

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

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Date of decision: December 08, 2021

+ RFA 249/2021, CM Nos. 15993/2021 & 15995/2021

PAWAN KUMAR GUPTA AND GURUCHARAN GUPTA

..... Appellant

Through: Mr. Abhay Kumar & Mr. Nirbhay
Kumar, Advs. with Pawant Kumar
Gupta, appellant in person.

versus

VEENA DHINGRA AND ANOTHER

..... Respondents

Through: Mr. H. L. Narula, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM No. 15995/2021 (for delay)

This is an application filed by the appellants seeking
condonation of delay in filing the present appeal.

For the reasons stated in the application, the same is allowed
and the delay in filing the present appeal is condoned.

Application is disposed of.

RFA 249/2021

1. This appeal has been filed by the appellants herein
challenging the common order dated January 16, 2021 passed by the
learned Additional District Judge; 02, (Central) Tis Hazari Courts,

Delhi ('Trial Court', for short) on applications filed by the respondents herein under Order XII Rule 6 and Order XXXIX Rule 10 read with Order XVA Code of Civil Procedure, 1908 ('CPC', for short). Suffice to state, vide the said order, the Trial Court has allowed both the applications. In the application under Order XII Rule 6 CPC, it directed the recovery of possession of the suit property being shop no.35, Lower Ground Floor, Gaffar Market, Karol Bagh, New Delhi ('suit property', for short) and also in the application under Order XXXI Rule 10 read with Order XVA CPC it directed recovery of arrears of rent @ ₹77,000/- per month along with interest at ₹18% per annum from the date of filing of suit till realisation.

2. Some of the facts relevant for the purpose of deciding this appeal are that, the appellants were inducted as tenants by a registered Rent Agreement executed on November 20, 2017 with regard to the suit property for a period of 11 months on payment of rent of ₹70,000/- commencing from September 01, 2017. On the expiry of the 11 months a fresh Rent Deed was executed on October 05, 2018 between the parties with regard to the suit property for payment of rent of ₹77,000/- per month for a period of 22 months excluding electricity and maintenance charges. The same was

registered on October 26, 2018. It was the case of the respondents herein that on expiry of the tenancy of 11 months, the appellants agreed to continue to remain in occupation of the suit property as tenants exclusive of electricity and other charges on payment of a monthly rent of ₹77,000/-.

3. It was also the case of the respondents that the appellants had last paid the rent of ₹77,000/- for the month of May 2019 and not thereafter. This resulted in an issuance of notice dated June 28, 2019 by the respondents whereby the tenancy was terminated after the expiry of one month of receipt of said notice. The said Notice was duly served on the appellants on June 29, 2019. A reply dated July 24, 2019 to the said Notice was sent by the appellants through their Advocate.

4. The respondents had accordingly filed a suit before the Trial Court being *CS. DJ No.747/2019, Smt. Veena Dhingra and Anr. v. Sh. Pawan Kumar Gupta and Anr.* It may be stated here that the appellants herein had also filed a suit being CS No.3437/2018 against the respondents herein for permanent and mandatory injunction. The prayers made in the suit CS. No. 3437/2018 are the following:

“In view of the averments and the circumstances as have been made herein before it is prayed that this Hon’ble Court may be pleased to:

a. pass a decree of permanent injunction /directions restraining the defendants, his servants, representatives and associates not to enter & dispossess the plaintiffs from the suit property i .e. premises / PROPERTY BEARING SHOP NO.35, AREA MEASURING 160 SQ. FEET, ON LOWER GROUND FLOOR, SITUATED AT GAFFAR MARKET, KAROL BAGH, NEW DELHI, without the due process of law, in favour of the plaintiffs and against the defendants.

b. pass a decree of mandatory injunction / directions restraining the defendants, his servants, representatives and associates to remove the stall installed in front of the suit property i.e. premises / PROPERTY BEARING SHOP NO.35, AREA MEASURING 160 SQ. FEET, ON LOWER GROUND FLOOR, SITUATED AT GAFFAR MARKET, KAROL BAGH, NEW DELHI, in favour of the plaintiffs and against the defendants.

c. Any other relief or remedy which this Hon’ble Court may deem fit and proper may also be passed in favour of the plaintiffs and against the defendants.”

