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

+ **RFA(COMM) 6/2022**

AMARJEET KAUR & ANR.

..... APPELLANTS

Through Mr.Vishal Chaudhary and Mr.Aman
Yadav, Advocates along with
appellants in person.

versus

DEEPAK LALWANI & ANR.

..... RESPONDENTS

Through Mr.Apoorv Jain and Mr. Jatin,
Advocates.

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Date of Decision: 06 April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral):

C.M. APPL.6600/2022 (exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

RFA(COMM) 6/2022 & CM APPL.6599/2022 (stay)

1. The appellants have challenged the impugned order dated 18.11.2021 passed in CS (COMM) No.9/2018 vide which the suit of respondents/plaintiffs was decreed and a decree for possession of the suit property bearing Shop no. 4A, New Market, Tilak Nagar, New Delhi – 110018 was passed in favour of the respondents/plaintiffs and against the

appellants/defendants. Learned trial court further passed a decree of arrears of rent/damages at the rate of Rs.1,57,000/- per month together with hire charges of Rs.28,350/- per month with effect from 01.10.2017 till the date of actual vacant possession to the plaintiff with costs.

2. Though the appellants have only prayed for setting aside impugned order/judgment dated 18.11.2021, but in the body of appeal the orders dated 26.10.2021, 28.10.2021, 11.11.2021 and 17.11.2021 have been mentioned vide which the learned trial court dismissed the applications filed by appellants i.e. application under Section 114 read with Order XLVII and Section 151 of the Civil Procedure Code (CPC) for review of order dated 22.2.2021, an application under Section 5 of Limitation Act for condonation of delay in filing of the written statement, an application under Order VII Rule 10 CPC for return of the plaint to its original instituted court and an application under Order VII Rule 11 CPC.

3. In the trial Court, the appellants sought review of the order dated 22.02.2021 on the ground that the same was passed in haste and in the absence of the respondent. It was alleged that the application filed by appellant no.2/defendant no.2 under Section 114 read with Section 151 CPC has been dismissed by the learned trial court vide order dated 28.10.2021 without appreciating material on record.

4. The appellants alleged that the application filed under Section 5 of the Limitation Act for condonation of delay in filing of the written statement was also dismissed despite the fact that each and every day of the delay was explained. It has been alleged that the learned trial court also did not consider the arguments and case law cited by the appellants.

5. The appellants have further stated that the application filed under

Order VII Rule 10 of the CPC for return of plaint to its original instituted court was also dismissed despite the fact that the Commercial Court Act, 2015 was not applicable in the present set of facts. The plea taken by the appellants is that the present dispute does not fall within the definition of ‘commercial dispute’ as defined under the Commercial Courts Act, 2015. Reliance has been placed upon ***Deepak Polymers Pvt. Ltd. Vs. Anchor Investments Pvt. Limited*** C.O.759/2021.

6. It has been alleged that the learned trial court overlooked the contents of the lease deed dated 01.01.2016 and merely relied upon the lease deed dated 04.09.2017. It was stated that appellant no.2 had never executed the lease deed dated 04.09.2017.

7. The appellants have stated that in fact as per the oral agreement between respondent no.1 and appellant no.1, the appellant deposited a sum of Rs.5,00,000/- and it was agreed that the interest amount would go towards the servicing of the rent of the said leased property.

8. Allegedly, the amount of Rs.5,00,000/- was paid as follows:

15.06.17	Cash	Rs.85,000/-
30.06.17	Cash	Rs.1,00,000/-
27.07.17	Cheque	Rs.1,57,000/-
17.07.17	Cheque	Rs.28,350/-
07.08.17	Cheque	Rs.1,57,000/-
07.08.2017	Cheque	Rs.28,350/-

9. The appellants have stated that in fact, the respondents wanted to dispossess the appellant no.1 from the suit property without following the due process of law and without refunding the amount of Rs.5,00,000/- to the appellant no.1. The legal notice sent by appellant no.1 to respondent no.1 dated 27.06.2018 was neither replied to nor complied with.

10. It has further been stated that the suit for permanent injunction which was filed by the appellant against respondent no.1 to restrain respondent no.1 from dispossessing the appellant no.1 from the suit property without following the due process of law is still pending disposal.

11. The appellants have stated that the suit filed by the respondents was an abuse of the process of law. The appellants have further stated that the learned trial court has wrongly allowed the application filed under Order 15A read with Section 151 CPC and the said order was passed in haste ignoring the material on record. The lease deed dated 04.09.2017 has been stated to be a forged and fabricated document. The ownership of the respondents has also been disputed by the appellants. The appellants have further stated that the complete trial was required to ascertain the damages and mesne profit. However, the learned trial court has passed the impugned order based on conjectures and surmises.

