



\$~58

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 568/2022 & CM APPL. 27442/2022, CM APPL. 27443/2022

RAJ KARAN Petitioner
Through: Mr. Prateek Sen and Ms. Stuti Gupta, Advs.

versus

SUDESH BHATIA Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT(ORAL)

% **02.06.2022**

1. The impugned order, dated 23rd April, 2022, passed by the learned District Judge (Commercial Courts), (“the learned Commercial Court”) in CS (Comm) 434/2021 (*Sudesh Bhatia v. Raj Karan*) rejects an application, by the petitioner, as the defendant in the said suit, preferred under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

2. CS (Comm) 434/2021 was filed by the respondent against the petitioner as a commercial suit, under the provisions of the Commercial Courts Act, 2015. The petitioner, as the defendant in the suit, filed an application under Order VII Rule 11 of the CPC, praying that the suit be dismissed as the dispute was not a “commercial dispute” within the meaning of the Commercial Courts Act, 2015 and, consequently, the learned Commercial Court was *coram non judice*.



3. The said application has been rejected by the learned Commercial Court *vide* the impugned order dated 23rd April, 2022, on the ground that the property forming subject matter of the suit was specifically let out for commercial purposes and that, therefore, the dispute emanating from the Lease Deed executed in respect of the property was a “commercial dispute”, within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015.

4. Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 defines “commercial dispute”, as meaning a dispute “arising out of an agreement relating to immovable property used exclusively in trade or commerce”. There are, therefore, three ingredients in this definition, which require cumulative satisfaction, in order for the dispute to be regarded as a “commercial dispute”, viz. (i) immovable property used exclusively for trade or commerce, (ii) an agreement relating to the said immovable property and (iii) that the dispute in the suit must arise out of the said agreement.

5. To determine whether the dispute, forming subject matter of CS (Comm) 434/2021 was, or was not, a “commercial dispute”, therefore, one has to examine the averments in the plaint vis-à-vis the afore-extracted definition of “commercial dispute” in the Commercial Courts Act.

6. The prayer clause in CS (Comm) 434/2021 reads thus:

“In view of the above and in the interest of justice, it is therefore, prayed that this Hon’ble Court be pleased to:



a. Pass a decree of possession in favour of the Plaintiff and against the Defendant, its agents, attorneys, assigns, successors, associates, employees or anybody else claiming through the said Defendant and direct the Defendant to hand over the vacant, peaceful and physical possession of the suit property bearing No. B-91, Mayapuri Industrial Area, Phase-I, New Delhi-110007;

b. Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendant, its agents, attorneys, assigns, successors, associates, employees or anybody else claiming through the said Defendant restraining the Defendant from creating any third party rights, title and/or interest, encumbrances, including but not limited to lien in form of mortgage, in respect of the suit property bearing No. B-91, Mayapuri Industrial Area, Phase-I, New Delhi-110007;

c. *Pass a decree of recovery of arrears of monthly rent in favour of the plaintiff and against the Defendant, its agents, attorneys, assigns, successors, associates, employees or anybody else claiming through the said Defendant restraining the Defendant in sum of Rs. 4,13,000/- along with interest at the rate of 24% per annum w.e.f. 23.08.2021 on the said amount till the date of its realization;*

d. *Pass a decree of recovery of mesne profits in favour of the Plaintiff and against the Defendant, its agents, attorneys, assigns, successors, associates, employees or anybody else claiming through the said Defendant @ Rs.25,000/- per day in terms of Clause 21.3 of the Lease Deed w.e.f. 10.09.2021 till the date when the vacant physical possession of the suit property is handed over by the Defendant to the Plaintiff along with interest at the rate of 24% per annum on the said amount till the date of its realization.*

e. Pass an order awarding costs in favour of the Plaintiff and against the Defendant; and/or



f. Pass any such other order(s) as this Hon'ble Court may deem fit and appropriate in facts and circumstances of the present case.

(Emphasis supplied)"

7. The respondent-plaintiff, in the aforesaid plaint, averred that the suit premises had been leased out by the respondent to the petitioner *vide* a Lease Deed dated 1st July, 2020, for the period 1st July, 2020 to 31st May, 2021. The petitioner is stated to have regularly paid lease rent to the respondent till May, 2021, whereafter the petitioner approached the respondent for extension of the Lease Deed for a further period of 11 months on mutually agreeable terms. The plaint alleges that the petitioner defaulted in payment of rent for the month of June 2021 and that, on the petitioner's request, the respondent agreed to waive rent for the said month, subject to extending the lease period by a period of 11 months w.e.f. June, 2021, at an enhanced lease rent of ₹ 3.5 lacs per month plus GST. It is further averred in the plaint that the petitioner was agreeable to the said arrangement and that the parties had, therefore, principally agreed to draw up a new Lease Deed, as per the proposed terms of which the petitioner did, in fact, pay lease rent of ₹ 3.5 lacs plus GST @18% (aggregating to ₹ 4,13,000/-) per month for the months of July and August, 2021, but that the petitioner did not come forward for executing a new lease agreement. In these circumstances, the plaint avers that, *vide* legal notice dated 23rd August, 2021, the lease agreement was terminated. Essentially in these circumstances, the plaint sought relief in terms of the prayers extracted in para 6 *supra*.



8. Para 27 of the plaint is of especial relevance, and read thus:

“27. The Defendant is in illegal possession of the suit property w.e.f. 11.09.2021 and he is liable to pay a sum of Rs. 25,000/- per day towards illegal occupation of the suit property till the date the possession thereof is handed over in terms of Clause 21.3 of the Lease Deed.”

8. Adverting, now, to the Lease Deed dated 1st July, 2020, it is seen that Clause 11 thereof reads thus:

“11. Use of Premises:

11.1 The Lessee shall be entitled to the use the said premises *only for office warehouse of products of Moon Beverages Ltd. Only or other related purposes required for the business of distribution of Moon Beverages (P) Ltd products only.*

11.2 The Lessee shall not in any manner carry out any unlawful illegal or dangerous activity in the said Premises.”

9. Clearly, Clause 11.1 envisages exclusive use of the leased premises for trade and commerce.

10. Prayers (c) and (d) in CS (Comm) 434/2021, read with para 27 thereof, extracted *supra*, clearly seek relief in terms of the aforesaid Lease Deed dated 1st July, 2020. The Lease Deed itself specifically envisages *exclusive* use of the suit property for the trade and commerce. Inasmuch as at least two of the prayers in the suit are predicated on the Lease Deed, which is in relation to immovable property to be used exclusively for trade and commerce, no occasion arises for this Court to interfere with the view expressed by the learned Commercial Court, that CS (Comm) 434/2021 was, in fact,



maintainable as a commercial suit.

11. I, therefore, concur entirely with the decision of the learned Commercial Court that the petitioner's application Order VII Rule 11 of the CPC was devoid of merit.

12. The petition is, accordingly, dismissed. Miscellaneous applications also stand disposed of.

13. This Court records its appreciation for the commendable clarity with which Ms. Stuti Gupta, as a young Counsel, argued the matter on behalf of the petitioner.

JUNE 2, 2022
r.bararia

C. HARI SHANKAR, J

न्यायमेव जयते