5. I have been informed that the suit has since been dismissed on November 15, 2021. Be that as it may, an application under Order VII Rule 11 CPC was filed by the appellants herein in CS. DJ. No.747/2019 seeking rejection of the plaint filed by the respondents herein on the ground that the relief claimed is undervalued. The same was dismissed by the Trial Court on January 05, 2021. The respondents herein have also filed two applications under Order XII Rule 6 CPC and under Order XXXIX Rule 10 read

with Order XVA and Section 151 CPC. No reply to the said applications has been filed by the appellants herein.

6. Though, it is stated in the impugned order that a joint written statement had been filed by the appellants herein, however the same has not been placed on record. But I find that the written statement in the suit being CS No.3437/2018 filed by the appellants, has been filed on record along with the appeal.

7. The findings of the Trial Court in these applications are primarily as under:

“Application under Order XII Rule 6 CPC

8. It is nowhere claimed by the defendants that the lease between the parties was for agricultural or manufacturing purposes. The lease deed dated 05.10.2018 was only for a period of 11 months w.e.f. 01.09.2018. Thereafter, the defendants agreed to continue as tenants in the suit property subject to increase of rent. There is nothing on record to show that any fresh written lease deed was executed between the parties. This would imply that after expiry of the lease period under deed dated 05.10.2018 the tenancy of defendants would be from month to month as envisaged under Section 106 (1) of the Transfer of Property Act.

8.1 In para no. 1 of reply on merits, in the written statement it is admitted that the defendants are tenants in the suit property. In para no. 6 of reply on merits in the written statement it is admitted that the rent of the suit property was being paid to Ms. Veena Dhingra and Ms. Sunita Dhingra i.e plaintiff no. 1 & 2 respectively. The defendants have stated that the plaintiffs have not filed any proof regarding their ownership over the suit

property. This contention does not help the defendants in their cause. Even if it is presumed that the landlord/landlady is not the owner of the tenanted premises, still the landlord/landlady has a legal right to recover possession of the tenanted premises from the tenant. The admission of the defendants to the effect that they paid rent to the plaintiffs would clearly show that the plaintiffs are the landladies of the defendants regarding the suit premises.

8.2 The defendants have not specifically denied the receipt of legal notice dated 28.06.2019. The defendants are stated to have sent reply dated 24.07.2019 to the said notice. This notice is signed by Sh. Sanjay Verma, advocate. The other particulars of Sh. Sanjay Verma, Advocate mentioned on the notice are similar to the details of Ld. Counsel for the defendants as mentioned in the present written statement. Neither the defendants nor Sh. Sanjay Verma, advocate have denied being sent reply dated 24.07.2019. It shows that the notice was duly served upon the defendants. Considerable time has lapsed after the service of notice. The statutory period as mentioned under Section 106 (1) of the Transfer of Property Act for giving notice for termination of tenancy has also lapsed.

8.3 In view of the above, it is amply clear that the defendants have admitted the plaintiffs as the landladies. The service of notice dated 28.06.2019 whereby the tenancy was terminated is also admitted.

8.4 In view of the above, the application of the plaintiffs under Order 12 Rule 6 CPC seeking recovery of possession on the basis of admission made by the defendants is allowed.

Application under Order XXXIX Rule 10 read with Order XV-A and Section 151 CPC

9. The plaintiffs have prayed for recovery of rent @ Rs. 77000/- per month for the months June & July' 2019. The plaintiffs have also prayed for recovery of penalty @ Rs. 3000/- per day in addition to rent for the month of June & July' 2019 along with interest @ 18% per

annum. The plaintiffs have claimed mesne profits @ Rs. 4 lakhs per month.