12. Vide order dated 18.02.2022, the appellants were directed to file an affidavit clearly stating the details of all their movable and immovable assets as well as their current residential addresses on or before the next date of hearing. The appellants were also directed to be present in person.

13. Pursuant to the direction, the appellants no.1 and 2 filed the affidavits of assets. In the affidavit the appellant no.1 reiterated that as per oral

agreement, the appellant no.1 deposited Rs.5,00,000/- and it was further agreed that the interest amount would go towards the servicing of the rent of the leased property. Appellant no.1 has also stated that she had taken a sum of Rs.25 lakhs and Rs.30 lakhs from appellant no.2 in April 2016 and in the year 2017 respectively and invested the said amount in the shop. It was stated that appellant no.2 joined the business of appellant no.1 as a caretaker. The plea of appellant no.1 is that when appellant no.1 requested for refund of the security amount, respondent no.1 denied and initiated the proceedings for dispossessing the appellant. The appellants have stated that appellant no.1 does not have any movable or immovable property in her name. However, the appellant No.1 has not filed any document to support her averments.

14. The appellant no.2 in his affidavit, has also stated that appellant no.1 had taken Rs.25 lakhs and Rs.30 lakhs in April 2016 and in the year 2017 from him for purpose of investment in the shop. Appellant no.2 stated that Rs.25 lakhs was given by him to appellant no.1 after taking a mortgaged loan of Rs.25 lakhs from City Bank. Similarly, Rs.30 lakhs was paid by appellant no.2 after withdrawing the same from his bank account. However, copy of the bank statement or any document to substantiate his plea has not been filed.

15. Mr.Apoorv Jain, learned counsel for the respondents stated that there is no veracity in the contentions raised by the appellants. It has been stated that the premises in dispute was let out to the appellants vide the lease deed dated 04.09.2017. The lease deed has duly been signed and executed by the appellants. Learned counsel for respondents submitted that initially the premises in dispute was let out to the appellant no.1 vide lease deed dated

01.01.2016 by Sh.Deepak Lalwani (respondent no.1) at a monthly rent of Rs.1,50,000/-. Subsequently, the tenancy was extended vide another lease deed dated 04.09.2017 executed between Taiyou Global Pvt.Ltd. (respondent no.2) and both the appellants. The lease deed dated 04.09.2017 was for a period of 11 months at a monthly rent of Rs.1,57,500/- per month along with the amount of Rs.28,350/- per month payable in advance inclusive of the hire charges of all the fittings and fixtures in the premises. Learned counsel for the respondents has submitted that the learned trial court has passed the impugned order on the basis of material on record and in accordance with law.

16. We have considered the submissions of the parties. We have also interacted with appellant no.1 who is present in Court in the presence of her lawyer.

17. We find that the learned trial court has passed the orders strictly in accordance with the law. Vide order dated 22.02.2021, on an application being moved by the respondent under Order XV-A (8) (b) (c) CPC for striking off the defence of the appellants/defendants and decreeing the suit, the trial court noted the submission of the appellants/defendants that they have not paid any rent as per the order in question and had filed an appeal against the said order. However, the appellants were unable to show any stay order. Learned trial court noted that there appears to be a willful non-compliance by the appellants/defendants and therefore, their defence was struck off. It is pertinent to mention that appellants have not shown to this Court any appeal filed against the order dated 22.02.2021 vide which on an application under Order XV-A read with Section 151 CPC the appellants were directed to pay rent at the rate of Rs.1,57,000/- per month together with

hire charges at the rate of Rs.28,350/- per month with effect from 1.10.2017 till date. Thus, the false averments of the appellants are writ large.

18. The perusal of the order reveals that on the same day, appellant no.1/defendant no.2 appeared and filed an application under Section 114 read with Order 47 and Section 151 CPC for review of the order dated 22.02.2021. Learned trial court vide detailed and reasoned order dated 28.10.2021 dismissed the application filed under Section 114 read with Order 47 and 151 CPC by defendant no.2.

