

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

Date of decision: 16<sup>th</sup> NOVEMBER, 2022

IN THE MATTER OF:

+ **RFA(OS)(COMM) 1/2022 & CM APPLs. 18826/2022, 18827/2022**

SKIPPER PROPERTIES PRIVATE LIMITED & ANR.... Appellants

Through: Mr. Suraj Prakash, Advocate

versus

SUNRISE PROPERTY DEVELOPERS PRIVATE LIMITED & ORS

..... Respondents

Through: Mr. Rajesh Yadav, Sr. Advocate with  
Ms. Ruchira, Advocate

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

**SUBRAMONIUM PRASAD, J**

1. The present Appeal has been filed under Section 13(1A), Commercial Courts Act, 2015 read with Section 131 of the Civil Procedure Code, 1908 against the order and part decree passed by the Ld. Single Judge in CS (OS) (COMM) 387/2019 and the order passed in the Review Petition No. 18/2020 in CS (OS) (COMM) 387/2019.

2. The facts leading up to the filing of this Appeal are that the Appellant No. 1/Skipper Properties/Appellant-lessor is a company registered under the Companies Act, 1956, which operates in the domain of constructing and developing commercial retail spaces/properties. The Appellant-lessor is the absolute owner of the premises in dispute.

3. The Appellant-lessor entered into a lease agreement with the respondent-lessee for the premises at No. 26, Ground Floor, Janak Cineplex located inside Plot No. 3, Community Center, Block-C, Janak Puri, New Delhi 110058, with a carpet area of 1100 sq ft. (*hereinafter referred to as 'the Premises'*) on 31.01.2015, for a period of 15 years with applicable rent at the rate of Rs. 312 per square feet of super area (being 2000 square feet), with an increment of 10% per annum after 3 years. Clause 16 stipulates the rent commencement period as being the 121<sup>st</sup> either from the date the lessee is in receipt of the Completion Certificate issued by the DDA/MCD, or on the date of completion of the work order as stipulated in clauses 10 and 11, whichever date would be later.

4. Pursuant to the requirements of clauses 5 and 6, the Respondent-lessee deposited Rs 37,44,000/- in lieu of refundable and interest free security deposit, and Rs. 74,88,000/- as advance rent for a period of 15 years, respectively. The combined total of these payments is Rs. 1,12,32,000/-. The Respondent-lessee's payment of the aforestated amount is recorded in Clause 7, while Clause 15 states that the lessee is entitled to obtain a refund of the interest free and refundable security deposit at any time, subject to payment of three month's rent, or after having served a notice period of 3 months. The relevant clauses of the lease agreement are reproduced below for reference:

*Clause 5. The Lease Rent shall begin after the 120 Days Rent Free Period from the date of receiving of completion certificate from DDA/MCD by the Lessor or Completion of Lessor's Scope of Work, which ever is later. As promised by Lessor the same will be done on or before 31 December 2015.*

6. That the LESSEE has paid a REFUNDABLE & INTEREST FREE Security Deposit Rs. 37,44,000/- (Rupees Thirty Seven Lacs Forty Four Thousand Only) vide cheque No. 880002 drawn on PNB Prashant Vihar Branch to the LESSOR, which is refundable on or before the time of vacating the premises and handing over the peaceful vacant possession of the Leased Premises.

That the LESSEE has also paid Advance Rent Rs. 74,88,000/- (Rupees Seventy Four Lacs Eighty Eight Thousand Only) vide cheq N. 880001 drawn on PNB Prashant Vihar Branch, to the LESSOR which shall be adjusted in the first (15) Fifteen Months, after the 120 days Rent Free Period from the date of receiving of completion certificate from DDA/MCD by the Lessor or Completion of Lessor's Scope of Work whichever is later.

If the Lessor fails to refund the security deposit and advance rent on the date when Lessee will desire to vacate the Leased premises or as per clause 20, the Lessor will be entitled to remain in possession of the Leased premises and carry on its business as it is, without payment of rent & maintenance, till the time entire security deposit is refunded, without prejudice to the right of the lessee to get the refund.