9.1 In the written statement the defendants have admitted that they have paid rent only till May' 2019. Thereafter, they stopped paying the rent. It is further submitted that the plaintiffs have placed two illegal counters in front of the suit property. Out of the said counters one has been rented out to Sh. Sunny and Sh. Deepak. The other counter has been rented out to Sh. Gurcharan Singh. One legal notice dated 24.07.2019 was also sent by the defendants regarding the said illegal counters. However, there is nothing on record to show that the defendants started any legal proceedings for getting removed the said illegal counters. It is stated that those counters have adversely affected the business of the defendants. The defendants have not pointed out any specific clause in the rent deed or any other orally agreed clause between the parties which entitled the defendants to stop paying the rent due to any acts of the plaintiffs. If the defendant were aggrieved by any act of the plaintiffs, they should have sought legal remedy. It is clear that the defendants have stopped paying rent without any legal basis.

9.2 In reply to para no. 9 in the written statement the defendants have given certain amounts which they claim were given to the plaintiffs. It is claimed that Rs. 1 lakh each was given as security in relation to the rent deeds which were prepared in 2017 and 2018. Sh. Surinder Dhingra and Sh. Kapil Dhingra (their relationship with the plaintiffs not specified) extorted Rs. 5 lakh from the defendants and the same has not been adjusted in rent. Rs. 11,150/- paid by the defendants on 16.11.2018 have not been returned by the plaintiffs (it is not clarified for what purpose this amount was given. Whether the plaintiffs are liable to return it or not).

9.3 In the replication, it is stated that the amount of Rs. 1 lakh was taken as security at the time of execution of earlier rent deed. The same is refundable when the defendants hand over the vacant physical possession of the suit property. At the time of execution of second lease deed no fresh amount was taken. The previous

amount of security given by the defendants still remain with the plaintiffs. The plaintiffs have denied that any amount of Rs. 5 lakhs was extorted from the defendants. The amount of Rs. 11,150/- mentioned by the defendants is half share of stamp duty which was levied upon the rent deed. In short the plaintiffs have admitted only the amount of Rs. 1 lakh given as security at the time of execution of first lease deed in the year 2017.

9.4 The plaintiffs have claimed that after the expiry of first lease deed, the defendants continued the tenancy upon the previous terms. The rent was increased by 10%. There is no clear cut admission on behalf of the defendants regarding the increase of rent. As such, the defendants would be entitled to recovery of arrears of rent in terms of Order 39 Rule 10 CPC (the aspect regarding increase of rent will be decided at the appropriate stage) @ Rs. 77000/- per month along with interest @ 18% per annum (since the tenancy was commercial) from the date of filing of suit till realization of the amount.”

8. Mr. Abhay Kumar, learned counsel appearing for the appellants would contest that the impugned order passed by the Trial Court primarily by stating that the respondents herein are not the owners of the suit property for them to file a suit for possession. In this regard, he has drawn my attention to a document which is General Power of Attorney dated March 10, 2015 executed by one Raj Kumar in favour of Subash Dhingra with respect to the suit property.

9. According to him, Subash Dhingra was the husband of the respondent No.1 who had expired, and on his death, the General

Power of Attorney ceases to have any effect. In other words, it is on the strength of the General Power of Attorney dated March 10, 2015 that the respondents herein have represented themselves as the owners of the suit property which is untenable as such they could not have executed the Rent Deed with regard to the suit property.

10. That apart, he has also stated there is no admission on the part of the appellants with regard to landlord-tenant relationship between the respondents and them. He also stated that it is not admitted by the appellants that the rent is being paid to the respondents. Suffice to state, no submission has been made by the learned counsel for the appellants with regard to the prayers granted in the application under Order XXXIX Rule 10 read with Order XVA of the CPC.

11. Learned counsel for the appellants has relied upon the following judgments in support of his submission that a decree on an admission under Order XII Rule 6 CPC can be passed only if there is an unequivocal and a clear admission made in the pleadings or otherwise:

- (i) ***Razia Begum v. Sahebzadi Anwar Begum & Ors., 1958 AIR SC 886;***
- (ii) ***Nagubai Ammal & Ors. V. B. Sharma Rao & Ors., 1956 AIR SC 593;***

- (iii) *Himani Alloys Ltd. v. Tata Steel Ltd.*, (2011) 7 SCR 60;
- (iv) *Raj Kumar Chawla v. Lucas Indian Services*, AIR 2006 Delhi 266; and
- (v) *Manisha Commercial Ltd. v. Shri N.R. Dongre & Anr.*, 85 (2000) 85 DLT 211.

