

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: September 03, 2021

- + FAO 175/2021, CM Nos. 26748/2021 & 26749/2021
- + FAO 176/2021, CM Nos. 26751/2021 & 26752/2021
- + FAO 177/2021, CM Nos. 26754/2021 & 26755/2021
- + FAO 178/2021, CM Nos. 26759/2021 & 26760/2021
- + FAO 179/2021, CM Nos. 26764/2021 & 26765/2021
- + FAO 180/2021, CM Nos. 26768/2021 & 26769/2021
- + FAO 181/2021, CM Nos. 26775/2021 & 26776/2021
- + FAO 182/2021, CM Nos. 26780/2021 & 26781/2021
- + FAO 183/2021, CM Nos. 26785/2021 & 26786/2021
- + FAO 184/2021, CM Nos. 26792/2021 & 26793/2021
- + FAO 185/2021, CM Nos. 26795/2021 & 26796/2021
- + FAO 186/2021, CM Nos. 26798/2021 & 26799/2021
- + FAO 187/2021, CM Nos. 26803/2021 & 26804/2021
- + FAO 188/2021, CM Nos. 26806/2021 & 26807/2021
- + FAO 189/2021, CM Nos. 26811/2021 & 26812/2021
- + FAO 190/2021, CM Nos. 26814/2021 & 26815/2021
- + FAO 191/2021, CM Nos. 26874/2021 & 26875/2021
- + FAO 192/2021, CM Nos. 26879/2021 & 26880/2021
- + FAO 193/2021, CM Nos. 26882/2021 & 26883/2021
- + FAO 194/2021, CM Nos. 26899/2021 & 26900/2021
- + FAO 195/2021, CM Nos. 26928/2021 & 26929/2021
- + FAO 196/2021, CM Nos. 26939/2021 & 26940/2021
- + FAO 197/2021, CM Nos. 26991/2021 & 26992/2021
- + FAO 198/2021, CM Nos. 26994/2021 & 26995/2021
- + FAO 199/2021, CM Nos. 27360/2021 & 27361/2021

M/S HIMANGNI ENTERPRISES

..... Appellant

Through: Mr. Rajat Aneja, Adv. with
Mr. Kartik Krishan Sood, Adv.

versus

KAMALJEET SINGH AHLUWALIA

..... Respondent

Through: Mr. Sandeep Sethi and
Mr. Sudhir Nandrajog, Sr. Advs. with

Mr. Preet Pal Singh, Mr. Sameer Chaudhary, Ms. Tanupreet Kaur, Mr. Aaryan Sharma, Mr. Saurabh Sharma, Ms. Sonali Jain, Mr. Gaurav Sharma & Mr. Siddharth Tandon, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

CM No. 26748/2021 in FAO 175/2021

CM No. 26751/2021 in FAO 176/2021

CM No. 26754/2021 in FAO 177/2021

CM No. 26759/2021 in FAO 178/2021

CM No. 26764/2021 in FAO 179/2021

CM No. 26768/2021 in FAO 180/2021

CM No. 26775/2021 in FAO 181/2021

CM No. 26780/2021 in FAO 182/2021

CM No. 26785/2021 in FAO 183/2021

CM No. 26792/2021 in FAO 184/2021

CM No. 26795/2021 in FAO 185/2021

CM No. 26798/2021 in FAO 186/2021

CM No. 26803/2021 in FAO 187/2021

CM No. 26806/2021 in FAO 188/2021

CM No. 26811/2021 in FAO 189/2021

CM No. 26814/2021 in FAO 190/2021

CM No. 26874/2021 in FAO 191/2021

CM No. 26879/2021 in FAO 192/2021

CM No. 26882/2021 in FAO 193/2021

CM No. 26899/2021 in FAO 194/2021

CM No. 26928/2021 in FAO 195/2021

CM No. 26939/2021 in FAO 196/2021

CM No. 26991/2021 in FAO 197/2021

CM No. 26994/2021 in FAO 198/2021

CM No. 27360/2021 in FAO 199/2021

These applications have been filed by the appellant seeking condonation of 344 days delay in filing these appeals.

For the reasons stated in the applications, the delay of 344 days in filing the appeals is condoned.

Applications are disposed of.

FAO 175/2021, CM No. 26749/2021
FAO 176/2021, CM No. 26752/2021
FAO 177/2021, CM No. 26755/2021
FAO 178/2021, CM No. 26760/2021
FAO 179/2021, CM No. 26765/2021
FAO 180/2021, CM No. 26769/2021
FAO 181/2021, CM No. 26776/2021
FAO 182/2021, CM No. 26781/2021
FAO 183/2021, CM No. 26786/2021
FAO 184/2021, CM No. 26793/2021
FAO 185/2021, CM No. 26796/2021
FAO 186/2021, CM No. 26799/2021
FAO 187/2021, CM No. 26804/2021
FAO 188/2021, CM No. 26807/2021
FAO 189/2021, CM No. 26812/2021
FAO 190/2021, CM No. 26815/2021
FAO 191/2021, CM No. 26875/2021
FAO 192/2021, CM No. 26880/2021
FAO 193/2021, CM No. 26883/2021
FAO 194/2021, CM No. 26900/2021
FAO 195/2021, CM No. 26929/2021
FAO 196/2021, CM No. 26940/2021
FAO 197/2021, CM No. 26992/2021
FAO 198/2021, CM No. 26995/2021
FAO 199/2021, CM No. 27361/2021

1. As these appeals involve almost identical facts and issues and the parties in these appeals being the same, the appeals are being decided through this common order.