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10. LESSOR'S Scope of Work is defined as: Whereas the Lessor shall provide the following to the Lessee inside the Leased Premises: Ducting for air-conditioning inside the showroom, Gypsum Ceiling, vitrified tiles, AC Unit (AHU) as per the area plan. Front Glasses and an access of total 46 ft approx. wide ENTRANCE, as per annexed site layout plan (Annexure A)

11. The Lessor has promised and committed to provide the following facilities, in the entire building :

a. Centralised Air Conditioning

*b. Elevators*

*c. Public Toilets for the Customers & the occupants*

*d. Atrium*

*IT IS FURTHER AGREED that the above mentioned facilities are a part of the pre-requisites for the Grant of L-10 Liquor retail Vend, and if the Lessor fails to provide even one of these facilities, the Lessee shall not be granted the L-10 license by the Govt of NCT of Delhi. Hence in such case clause 20 shall be applicable.*

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*15. LESSEE Lock in Period will be Nil years and Lessee can terminate Lease deed by giving three months' notice to Lessor or three months' rent in lieu of, whereas Lessor cannot terminate the lease for fifteen years subject to Lessee performs the terms of Lease as per clause 1, 2 & 17.*

*16. The "Rent Commencement Date" shall be the 121<sup>st</sup> day from the date of Receiving of Completion Certificate from DDA/MCD by the Lessee or Completion of Lessor's Scope of Work whichever is later. The Lessor shall be responsible for sending the Copy of Completion Certificate to the registered office of the Lessee, or thru Registered Post or sending a scan copy of the same through email.*

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*20. Since the Mall is yet not Functional and the Power, Air-conditioning & External Elevation along with the Flooring & Ceiling are not complete, The Lessor has agreed to complete the same and receive the Completion Certificate on or before 31 Dec 2015, failing which the Lessor shall pay interest @ 12 p.a. to the Lessee on the Amount of Rs. 1,12,32,000/- starting from the date of payment till the completion of Abovementioned Work.*

*Furthermore, the Lessee shall have the right to demand a refund anytime of the amount of Rs. 1,12,32,000/- along with 12% p.a. interest from the date of payment till the date of refund by the Lessor and till the time the amount is Refunded by the Lessor to the Lessee, the Lessee shall continue to have lien as per clause 19.*

*33. It has been agreed between both the parties in the event of default committed by the company including but not limited to the financial obligations of the Lessor company, the directors of the company will be personally liable for the same to the Lessee, and their liability will be jointly and severally with that of the Lessor.*

*It has been agreed between both the parties in the event of default committed by the company including but not limited to the financial obligations of the Lessee company, the directors of the company will be personally liable for the same to the Lessor, and their liability will be jointly and severally with that of the Lessee.*

5. At the time of entering the lease agreement, construction work for the premises located in Janak Cineplex remained incomplete, for which the Appellant-lessor had undertaken to complete work by 31.12.2015.
6. As per the lease agreement, the date of completion of work orders and handing was on or before 31.12.2015. A pre-requisite to successfully obtain the L-10 liquor license was to be in possession of a premises in respect of which all construction work in terms of clauses 10 and 11 were to be completed before or on the stipulated date. The Appellant-lessor was responsible to complete the work orders on time, failing which they were to be liable to refund interest accrued on the security deposit amount in terms of Clause 20.

7. On account of the security deposit amount tendered by the Respondent-lessee, the lease agreement conferred exclusive rights on the lessee to operate a liquor selling establishment from the premises at the Janak Cineplex mall in terms of clause 14 of the lease agreement. At the time of signing of the lease agreement, construction activities at the premises remained pending, completion of which was the prerogative of the Appellant-lessor.

8. As of June 2016, the Appellant-lessor handed over possession of the property. On 08.06.2016, the Respondent-lessee sent the first such communication seeking payment of interest amount accrued on Rs. 1,12,32,000/- pursuant to terms of Clause 20.