12. On the other hand, Mr. H. L. Narula, learned counsel appearing for the respondents would justify the impugned order passed by the Trial Court, inasmuch as it is the case of the appellants, even in the suit being CS No.3437/2018 filed by them against the respondents for permanent and mandatory injunction, that there exist a relationship of landlord and tenant between the respondents and them and also the fact that rent of ₹77,000/- was being paid for the suit property. That apart, he has drawn my attention to the reply to the legal notice dated June 28, 2019 wherein in unequivocal terms the appellants have admitted the aforesaid aspect.

13. Insofar as the plea of the learned counsel for the appellants that the respondents are not the owners of the suit property, he would state that such a stand cannot be taken by the appellants when they have executed a registered Rent Agreement with respect to the suit property and they have also admitted that they are paying rent to the respondents herein. In support of his submission, he has

relied upon the judgment in *Bhim Sain Aggarwal v. Rattan Lal Aggarwal*, 188 (2012) 188 DLT 273, wherein this Court has clearly held that the tenant cannot dispute the title of the landlord in view of Section 116 of the Indian Evidence Act, 1872.

14. He has also relied upon the judgment of the Supreme Court in the case of *Ram Prakash Sharma v. Bulbul Birla (Dead) by LRS. & Ors.*, (2011) 6 SCC 449 in support of his submission that the Supreme Court while granting time to the tenant had clearly held that if the tenant does not vacate the property within the time granted, then the tenant shall be evicted by police force.

15. Having heard the learned counsel for the parties, it may be stated at the outset that the learned counsel for appellants has made submissions only on the order in respect of application under Order XII Rule 6 CPC whereby the learned Trial Court has directed the recovery of possession of the suit property in favour of the respondents. In this regard, I have already reproduced the findings of the learned Trial Court. I have seen the suit filed by the appellants against the respondents being CS No.3437/2018 wherein the respondents in paragraphs 2, 3, 5, 6, 7 & 9 have stated as under:

*“2. That the plaintiffs are the tenant the premises /
PROPERTY BEARING SHOP NO.35, AREA
MEASURING 160 SQ. FEET, ON LOWER GROUND*

FLOOR, SITUATED AT GAFFAR MARKET, (KAROL BAGH, NEW DELHI, hereinafter called the suit property.

3. That it is pertinent to mention here that the said tenancy was commenced w.e.f. September 2017 and the same was further extended w.e.f. 01.09.2018 at an agreed rent of Rs. 77,000/- and the plaintiffs paid a sum of Rs. 1,00,000/- as security deposit to the defendants and a rent agreement to this effect was duly executed between the parties and registered with the office of the Sub registrar on 05.10.2018 and the plaintiffs has been paying the rent as and when due.

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5. That the plaintiffs objected for such acts of the defendants stating that the defendants have assured that they will get the tenanted premises vacated only when the plaintiffs wants and as such the plaintiffs had paid an amount of Rs. 1,00,000/- as security but to the utter shock, the defendants flatly denied to the said fact rather openly extended threats that if they want to run the shop at the suit property than they will have to pay a monthly rent of Rs. 1,50,000/- per month despite the fact that the rent agreed between the parties was Rs. 77,000/- per month.

6. That It is germane to mention here that the plaintiffs are running business at the suit property and has recently done the entire set-up and it took them lot of efforts to establish the institute and develop customers and such requested the defendants to let him continue with the tenancy but to utter shock, the defendants and his associates namely Surinder Dhingra S/o Sh. Des Raj Dhingra R/o Q-27, GF West Patel Nagar, New Delhi and Kapil Dhingra and Sachin both S/o Late Sh. Subhash Chander Dhingra, R/o A-333 Nagar, Vikas Puri, New Delhi threatened to forcibly dispossess them and when the plaintiff opposed such illegal acts of the defendants, to utter shock, the defendants started extending threats to the plaintiffs that they will implicate them in false criminal cases.

7. That not only this they even snatched one key of the suit property from the plaintiff and there is every

apprehension that they might misappropriate the goods lying in the shop, In fact the defendant wants to get the tenanted premises vacated and usurp the huge security amount of the plaintiffs and further extort money from him despite the fact that the rent agreement is valid for 22 months w.e.f. 01.09.2018. A complaint to this effect was also lodged on 16.11.2018 but no action was taken on the same, copy attached.