2. The challenge in these appeals arises from orders, (all) dated May 30, 2020 passed by the Addl. District Judge-07, South-East District, Saket Courts, New Delhi ('ADJ' for short) in the Civil Suit Nos. 8174/2018, 7263/18, 7752/2018,

9213/2018, 6980/2016, 8180/2018, 7137/2018, 7954/2018, 9214/2018, 9216/2018, 7940/2018, 8181/2018, 9215/2018, 7976/2018, 9195/2018, 8176/2018, 6954/2018, 8182/2018, 9194/2018, 8179/2018, 6953/2018, 8178/2018, 9196/2018, 8177/2016 & 7221/2018 (all) titled as ***Kamaljeet Singh Ahluwalia v. Himangni Enterprises*** whereby the applications of the respondent (plaintiff in the civil suits) under Order XXXIX Rule 10 read with Section 151 of Code of Civil Procedure, 1908 ('CPC', for short) were allowed by the Id. ADJ directing the appellant (defendant in the civil suits) to pay arrears of rent and use and occupation charges to the respondent / plaintiff with respect to the following suit properties / units on the second floor in a commercial complex known as "OMAXE SQUARE" situated at Plot No. 14, non-hierarchical Commercial Centre, District Centre, Jasola, New Delhi – 110025 within a period of one year from the date of the said order as per the details given below:

Sl. No.	Case Nos. / Suit Nos.	Unit Nos./ suit properties	Amount Awarded	Predecessor-in-interest	Dt. Of execution of sale deed
1.	FAO 175/2021 CS. No. 8174/2018	Commercial space/shop bearing No. SF-3, admeasuring 385.19 square feet (super)	Arrears of rent @ Rs. 37,363/- per month w.e.f. 18.09.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Mahesh Bajaj	16.09.2014
2.	FAO 176/2021 CS. No. 7263/2018	commercial space/shop bearing no. SF-40, admeasuring 535.72 square feet (super)	Arrears of rent @ Rs. 64,286/- per month w.e.f. 20.02.2015 till 08.08.2015 and use and occupancy charges from 09.08.2015 till 28.11.2018	Smt. Ratna Arora	18.02.2015
3.	FAO 177/2021 CS. No. 7752/2018	Commercial space/shop bearing No. SF-23A, admeasuring 296.42 square feet (super)	Arrears of rent @ Rs. 28,753/- per month w.e.f. 11.11.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Sunil Mittal and Sh. Rakhee Mittal	05.11.2014
4.	FAO 178/2021 CS. No. 9213/2018	Commercial space/shop bearing No. SF-32, admeasuring 497.46 square feet (super)	Arrears of rent @ Rs. 48,254/- per month w.e.f. 10.03.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Smt. Rachna Saha	05.03.2015

5.	FAO 179/2021 CS. No. 6980/2016	Commercial space/shop bearing No. SF-8, admeasuring 341.80 square feet (super)	Arrears of rent @ Rs. 33,155/- per month w.e.f. 17.09.2014 till 08.08.2015 and use and occupancy charges from 09.08.2015 till 28.11.2018	Sh. Mitra Lal Sharma	16.09.2014
6.	FAO 180/2021 CS. No. 8180/2018	Commercial space/shop bearing No. SF-42, admeasuring 450 square feet (super)	Arrears of rent @ Rs. 65,250/- per month w.e.f. 13.01.2015 till 10.08.2015 and use and occupancy charges from 10.08.2015 till 28.11.2018	Sh. Rajan Bajaj	31.12.2014
7.	FAO 181/2021 CS. No. 7137/2018	Commercial space/shop bearing No. SF-31, admeasuring 356.21 square feet (super)	Arrears of rent @ Rs. 34,552/- per month w.e.f. 10.03.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Smt. Archana Singhal and Sh. Rahul Singhal	05.03.2015
8.	FAO 182/2021 CS. No. 7954/2018	Commercial space/shop bearing No. SF-43, admeasuring 501.77 square feet (super)	Arrears of rent @ Rs. 52,686/- per month w.e.f. 11.11.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. V.C. Mehta	30.10.2014
9.	FAO 183/2021 CS. No. 9214/2018	Commercial space/shop bearing No. SF-6, admeasuring 141.92 square feet (super)	Arrears of rent @ Rs. 13,766/- per month w.e.f. 02.03.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Ranvir Singh	28.02.2015
10.	FAO 184/2021 CS. No. 9216/2018	Commercial space/shop bearing No. SF-29, admeasuring 296.42 square feet (super)	Arrears of rent @ Rs. 28,753/- per month w.e.f. 10.03.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Smt. Alka Jain and Sh. Ruchir Jain	05.03.2015
11.	FAO 185/2021 CS. No. 7940/2018	Commercial space/shop bearing No. SF-4, admeasuring 447.12 square feet (super)	Arrears of rent @ Rs. 43,371/- per month w.e.f. 21.11.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Mahesh Mittal	13.11.2014
12.	FAO 186/2021 CS. No. 8181/2018	Commercial space/shop bearing No. SF-30, admeasuring 296.42 square feet (super)	Arrears of rent @ Rs. 42,981/- per month w.e.f. 11.11.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Sanjeev Malhotra	03.11.2014
13.	FAO 187/2021 CS. No. 9215/2018	Commercial space/shop bearing No. SF-25, admeasuring 336.33 square feet (super)	Arrears of rent @ Rs. 32,624/- per month w.e.f. 18.10.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Joginder Bir Kaur	17.10.2014
14.	FAO 188/2021 CS. No. 7976/2018	Commercial space/shop bearing No. SF-45, admeasuring 470.30 square feet (super),	Arrears of rent @ Rs. 45,619/- per month w.e.f. 11.11.2014 till 10.08.2015 and use and occupancy charges from 10.08.2015 till 28.11.2018	Sh. G.R. Lakshmi	30.10.2014
15.	FAO 189/2021 CS. No. 9195/2018	Commercial space/shop bearing No. SF-23, admeasuring 296.42 square feet (super)	Arrears of rent @ Rs. 32,013/- per month w.e.f. 18.10.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Sanjay Goel and Smt. Jyoti Goel	17.10.2014
16.	FAO 190/2021 CS. No. 8176/2018	Commercial space/shop bearing No. SF-28, admeasuring 474.86	Arrears of rent @ Rs. 68,855/- per month w.e.f. 14.01.2015 till 10.08.2015 and use and occupancy	Sh. Rajan Bajaj	31.12.2014

