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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 22 August, 2022**

+ CS(COMM) 438/2019 &amp; I. A. 11227/2019

HIMANI WALIA

.....Plaintiff

Through: Mr. Amiet Andley and Mr. Arun K.  
Sharma, Advocates

versus

ANKIT KATYAL &amp; ANR.

.....Defendants

**CORAM:****HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI****J U D G M E N T****(Judgment released on 29.08.2022)****ANUP JAIRAM BHAMBHANI J.**

The present suit was filed by the plaintiff for recovery of possession of property bearing No. M-24, Greater Kailash- I (Market) New Delhi, comprising 1<sup>st</sup> and 2<sup>nd</sup> Floor along with terrace ('subject premises'); and for recovery of arrears of rent, mesne profits/damages for unauthorized use and occupation; as also for recovery of electricity charges and other consequential reliefs. By order dated 01.12.2020 this court allowed prayer (i) contained in the plaint, by passing a partial decree for possession of the subject premises, thereby handing-over vacant, peaceful, physical possession of the subject premises to the plaintiff; whereupon decree sheet dated 01.12.2020 was drawn-up.



What remained thereafter were the prayers for recovery of arrears of rent, mesne profits/damages for unauthorized use and occupation, arrears of electricity charges alongwith late payment charges and penalty, costs and other consequential reliefs, as set-out in the plaint.

2. A brief conspectus of the plaintiff's case is as follows:

- a. The subject premises was leased by Mr. Surinder Singh Walia, the plaintiff's father, to the defendants *vide* Lease Deed dated 21.03.2015 for running a restaurant in the name and style of '*Junglee Billie*'. The lease deed was for a period of 09 (nine) years which was to come to an end on 25.05.2024. The rent for the aforementioned period was Rs. 5,75,000/- per month from 26.05.2015 to 25.05.2018; after which a 15% increase was agreed to be levied and the rent was to be Rs. 6,61,250/- per month from 26.05.2018 to 25.05.2021; and with a similar agreed increase in rent thereafter to Rs. 7,60,437/- for the period from 26.05.2021 to 25.05.2024.
- b. The plaintiff's father died intestate on 10.12.2017; whereafter by way of a Family Settlement dated 16.10.2018, which was formalized by way of a decree passed by this court in CS (OS) 442/2018 titled *Himani Walia vs. Hemant Walia & Ors*, the subject premises fell exclusively to the plaintiff's share. Relinquishment Deeds dated 10.12.2018 and 20.05.2019 executed subsequently by the other legal heirs of the deceased in favour of the plaintiff made her the sole, absolute and exclusive owner of the subject premises.



- c. Later however, the plaintiff came to know that the defendants had not been paying rent since October 2017; and that they had closed down their business and the subject premises was lying vacant and locked. Accordingly, the plaintiff contends, that the lease deed stood terminated in terms of clauses 6 and 14 thereof and the defendants were in unauthorized and illegal possession of the subject premises.
- d. As a consequence, the plaintiff sent a Legal Notice dated 03.06.2019 formally terminating the lease deed with effect from the midnight of 30.06.2019 and 01.07.2019; while also calling upon the defendants to vacate the subject premises; and to pay arrears of rent and damages that had accrued. The plaintiff states that this legal notice was returned by the postal authorities with a noting that the defendants had "*left without address*".
3. The present suit was filed on 19.08.2019 and summons were issued to the defendants, which went unserved, with the office report stating that "*they are not residing at the given address*". Upon the plaintiff's application for substituted service being allowed, on 19.11.2019 a proclamation was duly published in the newspapers "*The Statesman*" and "*Veer Arjun*"; but the defendants remain unrepresented in the matter.
4. As seen from the record, *vide* order dated 19.12.2019 made by the learned Joint Registrar, the defendants' right to file written statement



was closed; and subsequently *vide* order dated 16.01.2020 made by the court, the defendants were set *ex-parte*.

5. Subsequently, in terms of order dated 10.12.2019 one set of the keys to the subject premises, comprising 05 keys which were lying deposited with court, was handed-over to learned counsel for the plaintiff, thereby handing-back possession of the subject premises to the plaintiff.
6. Thereafter, the plaintiff filed her affidavit dated 25.01.2020 by way of *ex-parte* evidence through her mother and constituted attorney Mrs. Urvashi Walia wife of late S.S. Walia, who (latter) was the original lessor. For sake of completeness, it may be recorded that the affiant to the affidavit-in-evidence is the constituted attorney appointed by the plaintiff *vide* Special Power of Attorney dated 16.12.2019, which was tendered in evidence as Exhibit PW 1/1 as recorded in examination-in-chief dated 17.02.2020.
7. By way of the present judgment, this court proposes to decide and dispose of the remaining prayers made in the suit *viz.* the prayers for recovery of arrears of rent; for recovery of mesne profits/damages for unauthorized use of occupation of the subject premises; for recovery of arrears of electricity charges alongwith late payment charges, penalty and other charges; and for costs of the suit.