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9. That it is germane to mention here that it has come to the knowledge of the plaintiffs that the defendants with a sole motive to earn more rent wants to let out the tenanted premises to some other person and thus the plaintiffs has been regularly receiving the threatening and has an apprehension of forcibly being dispossessed from tenanted premises and as such the plaintiffs approached to the police and tried to lodge a complaint with the P.S. concerned but the police officials refused to entertain the same saying that this is a pure civil matter and told the plaintiffs to approach the court.”

16. That apart, even in reply to the legal notice dated June 28, 2019 sent by the respondents herein, the stand of the appellants is the following:

“3. Reply to para no.2, it is correct that terms and conditions mentioned in the Registered Rent Deed but it was not registered on 05.10.2018 as per your legal notice, the actual date of registration was 26.10.2018 and as per this rent deed, the signatures of Sunita Dhingra was not available on page no. 2 and all terms and conditions were in favour of landladies, so it's not valid in the eyes of law.

4. Reply to para 3, that my clients gave Rs. 100,000/- as a security (white money) along with Rs. 11,150/- paid on dated 16.11.2018 as rent agreement/stamp duty amount and Rs. 5,00,000/- (in cash) were given to Mr. Kapil Dhingra (son of Defendant No. 1) and Mr. Surinder Dhingra

(Husband of Defendant No.2) in the month of October 2018 on the pretext to adjust the amount in rent in future but till today this amount was not adjusted in rent and after getting money they again harassed and threatened my clients to vacate the premises after registration of the rent deed.

5. *Reply to para 4, that your clients admitted I regularly paid rent to the landladies till May 2019 and after that I stopped the payment because the landladies illegally blocked my shops way by installing two counters in front of my shop and given on rent to 1, Mr. Sunny @ Udit and Deepak and 2. Gurucharan Singh on monthly rent of Rs. 35,000/- each taken from both parties and block my shop/customers way to enter in shop and it affects my business along with the landladies installed one counter in my shop illegally by Smt. Kamlesh W/o Sh. Vinod Kumar Gaba and her son Sh. Anshul Gaba to break my customer and it affects my business.*

6. *Reply to para 5, that no law available in World which gives right to landladies to eject the tenant who paid rent regularly without any income from the suit property.”*

17. A reading of the aforesaid stand in the suit being CS No.3437/2018 and the reply to the legal notice, it is clear that the appellants herein have admitted to the fact that landlord-tenant relationship exists between them and the respondents. They here admitted that they have been paying rent to the respondents. Nowhere in the pleadings have the appellants stated that they are not the owners of the suit property. In any case, the appellants

cannot contest the title of the appellants in view of Section 116 of the Evidence Act, 1872 which reads as under:

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

18. Mr. H. L. Narula is justified in relying upon the judgment in the case of ***Bhim Sain Aggarwal (supra)*** wherein this Court has in paragraph 7 has held as under:

“7. So far as the issue with respect to the doubt of ownership of the appellant / plaintiff of the suit premises is concerned, Section 116 of the Indian Evidence Act, 1872 is a complete answer, inasmuch as, under this provision a tenant is estopped from disputing the title of his landlord.”

19. In view of my above conclusion, the judgments relied upon by the learned counsel for the appellants have no applicability. The admission is clear and unequivocal, inasmuch as in a case of this nature what has to be seen is whether there exists landlord-tenant relationship; the factum of tenancy has been accepted and the rent is being paid to the landlord. All the three aspects have been proved in this case. The learned Trial Court has rightly granted the

possession in favour of the respondents. In this regard I may refer to a judgment of the Division Bench of this Court in the case of **Anupama Bansal v. Suraj Bhan Bansal & Anr., 2019 (260) DLT 465**, wherein it has been held as under: -

“20. The law on the aspect as to what should constitute “pleadings or otherwise”, the words used under Order XII Rule 6 CPC, for passing a judgment on admission, is well settled. There are a line of decisions rendered by the Supreme Court and the High Courts that if there is sufficient material on record including express/implied admissions, that can validate passing of a decree on the basis of such admissions, there is no impediment for the Court to accelerate the suit proceedings to a closure by passing a decree on admitted claims.