		<i>square feet (super),</i>	<i>charges from 10.08.2015 till 28.11.2018</i>		
17.	FAO 191/2021 CS. No. 6954/2018	Commercial space/shop bearing No. SF-2, admeasuring 317.29 square feet (super),	Arrears of rent @ Rs. 39,661/- per month w.e.f. 14.01.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	M/s. Unique Alloys Pvt. Ltd.	31.12.2014
18.	FAO 192/2021 CS. No. 8182/2018	Commercial space/shop bearing No. SF-17, admeasuring 648.49 square feet (super)	Arrears of rent @ Rs. 62,904/- per month w.e.f. 21.02.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Smt. Geeta Tiwari	18.02.2015
19.	FAO 193/2021 CS. No. 9194/2018	Commercial space/shop bearing No. SF-37, admeasuring 492.99 square feet (super),	Arrears of rent @ Rs. 59,159/- per month w.e.f. 02.03.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Smt. Sunila Goela	23.02.2015
20.	FAO 194/2021 CS. No. 8179/2018	Commercial space/shop bearing No. SF-Com-1, admeasuring 820 square feet (super),	Arrears of rent @ Rs. 79,450/- per month w.e.f. 11.11.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Aman Khera	03.11.2014
21.	FAO 195/2021 CS. No. 6953/2018	Commercial space/shop bearing No. SF-26, admeasuring 336.33 square feet (super),	Arrears of rent @ Rs. 32,624/- per month w.e.f. 28.11.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Smt. Kamlesh	31.12.2014
22.	FAO 196/2021 CS. No. 8178/2018	Commercial space/shop bearing No. SF-39, admeasuring 544.47 square feet (super),	Arrears of rent @ Rs. 84,393/- per month w.e.f. 11.11.2014 till 10.08.2015 and use and occupancy charges from 10.08.2015 till 28.11.2018	Sh. Daman Kumar	11.11.2014
23.	FAO 197/2021 CS. No. 9196/2018	Commercial space/shop bearing No. SF-24, admeasuring 388.99 square feet (super),	Arrears of rent @ Rs. 37,732/- per month w.e.f. 24.02.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Inderdeep Singh Modi and Sh. Rajneesh Chopra	24.02.2015
24.	FAO 198/2021 CS. No. 8177/2016	Commercial space/shop bearing No. SF-27, admeasuring 631.10 square feet (super),	Arrears of rent @ Rs. 61,217/- per month w.e.f. 11.11.2014 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	Sh. Anil Kumar Chopra	05.11.2014
25.	FAO 199/2021 CS. No. 7221/2018	Commercial space/shop bearing No. SF-1, admeasuring 686.25 square feet (super),	Arrears of rent @ Rs. 85,781/- per month w.e.f. 14.01.2015 till 29.07.2015 and use and occupancy charges from 29.07.2015 till 28.11.2018	M/s. Jai Ambey Construction	31.12.2014

3. The facts as noted from the appeals are, Suits were filed by the respondent alleging therein that the appellant / defendant was inducted as a tenant / lessee by its predecessors-in-interest named above in respect of the suit properties on monthly rental basis besides maintenance, electricity / water

and all other charges. The respondent purchased the suit properties by way of registered sale deeds on the dates as mentioned in the table above respectively executed by Sh. Mahesh Bajaj, Smt. Ratna Arora, Sh. Sunil Mittal and Smt. Rakhee Mittal, Smt. Rachna Saha, Sh. Mitra Lal Sharma, Sh. Rajan Bajaj, Smt. Archana Singh and Sh. Rahul Singhal, Sh. V.C. Mehta, Sh. Ranvir Singh, Smt. Alka Jain and Sh. Ruchir Jain, Sh. Mahesh Mittal, Sh. Sanjeev Malhotra, Sh. Joginder Bir Kaur, Sh. G.R. Lakshmi, Sh. Sanjay Goel and Smt. Jyoti Goel, Smt. Sunila Goela, M/s. Unique Alloy Pvt. Ltd., Smt. Geeta Tiwari, Smt. Sunila Goela, Sh. Aman Khera, Smt. Kamlesh, Sh. Daman Kumar, Sh. Inderdeep Singh Modi, Sh. Anil Kumar Chopra and M/s. Jai Ambey Construction in his favour. It was also stated by the respondent that he did not want the appellant to continue as a tenant, therefore the tenancies of the appellant were terminated vide notices issued and that despite the service of the said notices, appellant failed to comply therewith.

4. It was further averred by the respondent that after the termination of the tenancies, the appellant failed to vacate and hand over the peaceful, physical and vacant possession of the suit properties and occupied the same unauthorizedly and illegally without any right, title and interest in the suit properties and that the appellant is liable to pay use and occupation charges till the date of handing over the vacant, peaceful and physical possession of the suit properties / units.

5. It was pleaded that the appellant had some arrangement with the predecessors-in-interest of the respondent and in terms thereof the appellant had sublet the suit properties along with other adjoining premises to WIPRO Ltd. and that after the termination of lease with WIPRO Ltd., the possession of the suit properties along with other adjoining premises was handed over by WIPRO Ltd. to the appellant on March 18, 2015 pursuant to the orders passed by this Court in the suit bearing CS(OS) No. 3273 of 2014. It was further stated that the appellant had refused to hand over the possession of the suit properties and that appellant had neither paid nor tendered the monthly rent to the respondent which the appellant is liable to pay along with interest @ 12% *per annum*.

6. The appellant filed written statements in all the suits and took a stand that the Commercial Complex was proposed to be constructed on a plot of land bearing No. 14, ad-measuring 6986 Sq. Meters., situated at Jasola, New Delhi which was allotted by the Delhi Development Authority to a company namely 'OMAXE Construction Limited' at an auction held on March 21, 2005 for construction of a commercial complex as per the building plans approved by Delhi Development Authority and / or any other authorities. It was stated by the appellant that the company had a plan to construct the complex and had decided to make allotments of the commercial spaces to the intending allottees. It was also stated that after the construction of the complex namely,

OMAXE SQUARE, the company OMAXE Construction Limited sold different commercial spaces / units to intending buyers (including predecessor-in-interest) of the respondent vide sale deeds qua the respective units. The predecessors-in-interest of the respondent named above allegedly purchased the suit properties vide sale deed executed by OMAXE Construction Limited through its authorized signatory in their favour. It was further stated that the said owners after having purchased their respective units / spaces approached the appellant to facilitate the leasing of their units to WIPRO Ltd. It was stated that the Company WIPRO Ltd. agreed to take the entire second floor of the complex including the common areas on lease with a condition to convert the individual units into a big open space. The individual owners though agreed to give their units on lease, but they were not willing to incur the expenses for breaking down the walls or other expenses to make the place rentable since it would have been difficult to coordinate with more than 30 individual owners. In order to facilitate the modalities of lease, the appellant entered into three-fold negotiations; firstly, with the individual unit owners, secondly with WIPRO Ltd. and thirdly with OMAXE Limited. Eventually OMAXE Limited agreed to accord permission to break down the walls of the units situated on the second floor of the said complex on payment of a one-time fee of Rs. 15 Lacs. After due negotiations, separate agreements / lease deeds were entered into between the individual unit owners and the appellant wherein it was specifically agreed that the