9. A copy of the completion certificate issued by the DDA on 17.01.2018 was attached in an email sent by the Appellant-lessor to the Respondent-lessee on 09.06.2018. The Respondent-lessee was also offered to take over physical possession and commence operations. However, it is only on 04.08.2018 that the Respondent-lessee was handed over physical possession of the premises.

10. The Respondent-lessee sent separate emails to the Appellant-lessor on 22.01.2018, 31.01.2018 and 06.02.2018, demanding payment of interest on Rs. 1,12,32,000/- as per clause 20 of the Lease Agreement on account of the Appellant-lessors not furnishing the completion certificate in time, with further reminders to complete pending work and to complete the minimum carpet area of 1100 square feet.

11. On 06.07.2018, the Appellant-lessor informed the Respondent-lessee of the deduction of rent for the premises, starting from 16.05.2018, being the 121<sup>st</sup> day from date of issuance of completion certificate. Attached with the

email were ledger accounts of the Respondent-lessee, reflecting the accrued rent payable as of the date of communication. The Respondent-lessee

12. The Respondent-lessee issued a reply to letters of the Appellant-lessor dated 12.10.2018 and 16.11.2018, on 04.01.2019, *vide* which the Respondent-lessee denied to adjust interest accrued against the claims of the Appellant-lessor.

13. The Respondent-lessee issued a legal notice to the Appellant-lessor on 27.02.2019, informing the Appellant-lessor of their decision to terminate the lease agreement on account of various breaches in the lease agreement, and the conduct of the Appellant-lessor. It was the case of the Respondent-lessee that the Appellant-lessor was liable to refund a sum of Rs.1,12,32,000/- with interest @ 12% per annum from the date of payment. Paragraph 15 and 16 of the said legal notice reads as under:-

*“15. Instead of complying with your part to start “Rent Commencement Date”, you notice no.1 had vide your e-mails dated 12.10.2018 & 16.11.2018 attached your alleged rent invoices for the months of October 2018 & November 2018 with said e-mails and in your attached ledger, you noticee no. 1 had alleged Rs. 53,39,675 as total alleged rental and you notice.) no. 1 had given adjustment of Rs. 35,77,131/- and alleged outstanding of Rs.17,62,544/-.*

*Our client vide reply dated 04.01.2019 responded to your above e-mails and therein specifically denied above alleged rental claimed by you noticee no. 1 and again stated that In view of your non compliance of above para 7 of reply/notice dated 10.08.2018 of our client, "Rent Commencement Date" had not started and therefore your raising rent Invoices and sending ledgers making rental claims, were totally unfounded and denied.*

*Vide its above reply dated 04.01.2019, our client had again called upon you noticee no. 1 to comply with same requirements as of above para 7 of reply/notice dated 10.08.2018 of our client so as to start "Rent Commencement Date".*

*16. However, you noticee no. 1 have not complied with para 7 of reply/notice dated 10.08.2018 and above reply dated 04.01.2019 of our client. In view of the same, as there is apparent violation of Clauses 14 & 21 of the lease deed dated 31.01.2015 by you noticee no. 1 and our client was not able to use the rental premises for purpose mentioned in Clause 14 & 21 solely due to your faults and you have not taken steps to remove the same despite ample opportunities granted by our client vide its replies/legal notice as mentioned and you also cheated our client by not disclosing about your previous agreement with Mr. Shamsher Singh, our client is left with no option but to terminate the above lease deed. Accordingly, above lease deed dated 31.01.2015 stands terminated herewith."*

14. The abovementioned legal notice was replied to on 04.03.2019. In the said notice, the Appellant-lessor categorically stated that they were again willing to accept the termination of the lease agreement of the Respondent-lessee and upon execution and registration of the Cancellation Agreement, they were prepared to refund the balance amount to the Respondent-lessee in accordance with the terms and conditions of the lease agreement. The Appellant-lessor also stated that according to them, the amount refundable upon execution, registration, cancellation is Rs.46,47,394/-. The relevant portion of the lease agreement reads as under:-