21. The scope and ambit of Order XII Rule 6 CPC was discussed by the Supreme Court in the landmark case of Uttam Singh Duggal and Co. Ltd. Vs. Union Bank of India reported as AIR 2000 SC 2740, where it was observed as under:-

“12. As to the object of the Order 12 Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that „where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. “We should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to

succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.”

22. In *ITDC Ltd. Vs. M/s. Chander Pal Sood and Son* reported in 84 (2000) DLT 337 DB, a Division Bench of this Court interpreted the provisions of Order XII Rule 6 CPC in the following words:-

“17. Order 12 Rule 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing....”

23. Another Division Bench of this Court had the occasion to interpret the expression, ‘otherwise’ used in Order XII Rule 6 CPC in *Rajiv Srivastava vs. Sanjiv Tuli and Anr.* reported as 119 (2005) DLT 202 (DB) and observed as below:-

“10. The use of the expression ‘otherwise’ in the aforesaid context came to be interpreted by the Court. Considering the expression the Court had interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also de hors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties’ statement is recorded under Order 10 Rules 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in

the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein.”

24. In *Delhi Jal Board vs. Surendra P. Malik* reported as 104 (2003) DLT 151, a Division Bench of this Court had laid down the following tests for pronouncing a judgment on admission:-

“9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment.”

(Emphasis supplied)

20. Insofar as the relief on the application under Order XXXIX Rule 10 and Order XVA of the CPC is concerned, the learned counsel for the appellants has not made any submission contesting the findings of the learned Trial Court, as noted above.

21. I find the Trial Court on this application has granted an amount of ₹77,000/- per month from the date of filing of the suit till realisation. It was the case of the respondents before the learned

Trial Court that the last rent paid by the appellants was in the month of May 2019. That effective from June 2019, admitted rent in terms of the registered Rent Deed, was not paid. The suit had been filed by the respondents on August 01, 2019. It is also not the case of the appellants that they have given the possession of the suit property to the respondents. The learned Trial Court has granted the admitted rent, I do not see any illegality in that regard. Additionally, I may also refer to the rent agreement dated November 20, 2017, wherein the clause pertaining to penalty rent has been reproduced as under: -

“22. That if the tenants fail to vacate the said premises on expiry of tenancy period, tenants shall pay a sum of Rs.3,000/- (Rupees Three Thousand only) per day towards penalty alongwith monthly rent to the landladies.”

22. Further penalty rent was demanded by the respondents through the legal notice dated June 28, 2019, whereby the respondents made the following demand: -

“6. That In case you fail to comply with this notice, i) you, as per term 22 of the above said Rent Deed dated 5-10-2018, are under contracted obligation and are also liable to pay the stipulated penalty @ Rs.3000/- per day in addition to the agreed amount of monthly rent to my clients, till the date of delivery of vacant & peaceful possession of said premises to my clients, besides and/or in the alternative,

ii) You shall be liable to pay the damages (mesne profits) for use and occupation of the said premises at the rate of not less than Rs,2,00,000/- p.m. together

with interest @18% pa on the amount due and payable by, till the date of actually & physically, handing over the vacant & peaceful possession of said premises to my clients, on which date only you shall be allowed to claim the refund of Security amount of Rs. One lakh only, after adjustment of the amounts which have already become due and payable by you to my clients, and.....”

23. The appellants replied to the said notice vide reply dated July 24, 2019 wherein they have replied in the following manner regarding the issue of penalty rent i.e. they have not denied payment of penalty rent.

“7. Reply to para 6, an application already filed in concerned Court regarding issue of rent receipts to my clients and matter is pending for permanent injunction.”

24. Taking note of the aforementioned facts, insofar as the interest is concerned, the justification given by the learned Trial Court while granting interest @ 18% per annum is that the tenancy being commercial. Such a conclusion is reasonable in the facts of this case.

25. In view of my above conclusion, I do not see any merit in the present appeal. The same is dismissed.

CM No. 15993/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

DECEMBER 08, 2021/aky