lessee (appellant herein) would be entitled to sub-lease the said units to WIPRO Ltd. only on the terms and conditions settled therein. It was also the stand of the appellant in its written statements that the suits were not maintainable as the predecessors-in-interest of the respondent entered into lease deeds with the appellant qua suit properties with the sole intention to give the suit properties on lease to WIPRO Ltd. through appellant and that the predecessors-in-interest of the respondent had authorized and empowered the appellant with full liberty to sign the lease deeds in favour of the WIPRO Ltd. thereby making it clear that the end user was WIPRO Ltd., who had all the rights to enjoy the suit properties. After the agreements with the individual owners of the units, a lease deed dated June 4, 2010 was executed between the appellant and the WIPRO Ltd. in respect of super area of approximately 17921 Sq. Ft. on the second floor of the business complex, OMAX SQUARE which area was transformed into an open space after breaking the walls of the individual units inclusive of the suit properties.

7. It was further the stand of the appellant in the written statements that the subject suits filed by the respondent against the appellant on the basis of the lease deeds is bad in law and liable to be dismissed since the said lease deeds executed by the predecessors-in-interest of the respondent were not lease deeds as envisaged under Section 105 of the Transfer of Property Act, 1882 but a contract of agency for looking after

and managing the suit properties for the purposes of letting out and collecting the rent from the respective suit properties.

8. It was further pleaded that besides the predecessors-in-interest of the respondent, other owners of the individual units of the second floor of the commercial complex had in similar and identical manner appointed the appellant as their agent to collect rent and to distribute the same among the individual owners and as such the title of a landlord given to the appellant is only a misnomer, whereas the appellant has always acted for individual owners as an agent. That apart it was the stand of the appellant that the respondent had falsely alleged about the termination of the tenancy as no legal or valid notices for termination of tenancies have been given by the respondent, as required under the terms of the agreement between the predecessors-in-interest and the appellant. It was also contended that at the time of purported expiry of the lease deed between the appellant and WIPRO Ltd. certain disputes arose between them, pursuant thereto a suit being *Wipro Ltd. v. Himangni Enterprises and Ors., CS(OS) No. 1526/2014* was filed by WIPRO Ltd. seeking recovery of advance rent along with *pendente lite* and future interest. Further in the said suit a counter-claim was filed by the appellant seeking recovery of *mesne* profits, damages and user / occupation charges, besides of recovery of possession, *pendente lite* and future interest and restoration of the leased premises to its original condition. It was further averred that a fresh suit being *Himangni Enterprises v. Wipro Ltd., CS(OS) No. 3273/2014* was

preferred by the appellant before this Court seeking reliefs of specific performance and damages. In the latter suit, respondent had also filed an application under Order I Rule 10 CPC seeking its impleadment as a defendant in the said suit. It was contended by the appellant that issue involved in the said suit was directly and substantially related to the issues of the previously instituted suit, i.e., CS (OS) No. 1526/2014 and thus the said suit would not be maintainable. The application filed by the respondent under Order I Rule 10 CPC was dismissed by this Court on July 21, 2016.

9. Pursuant to the written statements, replications were filed by the respondent controverting the contentions of the appellant.

10. The respondent had also filed applications under Order XXXIX Rule 10 read with Section 151 CPC in the aforesaid suits seeking direction against the appellant for payment of arrears of rent as well as user and occupancy charges qua the suit properties. The appellant had filed replies to the applications whereby reference was made to the averments made in the written statements in the aforesaid suits and it was further pleaded by the appellant that there is no relationship of landlord and tenant between the respondent and the appellant in respect of the suit properties as the lease agreements executed between the predecessors-in-interest of the respondent and the appellant was in fact an agency agreement and the appellant was working as an agent on behalf of the owners of the individual units including the predecessor-in-

interest of the respondent, who through appellant had let out their units to WIPRO Ltd. The said applications came up for hearing before the ld. ADJ, who disposed of the applications in all the suits vide order dated May 30, 2020 thereby giving directions, a reference of which has already been made above.

SUBMISSIONS

11. It is the submission of Mr. Rajat Aneja, learned counsel appearing for the appellant that the ld. ADJ while passing the impugned orders thereby allowing the applications under Order XXXIX Rule 10 CPC failed to take into consideration the pleadings of the parties coupled with the documentary material placed on record by the appellant inasmuch as after the expiry of the initial period of tenancy of WIPRO Ltd., in the year 2013 the suit properties were not in exclusive possession of the appellant, i.e., after the delivery of the possession by WIPRO Ltd. on March 18, 2015, the possession thereof was forcibly taken by the respondent in 2015 through M/s. Godfrey Philips. He further stated that notwithstanding the aforesaid position, the ld. ADJ while considering the applications under Order XXXIX Rule 10 CPC failed to appreciate that the entitlement of the respondent could not be established conclusively keeping in view the fact that there was no privity of contract between the appellant and the respondent. It is more so because, the respondent claimed the arrears of rent and occupancy charges through his predecessor-in-interest whose agreement with the appellant was still to be tested on the touchstone of trial. Therefore, ld.

ADJ has committed a grave jurisdictional error by unilaterally placing reliance upon the version of the appellant without even considering the aforesaid vital aspect of the matter. Mr. Aneja has also stated that the Id. ADJ failed to take into consideration the scope of jurisdiction vested in it which empowers the Courts to apply its discretion to pass appropriate orders in the event of a strong *prima facie* case existing in favour of the respondent. However, there existed no *prima facie* case in favour of the respondent in view of the documents filed on record by the appellant including the Memorandum of Understanding ('MoU' for short) dated October 12, 2015 by virtue of which a settlement was arrived at between the respondent and Rajesh Arora (partner of the appellant firm) wherein the respondent undertook to pay a sum of Rs. 20 Crores to Rajesh Arora, who in turn agreed to hand over the possession of the units situated on the second floor of the business complex OMAXE SQUARE against receipt of the said amount. According to Mr. Aneja, reference to the delivery of possession of the second floor in the MoU was in the context of the suit properties, i.e., second floor of the business complex OMAXE SQUARE of which the suit properties form a part. That apart, the MoU does not stipulate that the payment of arrears of rent due qua the suit properties. However, contrary to the aforesaid position, the Ld. ADJ disregarded the MoU and instead observed that the said MoU was not set up as a defence by the appellant and it was attempted to be put on

record by means of an amendment application which has been disallowed earlier.