*"Please note that we are ready and willing to accept the request of your client for termination of the lease*

agreement and upon execution and registration of the Cancellation Agreement would refund the balance amount to your client strictly in accordance with the terms and conditions contained in the lease agreement, after deducting therefrom (i) lease rental for the period 16.05.2018 to 01.03.2019 (the date of receipt of termination notice). (ii) three months lease rental in lieu of notice (from 01.03.2019 to 31.05.2019). (iii) Maintenance charges, (iv) applicable taxes, (v) electricity and HVAC Charges and (vi) interest. For the purpose of reconciliation of account, your client can meet us on any working days after fixing time with us. According to our books of account, the following amount would be refundable by our company to your client.

| S. No. | Particulars                                                                                                                                    | Amount (Rs.)   |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 1.     | Amount paid by your client to our company under the lease agreement in question                                                                | 1,12,32,000.00 |
| 2.     | <u>Add:</u> Interest accrued on the aforesaid amount paid by your client less TDS @ 10%                                                        | 35,77,130.00   |
| 3.     | Sub-total (1+2) (A)                                                                                                                            | 1,48,09,130.00 |
| 4.     | <u>Less:</u> Lease-rental for the period 16.05.2018 to 01.03.2019 including GST                                                                | 69,95,040.00   |
| 5.     | <u>Less:</u> Maintenance charges for the period 16.05.2018 to 01.03.2019 including GST                                                         | 3,96,834.00    |
| 6.     | <u>Less:</u> Electricity & HVAC charges for the period 16.05.2018 to 01.03.2019                                                                | 2,68,340.00    |
| 7.     | <u>Less:</u> Interest charges as per clause 18 for the period 16.05.2018 to 01.03.2019                                                         | 1,67,246.00    |
| 8.     | <u>Less:</u> Three month's lease rental in lieu of notice for the period 01.03.2019 to 31.05.2019 including Maintenance charges as well as GST | 23,24,276.00   |
| 9.     | Sub-Total (4+5+6+7+8) (B)                                                                                                                      | 1,01,61,736.00 |
| 10.    | Amount refundable by our company to your client upon execution and                                                                             | 46,47,394.00   |

|  |                                                 |  |
|--|-------------------------------------------------|--|
|  | registration of Cancellation Agreement<br>(A-B) |  |
|--|-------------------------------------------------|--|

15. The relevant portion of the legal notice dated 27.02.2019 records the reasons for termination of the agreement on the grounds as reproduced below:

*"15. Instead of complying with your part to start "Rent Commencement Date", you notice no. 1 had vide your e-mails dated 12.01.2018 & 16.11.2018 attached your alleged rent invoices for the months of October 2018 & November 2018 with said e-mails and in your attached ledger, you noticee no. 1 had alleged Rs. 53,69,675 as total alleged rental and you noticee no. 1 had given adjustment of Rs 35,77,131/- and alleged outstanding of Rs. 17,62,544/-.*

*Our client vide reply dated 04.01.2019 responded to your above e-mails and therein specifically denied above alleged rental claimed by you noticee no. 1 and again stated that in view of your non compliance of above para 7 of reply/notice dated 10.08.2018 of our client, "Rent Commencement Date" had not started and therefore your raising rent invoices and sending ledgers making rental claims, were totally unfounded and denied.*

*Vide its above reply dated 04.01.2019, our client had again called upon you noticee no. 1 to comply with same requirements as of above para 7 of reply/notice dated 10.08.2018 of our client so as to start "Rent Commencement Date."*

*16. However, you noticee no. 1 have not complied with para 7 of reply/notice dated 10.08.2018 and above reply dated 04.01.2019 of our client. In view of the same, as there is apparent violation of clauses 14 & 21 of the lease deed dated 31.01.2015 by you noticee no. 1 and our client was not able to use the rental premises for purpose mentioned in clause 14 & 21 solely due to your faults and you have not taken steps to remove the*

*same despite ample opportunities granted by our client vide its replies/legal notice as mentioned and you also cheated our client by not disclosing about your previous agreement with Mr. Shamsher Singh, our client is left with no option but to terminate the above lease deed. Accordingly, above lease deed dated 31.01.2015 stands terminated herewith.”*

