

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 26th February, 2021
+ **CM (M) 24/2021, CM APPLs. 1168/2021 & 1169/2021**
SHAKUNTALA GUPTA Petitioner
Through: Mr. Sanjeev Kakra, Advocate.
versus

M/S BHARTI AIRTEL LTD. Respondent
Through: Mr. Sanjeev Ralli and Mr. Ramkrish
Khanna, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The only question in this case is as to whether the impugned order dismissing the Order XII Rule 6 CPC application is liable to be interfered with.
3. The Petitioner is the owner/ lessor and the Respondent is the tenant/lessee. A lease agreement was entered into between the parties in respect of premises bearing no. K-6, Ground Floor, South Extension (NDSE) Part II, New Delhi-110049 (*hereinafter, "suit premises"*). The lessee was, admittedly, in possession and using the said premises till 29th August, 2011. However, thereafter, disputes have arisen between the parties.
4. The case of the lessee is that the property was sealed by the Monitoring Committee on 29th August, 2011 and the material and other movable assets were removed by the lessee on 8th January, 2012. According to Mr. Ralli, Id. Counsel, the lessee informed the lessor of the

said removal of his possessions from the suit premises. However, the lessor failed to move an application for de-sealing. The suit was filed in January, 2014 and according to the lessee there is no mention of the sealing and the background facts in respect of the lessee having removed his possessions from the said premises.

5. On the other hand, the stand of the lessor is that the lease deed expired on 15th March, 2011, however, the lessor had determined the tenancy for the first time on 27th December, 2011 and thereafter on 3rd December, 2013. Mr. Sanjeev Kakra, Id. Counsel relies upon the provisions of Section 108(e) and 108(q) to argue that if the premises was rendered substantially and permanently unfit, option was of the lessee to determine the lease which the lessee did not determine. Accordingly, the tenant is liable to pay the *mesne* profits/ damages for the entire period which according to the lessor would be payable.

6. This court in this present petition is only concerned with the application under Order XII Rule 6 CPC. The prayer in the application under Order XII Rule 6 CPC reads as under:

“a) pass a decree of Possession in favour of the Plaintiff and against the Defendant in respect of the ground floor, property bearing No. K-6, South extension (NDSE) Part II New Delhi- 110049, admeasuring approximately 1150 sq.ft.more specifically shown in red colour in the site plan attached to the plaint.”

7. A perusal of the above prayer shows that the limited relief sought by the lessor is for a decree of possession. Admittedly, as on today, the lessee is not in physical possession of the property. According to the lessee, the lessor is free to deal with the property in the manner with which she wishes

to. The lessor, on the other hand, submits that in view of the fact that no notice was given invoking the provisions of law, the lessor has not agreed that the lease stands terminated. Be that as it may, the question of damages and mesne profits is not currently being gone into. The physical possession of the property, admittedly, today is not with the lessee. The question as to whether the lease was properly determined by the lessee or not and what would be the consequences thereof, would have to be determined after trial at the time of final adjudication. For the present, it is sufficient to record that the lessee not being in physical possession of the suit property, the lessor is free to deal with the property in any manner that she chooses. Since the physical possession is not with the lessee, at this point, no decree is actually required to be passed in this regard.

8. Mr. Sanjeev Kakra, Id. Counsel disputes the position that the lessor was aware that the lessee has removed his possession from the suit property. Mr. Kakra, further argues that the sealing of the premises does not by itself constitute termination of the lease deed which is disputed by Mr. Ralli, Id. Counsel. This issue is not gone into as it is a factual issue to be determined finally by the trial while adjudicating the issue of damages/mesne profits, if any.

9. The present petition is accordingly disposed of in the above terms along with all pending applications.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 26, 2021

dj//Ak