12. It is also stated by Mr. Aneja that while disregarding the MoU dated October 12, 2015, the Id. ADJ failed to consider the order dated November 28, 2018 passed by this Court in Civil Suit bearing CS(COMM) No. 1218 of 2018 of the appellant filed by Rajesh Arora against the respondent seeking a relief of specific performance in respect of the said MoU dated October 12, 2015 and which suit is still pending adjudication before this Court. In other words, the Ld. ADJ should have considered the said MoU inasmuch as the appellant was entitled to prove in his defence during the cross-examination of the witnesses of the respondent the effect of the MoU dated October 12, 2015 and which right of the appellant could not have been taken away.

13. It is the submission of Mr. Aneja that there were critical admissions which have come in the testimony of the respondent in CS (COMM) 1218/2018 during his cross-examination as DW1 therein accompanied by document which clearly bring forth the factum of the MoU dated October 12, 2015 having been executed between the parties and which clearly had a bearing on the subject suits from which the impugned orders dated May 30, 2020 have arisen. Mr. Aneja states that even if the amendment applications of the appellant were earlier dismissed by the Trial Court, it could not have precluded the appellant from producing or relying upon the document(s) already on record in support of his defence and

which defence was principally on the lines of the appellant herein being an agent only and not a tenant.

14. Mr. Aneja has also stated that the Id. ADJ in the impugned order had observed that the contention of the appellant regarding non-existence of relationship of landlord and tenant between the parties had already been dealt with in an earlier application filed under Order XII Rule 6 CPC, while passing a decree of possession is erroneous inasmuch as the application of the appellant / defendant filed under Order XII Rule 6 CPC was allowed by the Id. ADJ vide order dated July 20, 2018. However, after the said order dated July 20, 2018 was passed in the suits, this Court in CS(COMM) No. 1218/2018, with the consent of the parties therein while disposing of an interim application (IA. No. 15170/2018 filed under Order XXXIX Rule 1 and 2 CPC) vide order dated November 28, 2018 directed the parties therein that the process of demarcation and construction of the partition wall segregating flats / units of the defendant (respondent herein) and that the flats / units of the plaintiff (appellant herein) and the common areas be carried out whereupon the defendant (respondent herein) will take possession of his flats / units on the one hand and plaintiff (appellant herein) will take possession of its flats on the other hand, whereas the common areas will be meant for common use. Thus, according to Mr. Aneja it became abundantly clear that after the aforesaid order dated November 28, 2018 was passed by this Court, the issue, i.e., aspect of possession of the suit properties having been

handed over was put to rest. Since the issue of possession was sorted out between the parties by this Court, any challenge to the order dated July 20, 2018 of the Id. ADJ under Order XII Rule 6 CPC would have been a futile exercise on the part of the appellant and thus no appeal was filed against the said order dated July 20, 2018. However, without appreciating this aspect, the Id. ADJ had observed in Para 24 of the impugned orders, though erroneously, that the orders passed in the earlier applications under Order XII Rule 6 CPC were never challenged by the appellant and therefore the observations made therein had attained finality. The said observations according to Mr. Aneja are totally extraneous. That apart, it is the submission of Mr. Aneja that the Id. ADJ gravely erred in observing in Para 28 that the lease deeds between the predecessors-in-interest of the respondent and the appellant have been placed on record by the appellant itself and therefore it could not be argued that there was no admission on the part of the appellant, is totally erroneous inasmuch as the said observations of the Id. ADJ below were unsustainable as it was the case of the appellant as pleaded in the written statements that the lease deeds executed between the predecessors-in-interest of the respondent and the appellant were not lease deeds as envisaged under Section 105 of the Transfer of Property Act, but a contract of agency merely for the purpose of looking after and managing the suit properties to ensure its letting out and for collecting the rents qua the suit properties. He also stated, it was the case of the appellant that

besides the predecessors-in-interest of the respondent, other owners of individual units of the second floor of the commercial complex had in a similar and identical manner appointed the appellant as their agent to collect rent and to distribute the same amongst the individual owners.

15. Mr. Aneja stated that the Id. ADJ failed to appreciate that there has been no compliance of the terms of the clause 8.2 of the lease / agreements by the respondent under which it has been agreed between the predecessors-in-interest of the respondent and the appellant that in case the lessee fails to make the payment of rent on the due date then the lessor shall give a notice of such default to the lessee and the lessee may pay within 90 days. However, no such notice qua the rent or arrears of rent had ever been issued by either the respondent or the predecessors-in-interest at any point of time. Mr. Aneja had also stated that the Id. ADJ had failed to take into consideration that the case of the respondent was based on the sale deeds which were allegedly executed by the predecessors-in-interest of the respondent in his favour. As per clause 4 of the sale deed (for example, dated February 24, 2015), it was clearly mentioned that the vendor (predecessor-in-interest) of the respondent has handed over the vacant and physical possession of the suit properties to the vendee (respondent / plaintiff). However, it was an admission that the suit properties were under the physical possession of the tenant WIPRO Ltd. and the said possession of the suit properties was delivered by the WIPRO Ltd. to the appellant on March 18, 2015 and in the

light of the aforesaid, there was no question of delivery of possession of the suit properties by the predecessor-in-interest of the respondent to him on February 24, 2015. Therefore, the execution of the alleged sale deed on the basis of which the said suit was filed was under cloud. In view of the uncontroverted material on record, the ld. ADJ has committed an error in allowing the application under Order XXXIX Rule 10 CPC.

16. Mr. Aneja has also stated, it was the stand of the respondent that Rajesh Arora, the partner of the appellant represented that WIPRO Ltd. is interested in taking on lease the suit properties and that Rajesh Arora can get all the units leased out to WIPRO Ltd. and shall take his brokerage by way of service charges for facilitating and working out the modalities of the lease with WIPRO Ltd. It was further averred by the respondent that Mr. Rajesh Arora is in discussion with other unit holders in the said commercial complex and will try to facilitate their leases also since WIPRO Ltd. is interested in taking a substantial chunk of the commercial complex on rent. According to Mr. Aneja, it was apparent that the respondent himself admitted that the role of appellant was merely that of an agent.

17. Mr. Aneja concluded his arguments by stating that the appeals filed by the appellant need to be accepted and the impugned orders passed on the applications filed by the respondent under Order XXXIX Rule 10 CPC need to be set aside.