16. The Respondent-lessee filed a Suit being CS (OS) (COMM) 387/2019 on 12.07.2019, for recovery of the deposited security amount with interest as per clause 20 and damages on account of breach the lease agreement conditions by the Appellant-lessor, which amount was sought to the tune of Rs. 3,31,84,960/-. A breakup of the calculation of total recovery amount as sought for in the Complaint to the Suit is reproduced below:

| S. No. | Claim                                                                                                                                                                                          | Amount (in Rs.) |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| (a)    | Amount paid by the Plaintiff to the Defendant No. 1 which is liable to be paid back by Defendants                                                                                              | 1,12,32,000.00  |
| (b)    | Interest on Rs. 1,12,32,000.00 from 31.01.2015 till the date of filing of the suit, which date is taken for convenience as 30.06.2019 as per Clause 20 of the lease agreement, @ 12% per annum | 59,52,960.00    |
| (c)    | Total of (a) + (b)                                                                                                                                                                             | 1,71,84,960.00  |
| (d)    | Damages on account of the Defendants having not performed their part of the contracts and having committed breach of the same.                                                                 | 10,00,000.00.00 |
| (e)    | Loss of profit                                                                                                                                                                                 | 1,50,00,000.00  |
|        | Total amount claimed                                                                                                                                                                           | 3,31,84,960.00  |

17. The Appellant-lessor filed their Written Statement in the Suit on 16.11.2019, wherein the Appellant-lessor accepted the liability of payment

of Rs. 46,47,394/-, after making deductions from the security amount deposited being Rs. 1,12,32,000/-. Paragraph 36 of the Written Statement concedes the financial liability in the following terms:

*“36. ..It is submitted that the plaintiff is entitled to amount of Rs. 1,12,32,000/- which it had paid to the Defendant No. 1 on 31.01.2015 along with interest @ 12% per annum under Clause 20 of the lease agreement dated 31.12.2015 till 17.01.2018 i.e. the date of issuance of completion certificate and the said amount are liable to be adjusted against (a) lease rentals for the period from 17.05.2018 to 01.03.2019 [the date of receipt of termination notice], (b) three months lease rentals in lieu of three months notice period from 01.03.2019 to 31.05.2019, as provided in the agreement; (c) Maintenance charges; (d) applicable taxes; (e) electricity and HVAC charges and (f) interest. It is further submitted that the defendant nos. 2 to 6 is not liable towards the plaintiff in their personal and individual capacity. **Thus after adjustment of all the aforesaid claims, the plaintiff is only entitled to recover an amount of Rs. 46,47,394/- and nothing more than that.**”*

*(emphasis supplied)*

18. In the Written Statement, it was also submitted that Appellant No.2 along with respondent nos. 2-5 (Defendant Nos. 3-6 in the Suit), being the directors of the Appellant No. 1 company were wrongfully impleaded as parties to the Suit. According to the submissions, only the Appellant no. 1 was to be held responsible for any liability arising out of the dispute as appellant No. 2 was merely acting on behalf of the company in the capacity of a director of the Appellant No. 1 company. It was stated that the Appellant No.2 was not a signatory to the agreement entered into between the parties. Paragraph 2 of the Written Statement records the argument as:

*“2. It is further submitted that the present suit is also liable to be dismissed on the ground of mis-joinder of parties, inasmuch as, the plaintiff has wrongly impleaded the defendant nos. 2-5 as party to the present suit. It is submitted that the lease agreement dated 31.01.2015 was executed by and between the answering defendant no. 1 and the plaintiff and as such, the purported cause of action to file the present suit has arisen only against the answering defendant no. 1 and no part of alleged cause of action can be attributed to the defendant nos. 2 to 5. Furthermore, the defendant nos. 4 and 5 were appointed as directors of the defendant no. 1 company only on 24.09.2015. That the defendant no. 2 herein has signed the lease agreement dated 31.01.2015 and sent other communications to the plaintiff only on behalf of the defendant no. 1 company being one of its Director and has never played any role in the entire transaction in his individual capacity.”*

19. The Ld. Single Judge passed an order and a part decree in the Suit being CS (COMM) 387/2019, based on the admissions made in paragraphs 2 and 36 of the Written Statement, passing a decree for joint and several liability against the Appellant Nos. 1 and 2 and thereby directing payment for a sum of Rs. 46,47,394/- with interest @ 12% per annum from 01.01.2016 till date of payment in favour of the Respondent company.

