It is also a matter of record that in the light of the fact that the appellants/defendants had stopped paying the electricity dues, the respondent/plaintiff was compelled to approach the civic authority seeking disconnection of the electricity connection at the suit premises, for which the appellants/defendants have themselves to blame.

9. No other plea has been taken by the appellants/defendants besides those recorded herein above, which are not persuasive enough for this Court to interfere with the impugned judgment. However, in the interest of justice we did enquire from Mr. Vijay Choudhary, learned counsel for the appellants/defendants, if his clients are ready and willing to deposit in Court, the entire arrears of rent and other statutory dues/charges with interest, which have by now mounted to over Rs.4,00,00,000/-. He states that his clients may be granted at least 45 days for paying the outstanding dues. We are afraid we are unable to accommodate the appellants by granting them 45 days, particularly when, they have all along been aware that they have been in default for a year and a half. The appellants seem to be buying more time. The request made is not *bona fide* and is turned down.

10. Now that the sword of Damocles is hanging on their head in the execution proceedings taken out by the respondent/plaintiff where warrants of attachment have already been issued and the bailiff has been directed to visit the suit premises on 07.07.2020, for taking over physical possession of the subject premises, the appellants/defendants have come rushing to this Court. We are also not impressed by the submission made by Mr.Choudhary, learned counsel for the appellants/defendants that he had presented the present appeal in the Registry on 19th and 20th of March, 2020, but they had declined to entertain the same, particularly when, no steps were taken by the appellants for three months thereafter, from April to June, 2020 to pursue the present appeal, knowing very well that warrants of attachment had already been issued and were liable to be executed any time after 04.03.2020.

11. For the aforesaid reasons, we do not find any ground to interfere in the impugned judgment dated 15.01.2020 which is upheld. The present appeal is dismissed as meritless along with the pending applications.

HIMA KOHLI, J.

SUBRAMONIUM PRASAD, J.

JULY 02, 2020
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