18. Mr.Sandeep Sethi, learned Senior Counsel appearing for the respondent in some appeals would submit that the respondent had filed the suits for ejectment of the appellant, who was a tenant, from different units; for recovery of rent and *mesne* profits at market rate on the ground that the appellant is in unauthorized occupation. In a suit for ejectment, what has to be seen is whether there is a landlord-tenant relationship and the tenancy has been terminated. According to him, both the requirements have been met in the cases in hand as can be seen from various documents filed on record. He stated that the lease deeds executed between the appellant and the predecessors-in-interest of the respondent (which are identical in respect of all units) are registered deeds and as the nomenclature itself suggest the same were “*lease deed*”. That apart, clause 2.1 of the same suggest the payment of lease rent @ Rs.37,732/- (in FAO 197/2021) by the appellant to the respondent and it is this amount as depicted in all the lease deeds pertaining to the units in all the appeals which have been granted by the ld. ADJ.

19. He laid stress on the fact that the payment of rent by the appellant was not subject to use by WIPRO Ltd. Mr. Sethi has also referred to Clause 8.2 of the lease deed (in FAO 197/2021) which is a stipulation governing termination of lease in the eventuality, the appellant (lessee) failing to make payment of the lease rent which shall result in the appellant handing over the vacant possession of the premises (units). Mr.Sethi has also highlighted the fact that on an application

filed by the respondent under Order XII Rule 6 CPC, the possession of the units / premises was granted in favour of the respondent vide order dated August 20, 2018 which order has not been challenged by the appellant, and to that extent the same has attained finality. Mr. Sethi stated, reliance placed by Mr. Aneja on the MoU dated October 12, 2015 is misconceived as the same was not the part of the defence / written statements filed by the appellant. In fact, according to him, there is no counter claim of the appellant in the suits. Even the attempt of the appellant to seek amendment of the written statements was rejected by the Id. ADJ on July 19, 2018 and the appeals thereof have been dismissed.

20. Further, Mr. Sethi by contesting the MoU would submit, even otherwise the appellant Himangni Enterprises was not a signatory to the said MoU, i.e., the parties herein are not bound by the same. He has drawn my attention to the order dated August 03, 2018 of this Court in CM (M) 880/2018 wherein this Court has rejected the challenge to the order dated July 19, 2018 and has noticed that the suit and the MoU have no connection, as the subject matter of the suit was completely different.

21. In substance, it is his submission, that Mr. Aneja cannot rely on MoU. He also stated, in fact, no issue has been framed in the suits for Mr. Aneja to argue that the respondent has to pay the amount as sought to be claimed by the appellant. He stated if a party intend to setup a case different from landlord and tenant, it has to specifically plead and place evidence in

that regard. He has relied upon the judgment in the case of ***Sudhir Sabharwal v. Rajesh Pruthi, 218 (2015) DLT 290.*** Mr. Sethi has also relied upon the order dated January 20, 2020 of a Coordinate Bench of this Court in transfer petition being TR.P.(C.) 7/2020 whereby the transfer petition of the appellant seeking transfer of 28 suits (including these) to this Court on the ground of pendency of suit being ***CS (COMM) 1218/2018, Rajesh Arora & Ors. v. Kamaljeet Singh Ahluwalia & Ors.,*** was dismissed by noting that the decree of ejectment has been passed against the appellant which has been given effect to in terms of order dated November 28, 2018 passed in CS (COMM) 1218/2018 and also it do not find any overlapping issues in the two suits.

22. According to him, under Order XVA CPC, the Court not only can direct payment of admitted rent but can also direct something more than that by referring to the judgment in the case of ***Raghubir Rai v. Prem Lata & Ors., 211 (2014) DLT 516.*** On similar proposition, he relied upon the judgment in the case of ***Sunil Kapoor v. Himmat Singh & Ors., 2010 SCC OnLine Del 354.*** It is his plea that the appellant cannot take recourse to the pending suit (being CS (COMM) 1218/2018) to frustrate the provisions of Order XVA CPC. In conclusion he stated that the impugned order is not perverse in nature but based on reasons and seeks the dismissal of the appeals.

23. Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the respondent in some other appeals would

contest the case setup by the appellant in the appeals, that it has a claim of Rs.20 Crores against the respondent, by stating the same is untenable in view of the provisions of Order VIII Rule 6 CPC, which requires the case has to be setup in the pleadings at the first instance. Concedingly, the case as being argued, has not been pleaded in the written statements. The attempt of the appellant to plead such a case by way of amendment has been rejected, so also the appeal therefrom.

24. Mr.Aneja in rejoinder submissions stated that even if the appellant is precluded from relying upon the MoU, surely the appellant is within its right to cross examine the witnesses of the respondent on the same as it is the case of the appellant that there is no relationship of tenant and landlord between the parties but that of a principal and agent and the amounts sought in the suits are not payable.

CONCLUSION

25. Having heard the learned counsel for the parties, and perused the record, the only issue which arises for consideration in these appeals is, whether the Id. ADJ is justified in allowing the applications of the respondent (in the suits filed by him) under Order XXXIX Rule 10 read with Section 151 CPC and grant the arrears of rent and use and occupation charges in his favour till the date of possession of the units / suit properties to him.

26. The respondent has filed Suits for ejectment possession, recovery of arrears and permanent injunction on the strength of lease deeds executed in respect of the properties

/ units by his predecessors-in-interest. The respondent purchased the units / suit properties from the predecessors-in-interest by way of registered sale deeds. It was the case of the respondent that the tenancies have come to an end with efflux of time and the appellant neither paid nor tendered monthly rentals to the predecessors-in-interest or to him from different dates with regard to different units. Despite notices, the appellant had not vacated the unit / properties.

27. There is no dispute that the appellant, handed over the possession of the units / properties on November 28, 2018 after the application of the respondent under Order XII Rule 6 was allowed which order was given effect to in the order dated November 28, 2018 in CS (COMM) 1218/2018 of this Court.

28. The plea of Mr.Aneja in substance is that the Id. ADJ could not have passed the impugned orders in view of the documents filed on record by the appellant including the MoU dated October 12, 2015 by which a compromise was entered between the respondent and Rajesh Arora, whereby the respondent undertook to pay Rs.20 Crores to Rajesh Arora who in turn agreed to handover the units situated at the second floor of OMAXE SQUARE. That apart, the MoU does not stipulate, the payment of arrears of rent due, qua the suit properties.