20. In holding that the admissions in the written statement were made without any reference to being affected by a limitation period, the Id. Single Judge opined that the admissions made would therefore not be affected as being beyond the period of limitation, and were enforceable under Section 25(3) of the Indian Contract Act, 1872. On the question of imputing joint and several liability against the directors of Appellant No. 1, the Id. Single Judge, while relying on the admission made in paragraph 2 of the written

statement to the Suit, held that despite the Appellant No. 2 acting on behalf of Appellant No. 1 company, was a director of the company nonetheless and was also a signatory to the lease agreement wherein Clause 33 provides for joint and several liability of directors personally. The relevant portions of the impugned order and decree respectively are as follows:

*“8. The admission of the defendants in paragraph 36 of their written statement is unequivocal and without referring to the plea if any of bar of limitation. Moreover, the said admission is also enforceable under Section 25(3) of the Contract Act, 1872.*

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*15. The counsel for the plaintiff states that defendant No. 2 has signed the lease agreement.*

*16. The counsel for the defendants states that the defendant No. 2 has signed on behalf of defendant No.1.*

*17. Even if that be so, the lease agreement having provided for joint and several liabilities of the directors and the defendant No. 2, even if on behalf of defendant No. 1, being a signatory thereto, would be liable.*

*18. A part decree is accordingly passed, in favour of the plaintiff and jointly and severally against the defendant No. 1, Skipper Properties Pvt. Ltd. and defendant No. 2, Harvinder Pal Singh, of recovery of Rs. 46,47,394/- with interest @ 12% per annum as agreed, from 1st January, 2016 till date of payment.”*

21. Review Petition No. 18/2020 was filed by the Appellants seeking review of order and part decree passed by the Ld. Single Judge in CS (OS) (COMM) 387/2019. In the Petition, the Appellants sought clarifications with

respect to an error set out in their Written Statement, which as per them states that the lease agreement was signed by the Appellant No.2 while representing the Lessor company. The Appellants sought to clarify that one Sanjeev Kumar, who was not a director of the Appellant No. 1 company, had signed the lease agreement in the capacity of an appointed signatory, pursuant to a resolution passed by the Board of Directors of Appellant No. 1 company. It was submitted hence that since the Appellant No. 2 did not sign the agreement and that the decree against Appellant No. 2 was not entitled to be passed against the same. The Id. Single Judge further noted that the interest accrued till 17.01.2018 had already been included in the calculated interest amount, it was therefore held that the effective date from which interest was to be paid thereon would be taken from 18.01.2018, and not 01.01.2016.

22. While addressing clarifications sought to be rectified through the Review Petition, the Id. Single Judge reasoned that allowing for withdrawal of admissions made by the Appellants in the Written Statement to the Suit by way of an amendment at the current stage would tantamount to depriving the Respondents of their right that had accrued in their favour on the strength of the said admissions. The Review Petition was disposed of, without allowing for any relief to the Appellants.

23. The Appellants thereafter preferred the present appeal on 20.03.2020, with prayers to set aside the order and part decree in the Suit being CS (OS) (COMM) 387/2019 and the order passed in Review Petition No. 18/2020 in the abovementioned Suit.

24. Heard learned Counsels appearing for the Parties and perused the material on record.

25. Learned Counsel for the Appellants submits that the suit is barred by limitation. The Suit could have been filed within three years from 31.12.2015, but was filed only in July, 2019, and therefore, would be barred by limitation. He further submits that the lease agreement was not signed by the Appellant No.2 (Defendant No.2 in the suit). Therefore, the Appellant No.2 cannot be made liable for the claim of the Respondent-lessee.

