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

% *Date of Decision: 5th September, 2022*

+ **RFA(COMM) 60/2022**

**RAVIN KUMAR ALIAS RABIN
KUMAR**

..... Appellant

Through: Mr. Manish Kumar, Mr.
Anubhav & Mr. Abhishek,
Advs.

Versus

DR SUSHIL GUPTA AND ORS.

..... Respondents

Through: Mr. Anil Sehgal & Mr. Lalit
Khurana, Adv.

CORAM:

**HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN**

VIBHU BAKHRU, J. (ORAL)

Caveat No.268/2022

1. The learned counsel for the respondents / caveators appears.
2. The caveat stands discharged.

CM No.39037/2022

3. Exemption is allowed, subject to all just exceptions.
4. The application is disposed of.

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5. The appellant (defendant no.1) has filed the present appeal



impugning an order dated 22.07.2022, whereby the respondents (plaintiffs) application under Order XIII A of the Code of Civil Procedure, 1908 (CPC), as amended by the Commercial Courts Act, 2015, was allowed.

6. The respondents (plaintiffs) had instituted a suit [being CS(COMM) No.400/2019 captioned ***Dr. Sushil Gupta & Ors. v. Ravin Kumar @ Rabin Kumar & Anr.***] for recovery of possession of the ground floor of built up property bearing address no. 663, Dr. Mukherjee Nagar, Delhi-110009 along with all fittings and fixtures (hereafter 'the suit premises'); arrears of rent; and damages.

7. It was the case of the respondents (plaintiffs) that they had let out the suit premises to appellant (defendant no.1) with effect from 01.03.2018 at a monthly rent of ₹40,000/-, excluding electricity and water charges, for the purpose of running a Paying Guest Accommodation for the students. The respondents (plaintiffs) claimed that the appellant (defendant no.1) had defaulted in his obligation to pay the rent. The appellant (defendant no.1) had paid the rent of the suit premises at the rate of ₹10,000/- for some months and at the rate of ₹20,000/- for certain other months. The appellant (defendant no.1) had completely stopped making the payment of rent from the month of April, 2019.

8. In the aforesaid circumstances, the respondents (plaintiffs) had issued a legal notice dated 27.07.2019 terminating the tenancy and calling upon the appellant (defendant no.1) to handover the vacant



possession of the suit premises and an aggregate sum of ₹5,30,000/-. The said sum included arrears of rent at the rate of ₹40,000/- per month for the period April, 2019 to July, 2019 as well as a sum of ₹2,30,000/- towards arrears of rent from March, 2018 to March, 2019.

9. There is no dispute that the appellant (defendant no.1) had taken the suit premises on lease. According to the appellant (defendant no.1), he had taken the suit premises on rent on 26.02.2018 for a period of one year. The respondents (plaintiffs) also affirm the same although they state that the tenancy was effective from 01.03.2018

10. There is a dispute as to the rent payable. The appellant (defendant no. 1) disputes that the rent for the suit premises was ₹40,000/- per month as claimed by the respondents (plaintiffs). According to the appellant (defendant no.1), the suit premises were leased out at a monthly rent of ₹10,000/-. The appellant (defendant no.1) also claims that he has handed over twelve blank cheques of ₹10,000/- to the respondents (plaintiffs) towards advance, which are required to be returned on payment of rent. In addition, the appellant (defendant no.1) claims that he had paid a sum of ₹20,00,000/- to the respondents (plaintiffs) as 'Security Deposit', which has not been returned by the respondents (plaintiffs).

11. As noticed above, there is no dispute that the appellant (defendant no.1) had taken the suit premises on rent. Undisputedly, the appellant (defendant no.1) has not paid any rent for the period of four months ending July, 2019.



12. According to the appellant (defendant no.1), he demanded the refund of Security Deposit of ₹20,00,000/- after expiry of the tenancy on 25.02.2019 but the same has not been refunded by the respondents (plaintiffs).

13. The learned Commercial Court found in favour of the respondents (plaintiffs) and held that they are entitled to recover possession the suit premises from the appellant (defendant no.1).

14. Although the appellant (defendant no.1) claims he is entitled to the refund of ₹20,00,000/-; the respondents (plaintiffs) deny that any such Security Deposit was paid to them.

15. The appellant (defendant no.1) claims that he had paid a sum of ₹20,00,000/- in cash towards the Security Deposit and the learned Commercial Court has erred in directing that possession of the suit premises be handed over to the respondents (plaintiffs) without directing refund of the said security deposit.

16. Admittedly, the appellant (defendant no.1) does not have any receipt indicating acknowledgement of receipt of ₹20,00,000/- in cash by the respondents (plaintiffs). There is no written document evidencing that the said payment was made by the appellant (defendant no.1). The appellant (defendant no.1) claims to have made the payment of ₹20,00,000/- in cash in good faith. Admittedly, the appellant (defendant no.1) did not possess the means to pay the amount of ₹20,00,000/- in cash, he claims to have borrowed it from his sister.



17. In the aforesaid admitted facts, it is apparent that the appellant (defendant no.1) has little probability of succeeding in his claim for refund of the Security Deposit. In any view, there is little doubt that the appellant (defendant no.1) cannot retain the possession of the suit premises, which was admittedly taken on rent from the respondents (plaintiffs). There is no real prospect of succeeding in resisting the respondents' (plaintiffs') claim for possession of the suit premises.

18. In view of the above, this Court finds no infirmity with the decision of the learned Commercial Court allowing the respondents (plaintiffs) application under Order XIII A of the CPC for passing a decree of possession in their favour.

19. The appeal is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 5, 2022

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