29. I am not impressed by this submission of Mr.Aneja; firstly there is no stand / claim of the appellant based on the MoU as a defence or as a counter claim(s) in the written statements and as such no issue has been framed in that regard,

for determination by the Court. Secondly, even otherwise, the MoU has not been filed by the appellant in the suits. The attempt of the appellant to seek amendment of written statements based on MoU was rejected by the ld. ADJ vide order dated July 19, 2018 wherein in para 12 the ld. ADJ has stated as under:

“12. This judgment is squarely applicable to the case in hand. However, even if we consider this application on merits, it is an admitted fact that this application has no concern with the defendant firm whatsoever or with the subject matter of the present case. The present suit has been filed for eviction of the defendant firm from the suit premises. The WS filed earlier contained no reference to these two companies. By moving this application, the defendants wishes to file MoU entered into between the parties out of court, however, this document does not find mention of these cases pending before this court specifically. There is no mention with respect to disputes pending between the plaintiff and defendant herein in this MoU. It is pertinent to mention here that as per the application of the defendant Mr Rajesh Arora was Managing Director of the two companies namely Arora and Associates Realty Ltd. and M/s Innovating Thermal Coatings Pvt Ltd known as ARC Arora Projects Pvt Ltd. It is pertinent to mention here that companies are distinct legal entities separate from its shareholders/directors. This MoU- is between the plaintiff and Mr Rajesh Arora and is not even accompanied board resolution in favour of Mr Rajesh Arora to act on behalf of the company. The court itself cannot contemplate or take into consideration that this MoU includes the settlement in respect of present

case as well. Even if this settlement is taken to be true, the amendments proposed to be made in the written statement in this case are not related to the defendant firm. The subject matter of the suit pending in this court is completely different. Therefore, this court do not find any merits in this application. Hence, application is dismissed.”

(emphasis supplied)

30. The above reveals a finding of the Court below, that the MoU on which reliance is placed by Mr. Aneja does not include a settlement in respect of the suits filed by the respondent herein. It is also a finding that the MoU is not related to the appellant (defendant firm) which means, the amount is not payable to the appellant. This finding of the Court has attained finality with the rejection of CM (M) 880/2018 on August 03, 2018.

31. The Id. ADJ has dealt with the submission, as now made by Mr. Aneja in para 25 which I reproduce as under:

“25. Another argument of the defendant’s counsel is that there was no admission in respect to the rent and a memorandum of understating was executed between one of the partners of the defendant and the plaintiff and as per that MOU, defendant was not required to pay any rent till it received the same from Wipro. As far as this argument is concerned, first of all, the MOU relied upon by the defendant is not a part of defence of the defendant of all in this case. It was attempted to be put on record by way of moving an amendment application which was disallowed. The order of dismissal was challenged by the defendant however of no avail and that order has also attained finality. Apart from this, the

defendant tried to club the present case alongwith the suit for recovery filed by the defendant against the plaintiff before the Hon'ble High Court of Delhi but the application for transfer was dismissed by the Hon'ble High Court of Delhi vide its order dated 20.01.2020."

(emphasis supplied)

32. Insofar as the submission of Mr.Aneja that the ld. ADJ has failed to consider the order dated November 28, 2018 passed in CS (COMM) 1218/2018 of this Court seeking the relief of specific performance in respect of MoU dated October 12, 2015 which is still pending and the appellant is entitled to prove his defence during cross examination of the witnesses of the respondent, which right cannot be taken away is concerned, the said submission of Mr.Aneja is overlooking the fact that the appellant had failed in its attempt to bring on record the said MoU through amendment. Even the revision petition was dismissed. The ld. ADJ while rejecting the argument has in para 26 stated as under:

"26. As far as the lease deed executed between the defendant and predecessor in interest of the plaintiff is concerned, there can not be any contest to the same as it was placed on record by the defendant itself & the rate of rent is mentioned therein. So, defendant can not fall on any MOU for absolving itself from its liability to pay the arrears."

(emphasis supplied)

33. I agree with the aforesaid conclusion of the ld. ADJ. As the application under consideration was under Order XXXIX Rule 10 CPC for payment of arrears of rent / use and

occupation charges, till the possession of the units was given to the respondent, based on the admitted rent in the lease deed executed between the predecessors-in-interest of respondent and the appellant, the ld. ADJ has rightly granted the amounts by holding that the appellant cannot fall back upon MoU and absolve itself from its liability to pay the arrears.

34. The plea of Mr. Aneja that, the Trial Court could not have precluded the appellant from producing or relying upon the documents already on record in support of his defence which is principally that the appellant is an agent only and not a tenant is also not appealing. This I say so, in view of the conclusion of the ld. ADJ while deciding application under Order XII Rule 6 CPC of the respondent herein, wherein in para 23 to 27 ld. ADJ has held as under:

*“23. **Relationship of landlord and tenant between the parties:** Ld Sr. Advocate for the defendant has argued that lease deed executed between the predecessor in interest of the plaintiff and that of defendant is not a lease deed, in its true spirit and it is a contract of agency. In order to decide whether the lease deed in question was in fact a lease deed or a contract of agency, certain facts are important which are placed herein under:-*

24. First of all, it is pertinent to mention here that it was a registered lease deed for a period of three years which had already expired on 14.07.2013. Section 105 of the Transfer of the Property Act provides here as under:-

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid

or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasion to the transfer by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined:- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

25. First condition is that it should be of an immovable property which is satisfied here. Second, it is a transfer of right to enjoy such property. Transfer of possession of unit in question from predecessor of plaintiff to defendant is not denied. In the lease deed specific period of three years have been mentioned with a further clause of allowing the lessee i.e. defendant to sub let the same to Wipro Ltd. The consideration amount is in the form of rent which was Rs. 37,732/- per month. All the conditions mentioned in the Section 105 of Transfer of Property Act stands satisfied. Merely having a clause of sub letting does not make it contract of agency. It is pertinent to mention here that an agent has no right to retain the property whatsoever unless otherwise stated or proved. The defendant has filed documents along with its written statement. A lease deed entered between it (defendant) and M/s Wipro was executed in pursuance of the lease deed executed between the parties herein. This lease deed (between defendant and M/s Wipro) specifically provides that M/s Himangi Enterprises i.e. defendant is a lessor. At one place i.e. in the written statement, defendant alleges that property was taken for giving it to Wipro as an agent, however, in the lease deed executed between the defendant and Wipro, it specifically shows that defendant is a lessee. This fact is neither disputed nor explained in any

manner. Defendant cannot be allowed to approbate & reprobate at the same time. Merely taking a plea in this case that a registered lease deed is a contract of agency is inconsequential. The execution of the same has not been denied. This is an attempt to bring it within the ambit of Section 202 of Indian Contract Act, where agent has an interest in the subject matter. But this argument or interpretation is an absolute fallacy. Registered lease deed has to be read in the manner in which it is written in view of Section 91 & 92 of Indian Evidence Act, 1872. Therefore, it stands established that predecessor in interest of the plaintiff and defendant had a relationship of landlord and tenant between them.