26. *Per contra*, Mr. Rajesh Yadav, learned Senior Advocate for the Respondents, places reliance on the reply notice sent by the Appellant-lessoron 04.03.2019. He relies on the Appellant-lessor's reply letter dated 04.03.2019 and Paragraph 36 of the Written Statement to submit that both documents show that there is an unequivocal promise to refund the money back, and, therefore, the partial decree of the learned Single Judge does not require any interference. As per the Id. Counsel for the Respondents, the basis of filing the Suit was that the Appellant-lessor had been in breach of the lease agreement, since construction of the premises had not been completed, and possession was not handed over on or before 31.12.2015.

27. The contention of the Appellant-lessor, that the cause of action arose only on 31.12.2015 and not thereafter cannot be accepted, since the cause of action according to the Respondent-lessee arose when the Appellant-lessor started raising invoices for payment of rent effectively from May, 2018, which according to the Respondent-lessee was contrary to the terms of the lease agreement. The cause of action extends to 2018, and, therefore, it cannot be said that the suit is bound by limitation.

28. A reading of the termination notice dated 27.02.2019 shows that the case of the Respondent-lessee is not restricted only with respect to not receiving the completion certificate by 31.12.2015. Their case is that the termination of contract has taken place primarily due to several acts of

omission and commission of the Appellant-lessor even after 31.12.2015. It is evident from Paragraphs 15 and 16 which has been quoted above.

29. As stated above, the cause of action arises on 16.05.2018 being the Rent Commencement Date. Physical possession of the premises was handed over in August, 2018. However, as alleged by the Respondent-lessee the Appellant-lessor, contrary to the terms of the lease agreement began deducting lease rent and maintenance charges from 16.05.2018. The Appellant-lessor also started issuing invoices for payment of rent as mentioned in Paragraphs 15 and 16 of the termination notice. The contention regarding limitation thus cannot be accepted.

30. On the question of personal liability of Appellant No. 2 for payment of the decretal interest amount, Clause 33 of the lease agreement in lucid and clearest terms possible, provides for joint and several liability of directors of Appellant No. 1 company.

31. Clause 33 of the Lease Agreement reads as under:

*"33. It has been agreed between both the parties in the event of default committed by the company including but not limited to the financial obligations of the Lessor company, the directors of the company will be personally liable for the same to the Lessee, and their liability will be joint and severally with that of the Lessor."*

In light of the above provision, we agree with the finding of the Id. Single Judge passed in the order to the Suit, in holding Appellant No. 2 to be personally liable towards the respondent company.

32. The appellants in the written statements to the suit accepted their liability in paragraphs 2 and 36. The part decree directing the Appellants and 2 for payment of the interest on the security deposit amount was premised

on the admissions made in the written statements, which were submitted in unequivocal and clear terms, reflecting the willingness of the Appellants in accepting their liability. The settled position with respect to the nature of admissions made under Order XII Rule 6 of the CPC, is laid down in the decision of the Apex Court delivered in Himani Alloys Limited v. Tata Steel Limited, (2011) 15 SCC 273. The relevant paragraph from the judgment is reproduced below:

*“11. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short, the discretion should be used only when there is a clear “admission” which can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120], Karam Kapahi v. Lal Chand Public Charitable Trust (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262] and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha [(2010) 6 SCC 601 : (2010) 2 SCC (Civ) 745] .) There is no such admission in this case.”*

33. We therefore do not find any merit in the contentions raised by the Id. Counsels for the Appellants. In doing so, we agree with the findings of the

ld. Single Judge recorded in the impugned order and part decree, and impugned order passed in the review petition to the suit. We therefore hold the Appellants liable for payment of the decretal amount being Rs. 46,47,394/-. The prayers sought for in the present appeal are therefore rejected.

34. The present appeal is accordingly dismissed, along with pending application(s), if any.

**SATISH CHANDRA SHARMA, C.J.**

**SUBRAMONIUM PRASAD, J**

**NOVEMBER 16, 2022**

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