19. The learned trial court also considered the application filed under Section 5 of the Limitation Act for condonation of delay of filing of the written statement and noted that defendant no.2 was served through publication on 03.06.2019. Learned trial court after considering the submissions of appellant no.2/defendant no.2 noted that he had given vague facts and he had tried to conceal the correct facts relating to his actual address. It was noted that appellant no.2/defendant no.2 appeared to have raised the plea merely to delay the claim of the plaintiffs. Learned trial court noted that the written statement as per the Commercial Courts procedure was required to be filed within thirty days with further provision of extension upto 90 days subject to providing cogent and sufficient reasons. It was noted that defendant no.2 would have 120 days from the date of his service for filing of written statement. The written statement was filed on 28.10.2021 which was beyond the period of 120 days. Learned trial court rejected the plea of appellant no.2/defendant no.2 regarding directions passed by the Supreme Court in *suo motu* case as the period of limitation available to appellant no.2 had expired way back in the year 2019. It is pertinent to mention here that in *Suo Motu* Writ Petition (Civil) No.3 of

2020 in *Re: Cognizance for Extension of Limitation* the Supreme Court passed the first order ordering the extension of limitation period for filing of cases and applications in courts and tribunals only in March, 2020.

20. The appellants in the appeal have only prayed for setting aside the impugned order/judgment dated 18.11.2021 vide which the learned Trial Court passed in decree for possession of the suit property and decree of arrears of rent/damages @ Rs.1,57,000/- per month together with hire charges of Rs. 28,350/- w.e.f. 01.10.2017 till the date of actual vacant possession to the plaintiff with costs is passed. However, in the appeal, the appellants have mentioned all the interim orders passed by the learned trial Court. We have examined all such order though there is no specific challenge to the interim orders. We have found that the learned Trial court has passed the detailed and reasoned order after affording the appellants an opportunity of being heard and we do not find any defect/lacuna in the same.

21. The appellants have apparently taken the plea which has not been substantiated in any manner regarding the payment of Rs. 5,00,000/-. There is not even an iota of proof regarding the payment of such Rs.5,00,000/- to the plaintiff/respondents. The bald plea of the appellants regarding this cannot be accepted. It is also pertinent to mention that this plea was also considered in detail by the learned trial court and the same was not accepted. We do not find any reason to deviate from the finding of the learned Trial Court in this regard.

22. It is also pertinent to mention that the appellants have not disputed the execution of the lease deed dated 01.01.2016. In respect of the lease deed dated 04.09.2017, the appellant no.1 has stated that signatures were taken on blank papers. The appellant no. 2 has denied the execution of lease

deed. However, it is beyond comprehension that if the signatures of appellant no. 1 were taken on blank papers, the appellant no. 1 would not challenge it before any forum prior to have taken this plea before the learned trial court. The plea taken by the appellant on the face of it is untenable. The case of the appellant-defendant that he had signed blank papers without application of mind is only to be stated to be rejected. One of us (Manmohan, J) in ***Smt. Sangeeta Anand vs. Mr. Amit Madan & Ors., CS(OS) 2687/2008*** has held that if the parties are not famous sportsmen or film stars, they are not supposed to sign autographs on blank papers without application of mind. Literate persons are presumed in law to sign papers after reading the same. Accordingly, the sanctity of the Deed has rightly been accepted by the Trial Court. It is also to be noted that in both the lease deeds, there is no mention of any payment of Rs.5,00,000/- towards servicing the rent amount and hire charges. It is also not plausible that against the monthly rent of Rs. Rs.1,57,000/- per month and hire charges of Rs.28,500/-, the landlord would accept only sum of Rs.5,00,000/- towards servicing of the rent charges. The plea taken by the appellants, therefore, is noted only to be rejected.

23. The appellants have not disputed the relationship of landlord and tenant however, they have raised half-hearted plea of challenging the ownership of the respondents. It is settled proposition that the tenant is estopped from denying the title of the landlord.

24. It may be noted that an order for the payment of rent together with hire charges were made vide order dated 22.02.2021. This order was not challenged by the appellants. Furthermore, the orders rejecting the application for condonation of delay in filing written statement, order of striking of the defence of appellant no.1 and order regarding rejection of the

right of appellant no.2 for filing of written statement had not been challenged by the appellants. Since these orders had attained finality, the learned trial court had rightly passed the impugned order dated 18.11.2021.

25. Further, one of us (Manmohan, J) in *Su-Kam Power Systems Ltd. Vs. Kunwer Sachdev and Anr., 2019 SCC OnLine Del 10764* has held that if the Court is able to make the necessary finding of fact, apply the law on facts and the same is proportionate more expeditious and less expensive means to achieve a fair and just result, then there will be no real prospect of successfully defending the claim and the Court shall be entitled to pass a summary judgment under Rule 3 of Order XIII-A CPC.

26. We consider that in view of the discussions hereinabove, there is no cogent and creditworthy material putforth by the appellants for setting aside the order/judgment dated 18.11.2021. Hence, the appeal along with the pending application is dismissed.

DINESH KUMAR SHARMA, J

MANMOHAN, J

APRIL 06, 2022

rb/Pallavi