26. This lease deed expired by efflux of time on 14.07.2013, however, admittedly no fresh lease deed was executed between the parties and the defendant became a month to month tenant. Plaintiff purchased this property on 18.02.2015 from the predecessor and got the sale deed registered on 24.02.2015 and at that time defendant was a month to month tenant. It is pertinent to mention here that in a separate suit filed by defendant against Wipro, the property stood vacated on 18.03.2015 by the order of Hon'ble High Court of Delhi and possession lies with the defendant thereafter. Though, it is argued that possession has been taken forcibly by one M/s Godfrey at the instance of plaintiff, however, it is not substantiated by any document and merely remains an averment which is denied by plaintiff. As far as Naspuri Dharmaiah (Supra) is concerned, in this case it was not clear as to who is in the possession of the property, however, in the present case documents and the pleadings reveals that property has already been handed over by M/s Wipro to defendant on 18.03.2015 in pursuance of the order of Hon'ble High Court of Delhi in another case filed by the defendant herein against

M/s Wipro. The plea of forcible dispossession of defendant by M/s Godfrey in connivance with plaintiff is not substantiated. Therefore, this judgment is not applicable.

27. It is also argued that no deed of adherence was signed by subsequent purchaser i.e. plaintiff in view of clause 6.2 of the lease deed. In this regard, it is worthwhile to note here that when the plaintiff purchased the suit property, this lease deed had already expired and none of the terms of the lease deed with respect to any compliance was binding on the plaintiff. The reading of the entire lease deed together clearly shows that it was a rent agreement. The relationship of landlord and tenant between the parties stands established.

(emphasis supplied)

35. There is a conclusive finding of the Trial Court that there is a relationship of landlord and tenant between the parties. This finding has not been disturbed, as no appeal has been filed. The said finding is also not interfered with in the order dated November 28, 2018 in CS (COMM) 1218/2021. So, the plea of Mr.Aneja that the appellant was only an agent, is liable to be rejected. The plea of Mr.Aneja that; (i) after the aforesaid order dated August 20, 2018 was passed, this Court in the suit bearing CS (COMM) 1218/2018, with the consent of the parties disposed of an interim application being I.A.15170/2018 vide order dated November 28, 2018, which clearly reveals the issue, of handing over of possession of the suit properties, was put to rest and there was no necessity to challenge the order dated August 20, 2018 and; (ii) the ld. ADJ without appreciating erroneously held that the order passed in

the application under Order XII Rule 6 was never challenged and therefore observation made therein had attained finality are concerned, the same are unmerited as in the order dated November 28, 2018 this Court in paragraphs 9 and 10 has also stated as under:

“9. It is also informed that there is a decree for ejectment in favour of the defendants and against the plaintiff no.4 Himangi Enterprises with respect to the aforesaid flats.

10. It is clarified that the execution of the decree will be in terms of above.”

36. From the above, it is clear that this Court was conscious that a decree of ejectment has been passed against the plaintiff No.4, i.e., Himangni Enterprises appellant herein with respect to flats / units and that the execution of the decree will be in terms of the above, i.e., the decree of ejectment in favour of the respondent herein. In other words, this Court has not varied the order passed by the Id. ADJ in the application under Order XII Rule 6 CPC. Hence, I am in agreement with the conclusion of the Id. ADJ that the order passed on application under Order XII Rule 6 CPC has attained finality.

37. The argument advanced by Mr.Aneja that the lease deed executed between the predecessor in interest of the respondent and the appellant, was not a lease deed as envisaged under Section 105 of the Transfer of Property Act, 1882 as the same is only a contract of agency for the purpose of looking after and managing the suit properties, is also without merit for the reasons already stated above.

38. The plea of Mr. Aneja that the other owners of individual units of the second floor of the commercial complex had in similar and identical manner appointed the appellant as their agent to collect rent, which fact has not been appreciated by the Id. Trial Court is also unmerited in view of clear stipulation in lease deed and the conclusion already drawn by the Id. ADJ on the application under Order XII Rule 6.

39. Insofar as the plea of Mr. Aneja, with regard to the date of possession is concerned, the order dated November 28, 2018 is very clear wherein in para 7 this Court has clearly stated that defendants *will take the possession of their flats*, which presupposes till that date, the possession of the flats was not taken by the defendants, who included the respondent herein. Hence, the Id. ADJ has rightly granted the use and occupation charges till November 28, 2018.

40. In the end, I may refer to the judgment of this Court in the case of ***Sunil Kapoor (supra)***, wherein this Court has held that pendency of suit for specific performance is not a bar for suit for ejectment. The relevant paragraph of the said judgment is reproduced as under:

“20. Though the aforesaid two judgments of the Division Bench of this Court are on injunction application in suits for specific performance, but the principles laid down therein would apply here. The jurisdiction, if any, to stay eviction pending a suit for specific performance is of the court where the suit for specific performance is pending and the court where the suit for ejectment/eviction is pending ought not to restrain its hands merely

because the suit for specific performance has been filed.”

41. In the case of ***Nutan Tyagi v. Nirmala Dabas, 232 (2016) DLT 60***, wherein it was similarly held as under:

“38. Thus, while allowing the appeal, it is clarified (i) that the pendency of the suit for specific performance will not come in the way of the suit for ejectment filed by the respondent/defendant against the appellant/plaintiff and/or in execution of the decree therein.....”

42. In view of my above discussion, I do not see any illegality / perversity in the orders passed by the Id. ADJ in the appeals. The appeals and connected application(s) are accordingly dismissed. No costs.

V. KAMESWAR RAO, J

SEPTEMBER 03, 2021/jg/aky