**Recovery of arrears of rent:**

8. The plaintiff claims that in accordance with clause 1 of the lease deed, the defendants were liable to pay rent throughout the period of use and occupation of the subject premises but omitted to do so after



paying rent for the month of October 2017. The plaintiff has accordingly claimed arrears of rent for the period from November 2017 till the lease was terminated by way of legal notice dated 03.06.2019 with effect from 30.06.2019 [Exhibit PW 1/8]. It is seen that as per the terms of the lease deed, rent was payable at the rate of Rs. 5,75,000/- per month for the period November 2017 until 25.05.2018; and at the rate of Rs. 6,61,250/- per month for the period 26.05.2018 to 30.06.2019. Furthermore, the plaintiff also claims service tax (as was then applicable) on the payment of lease rent as was due and payable by the defendant under the lease deed.

9. The lease deed has been duly proved in evidence. The lease deed is a duly stamped and registered document; and is therefore admissible in law and the terms thereof are enforceable. There is also no cross-examination on behalf of the defendants.
10. Accordingly, it is held that the plaintiff is entitled to arrears of rent at the rate of Rs. 5,75,000/- per month for the period November 2017 until 25.05.2018; and at the rate of Rs. 6,61,250/- per month for the period of 26.05.2018 to 30.06.2019, in accordance with what was agreed to in the lease deed.

**Towards mesne profit/damages:**

11. The lease was terminated, as aforesaid with effected from 01.07.2019; and vacant, physical possession of the subject premises was received by the plaintiff on 10.12.2019 through court. The plaintiff is therefore seeking recovery of mesne profits/damages for unauthorized use and occupation of the subject premises for the period beginning



01.07.2019 to 10.12.2019 at the rate of Rs. 7,14,150/- per month (including GST and TDS) alongwith penalty at the rate of Rs. 15,000/- per day in addition to the agreed rate of rent, as per clause 13 of the lease deed.

12. In the circumstances of the case, since no enquiry was ordered for ascertaining the mesne profits under the provisions of Order XX Rule 12 of the Code of Civil Procedure 1908; and the agreed rate of rent for the period 01.07.2019 to 10.12.2019 under the lease deed itself is Rs. 6,61,250/-, this court is of the view that it would be fair, just and equitable to grant in favour of the plaintiff and against the defendants mesne profits/damages for unauthorized use and occupation of the subject premises (a) from the date that the termination of lease took effect, i.e. 01.07.2019 upto the date when the plaintiff received vacant, peaceful, physical possession of the subject premises through court i.e., 10.12.2019; and (b) at the rate of Rs. 6,61,250/- per month for the entire said period.

**Arrears of electricity charges:**

13. The plaintiff has also claimed arrears of electricity charges that were to be paid by the defendants in respect of electricity connection bearing CA No. 151526956 installed at the subject premises, alongwith late payment charges, penalty and other charges as imposed by the electricity company viz. BSES Rajdhani Power Ltd., as stipulated in clause 5 of the lease deed.
14. In support of this claim, the plaintiff has placed on record the last electricity bill received from the electricity company for the



connection installed at the subject premises, which is on record as Mark-E. This bill shows a pending amount of Rs. 7,31,350/-, which was due by 31.12.2018. It has further been averred in the affidavit-in-evidence, that the electricity connection in the subject premises stands disconnected by reason of non-payment of electricity charges.

15. Since there is nothing further on record indicating the present status of the electricity connection for the subject premises; nor anything to prove the final charges paid by the plaintiff to the electricity company for restoration of the electrical connection and for discharge of past arrears including penalty etc., this court is inclined to allow only the sum of Rs. 7,31,350/- as shown in the electricity bill placed on record, in favour of the plaintiff and against the defendants, towards arrears of electricity charges, late payment charges and penalty on that count.

**Costs:**

16. Since evidently the defendants did not vacate the subject premises despite service of legal notice dated 03.06.2019 within the statutory period as contemplated in section 106 of the Transfer of Property Act 1882, the plaintiff was compelled to move the present suit to recover possession of the subject premises alongwith mesne profits/damages for unauthorized use and occupation and for other reliefs. The defendants have also chosen not to defend the matter despite service and have had to be proceeded *ex-parte*; and it would therefore appear that the defendants had no defence to their failure to vacate the subject premises upon receiving notice from the plaintiff.



17. Accordingly, the plaintiff is entitled to costs for the suit, which are required to be assessed as per rules.
18. The Registry is accordingly directed to draw-up the costs to which the plaintiff is entitled as per the Delhi High Court Rules.
19. The suit is decreed in the above terms.
20. Decree sheet be drawn-up accordingly.
21. Pending applications, if any, stand disposed of.

**ANUP JAIRAM BHAMBHANI, J**

**AUGUST 22, 2022**

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