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

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Date of decision: 29th October, 2021

+ **CM(M) 966/2021**

GURJINDER SINGH

..... Petitioner

Through: Mr. Sachin Tandon, Mr. Aseem
Nayyar and Mr. Tushar Anand,
Advocates.

versus

S. GURBIR SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]

AMIT BANSAL, J. (Oral)

CM No. 38988/2021 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 966/2021, CM No. 38986/2021 (for stay) and CM No. 38987/2021 (for condonation of delay in filing petition)

3. The present petition under Article 227 of the Constitution of India impugns the order/judgment dated 1st April, 2021 passed by the District Judge, Commercial Court-02, West District, Tis Hazari Courts, Delhi, in CS (COMM.) No.574/2019, whereby the application filed by the respondent/plaintiff landlord under Order XIII-A of the Code of Civil

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Procedure, 1908 (CPC) has been allowed, a summary judgment for eviction has been passed against the petitioner/defendant tenant in respect of premises no. K-86, Ground Floor, Sham Nagar, Khyala Road, New Delhi-110018, and the petitioner/defendant tenant was directed to hand over peaceful and vacant possession of the said premises to the respondent/plaintiff landlord within one month from the date of the said impugned order.

4. The suit premises were let out to the petitioner/defendant tenant for commercial purposes vide unregistered rent agreement dated 22nd January, 2018 for a period of five years at the monthly rent of Rs. 15,000/-, excluding electricity and water charges. The petitioner/defendant tenant paid the rent till January, 2019 and thereafter, stopped paying rent w.e.f. 1st February, 2019. As the petitioner/defendant tenant failed to clear the arrears, the tenancy was terminated by serving a one-month's notice dated 24th October, 2019. Despite receipt of the said legal notice, the petitioner/defendant tenant failed to clear the arrears. Accordingly, the suit was filed by respondent/plaintiff landlord for possession, recovery of arrears of rent, *mesne* profits and for permanent injunction against the petitioner/defendant tenant. The said suit in question was filed as an ordinary suit and was converted into a commercial suit on 10th January, 2020. The petitioner/defendant tenant entered appearance before the Commercial Court on 4th February, 2020. In January 2021, an application under Order XIII-A of the CPC was also filed by respondent/plaintiff landlord for passing summary judgment against the petitioner/defendant tenant in respect of relief of possession. The said application has been allowed and the

Commercial Court has passed a summary judgment for eviction on 1st April, 2021. Hence, the present petition.

5. The counsel for the petitioner/defendant tenant assails the impugned order/judgment primarily on the grounds that, (i) the written statement of the petitioner was not taken on record by the Commercial Court; and (ii) no mandatory pre-institution mediation in terms of Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Commercial Courts Act') was instituted in the case before filing of the suit.

6. As regards the ground in respect of the written statement not being taken on record, it is clear from the reading of paragraph 13 of the impugned judgment that even though the written statement was not taken on record, the defence set up by the petitioner/defendant tenant was considered by the Commercial Court while passing the impugned order. Paragraph 13 of the impugned judgment is set out hereinbelow:

*"13. The defendant had filed the written statement twice although was not taken on record, however, for the purpose of present application they are noticed. Brief facts of the case as stated in the written statement are, that the suit is not properly valued as the plaintiff has not paid the proper court fee and the plaintiff has not come with clean hands and has concealed true facts. That the defendant is tenant since 17.07.2017. **The defendant thereby admitted relationship of landlord and tenant.** Further, the plaintiff has also filed the legal notice sent by the counsel for the defendant wherein it is stated that his client is tenant of the property and his client has repeatedly asked him to sign rent agreement. It is also stated that his client is also having tenancy in*

the property by virtue of rent agreement dated 22.01.2018 which is duly notarized on 23.01.2018. Thus, the relationship between the plaintiff and defendant is undisputed.”

7. It has also been noted in the impugned judgment that the relationship of landlord and tenant has been admitted by the parties. The said fact has also been admitted before this Court by the counsel appearing on behalf of the petitioner/defendant tenant. It has also been noted in the impugned order that the tenancy was on a month-to-month basis and the notice had been duly served by the respondent/plaintiff landlord on the petitioner/defendant tenant for terminating the tenancy. Relying upon the judgments of the Supreme Court in **Madan & Co. Vs. Wazir Jaivir Chand** AIR 1989 SC 630 and **Indo Automobiles Vs. Jai Durga Enterprises & Ors.** (2008) 8 SCC 529, the Commercial Court came to the conclusion that once the notice at the correct address of the tenant has been sent by registered post, the tenant is assumed to have been served. Accordingly, the Commercial Court allowed the application filed on behalf of the respondent/plaintiff landlord under Order XIII-A of the CPC and passed the impugned summary judgment for eviction.

8. It was put to the counsel for the petitioner/defendant tenant, whether the ground with regard to non-compliance of Section 12A of the Commercial Courts Act was ever taken before the Commercial Court by the petitioner/defendant tenant.

9. The counsel for the petitioner/defendant tenant fairly concedes that no such ground was ever taken by the petitioner/defendant tenant in the written statement filed by the petitioner/defendant tenant or in the application under Order VII Rule 11 of the CPC filed on behalf of the

petitioner/defendant tenant. It is further submitted that only an oral request was made to the Commercial Court in relation to the same. A perusal of the record shows that no reference to such a request has been noted in any of the orders of the Commercial Court. It was also agreed by the counsel for the petitioner/defendant tenant that no application has been moved by the petitioner/defendant tenant with regard to the maintainability of the commercial suit in light of Section 12A of the Commercial Courts Act.

10. It may be noted here that the respondent/plaintiff landlord had filed an application under Order XXXIX Rules 1 and 2 of the CPC along with his suit. However, whether the same qualifies as an ‘urgent interim relief’ in terms of Section 12A of the Commercial Courts Act, has not been considered by the Commercial Court since this issue was never pressed before the Commercial Court.

11. It is obvious that the ground with regard to Section 12A of the Commercial Courts Act has been taken for the first time in the present petition filed before this Court after the summary judgment has been already passed against the petitioner/defendant tenant. Unsuccessful litigants after having suffered a judgment cannot be allowed to raise the plea with regard to Section 12A of the Commercial Courts Act. If the petitioner/defendant tenant had *bona fide* intentions, the said request should have been made at the earliest before the Commercial Court.

12. It has been put to the counsel for the petitioner/defendant tenant the reasons for filing the present petition almost seven months after the impugned judgment was passed. The only answer forthcoming from the

counsel for the petitioner/defendant tenant was that it was on account of COVID-19 pandemic.

13. It is clear from the above that the present has been filed belatedly, only after when the petitioner came across the ground with regard to the maintainability of suits on non-compliance with Section 12A of the Commercial Courts Act. Even till date no application with regard to Section 12A of Commercial Courts Act has been filed by the petitioner/defendant tenant before the Commercial Court.

14. No grounds for interference with the impugned judgment are made out under Article 227 of the Constitution of India.

Dismissed.

OCTOBER 29, 2021

Sakshi R.

AMIT BANSAL, J

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