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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1238/2022 & CM APPL. 49315/2022, CM APPL. 49316/2022

SHRI NARSINGH SHAH Petitioner
Through: Mr. Ashwin Vaish, Adv.

versus

BDR DEVELOPERS PVT. LTD Respondent
Through: Mr. Akhil Sachar, Adv. with
Mr. Sangram Singh and Mr. Arnav Pal
Singh, Adv.

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

J U D G M E N T (ORAL)
23.11.2022

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1. The order dated 5th November 2022, under challenge in the present petition instituted under Article 227 of the Constitution of India, passed by the learned Additional District Judge (“the learned ADJ”) in CS DJ 469/2019 (*M/s BDR Developers Pvt. Ltd. v. Narsingh Shah*), reads as under:

“16 CS DJ 469/19
M/S BDR DEVELOPERS PVT. LTD. Vs. NARSINGH SHAH
NARSING SAH

05.11.2022

Present: Sh. Sanjay Bansal, Sh. Akhil Sachar and Sh. Arnav
Pal Singh, Ld. Counsels for Plaintiff.

Sh. Ashwin Veish, Ld. Counsel for defendant through
video conferencing.

At the outset, arguments on maintainability of application
under Order 39 Rule 2 A CPC on behalf of the plaintiff heard.

At this stage. Id. counsel for the plaintiff submits that he does not wish to press for this application, which accordingly stands dismissed as not pressed. Ld. counsel for the plaintiff further pointed out that in compliance of order dated 23.07.2022, defendant has failed to make the payment of the admitted rent in favour of the plaintiff and consequent to the observations of the court dated 07.10.2021, the defence of the defendant should be struck of.

On the contrary, Id. counsel for the defendant submits that due to financial constraints, 06 weeks time may further be granted to defendant to clear the entire payment.

Order dated 07.10.2021 is perused, as per which show cause notice has already been issued by this court to the defendant by virtue of Order 15 A of CPC as to why the defence of the defendant should not be struck of for not making the payment as per the said order. Thus, it is manifest that for more than a year, defendant has disregarded the said show cause notice by not filing any response to it. Nonetheless, on the request of Id. counsel for the defendant, this court is granting indulgence to the defendant to clear the entire outstanding rent in favour of the plaintiff within 02 weeks from today, failing which the defence of the defendant shall be deemed to be struck of.

Ld. counsel for the plaintiff is at liberty to mention this fact after expiry of 02 weeks from today, in case of non-compliance of this order, so that formal order could be passed in this regard.

Otherwise, the matter is at the stage of arguments on application under Order 6 Rule 17 CPC and under Order 12 Rule 6 CPC.

List now for arguments on 01.02.2023.

Ld. counsel for the plaintiff has also pointed out that cost imposed vide order 28.07.2020 and 04.12.2021 has also not been paid by the defendant. Ld. counsel for plaintiff does not press for the cost imposed vide order dated 04.12.2021, but insist that the cost imposed vide order dated 28.07.2020 be paid. Let the needful be done on behalf of the defendant before next date of hearing.

(Navjeet Budhiraja)
ADJ-03/South-East District
Saket Courts, New Delhi/05.11.2022"

2. To understand the background of this order, and the reason for the petitioner to approach this Court under Article 227 thereagainst, a

brief historical perspective is necessary.

3. CS DJ 469/2019 was instituted by the respondent against the petitioner, seeking a decree for recovery of possession and ejectment of the petitioner from the property located at No. A-25, Molarband, Post Office, Badarpur, New Delhi-110044 (“the suit property”), apart from rent and *mesne* profits in respect of the suit property.

4. The plaint asserted that the respondent was the sole and exclusive owner of the suit property, in which the petitioner had been a lessee, *vide* registered lease deed dated 11th June 2018, which was allegedly terminated by the respondent by a notice to quit dated 15th April 2019. As the petitioner failed to vacate the suit property, despite the said notice, a suit was instituted, seeking recovery of the suit property from the petitioner.

5. Along with the suit, the respondent moved an application under Order XV-A of the CPC, as applicable to the State of Delhi, which reads as under:

“ORDER XV-A

STRIKING OFF DEFENCE IN A SUIT BY A LESSOR:

- (1) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order (within such time as the court may fix and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike

off the defence.

- (2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.”

6. During the course of the suit proceedings, the learned ADJ came to pass an order dated 4th August 2020. To the extent the said order put up the matter for arguments on an application filed by the petitioner under Order VI Rule 17 of the CPC without first deciding the application filed by the respondent under Order XII Rule 6 of the CPC. The said order was challenged by the respondent before this Court by way of CM(M) 412/2020 (***BDR Developers Pvt. Ltd. v. Narsingh Shah***).

7. The following orders which came to be passed by this Court in the aforesaid CM(M) 412/2020 deserve to be reproduced, *in extenso*:

Order dated 1st September 2020

- “1. The hearing was conducted through video conferencing.
2. Learned counsel appearing for the respondent submits that since the mediation proceedings have failed yesterday, he prays for time to file reply.
3. Let the same be filed within two weeks. Rejoinder, if any, be filed within one week thereafter.
4. List for consideration on 12.10.2020.
5. Learned counsel appearing for the petitioner submits that the respondents are in arrears of rent @ Rs. 50,000/- per month.
6. Learned counsel appearing for the respondent submits that in terms of the understanding between the parties, the respondent is not a tenant in the property but had received a loan from the petitioner and CM(M) 412/2020 was paying interest at the above referred rates and not rental. He, however, admits that there are arrears.

7. Learned counsel for the respondent under instructions submits that respondent shall clear entire arrears at the above referred rates within a period of four weeks from today.

8. Mr. Sachar submits that it is not interest but it was rent which was payable.

9. Without prejudice to the rights and contentions of the respective parties as to whether it was rent or interest, since the amount is not in dispute, respondent is directed to clear entire arrears within a period of four weeks from today.

10. It is clarified that payment and receipt of the amount would be without prejudice to the rights and contentions of the parties as to whether the same is towards rental or interest.

11. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.”

Order dated 12th October 2022

“1. The hearing was conducted through video conferencing.

2. Learned counsel for the petitioner submits that despite an assurance payment has not been made.

3. Learned counsel for the respondent submits that a sum of Rs.9.50 lakhs has been made and no further amount is due and payable to the petitioner. He submits that reply has been filed, however, the same is not on record. Let him check up with the registry and have the same placed on record.

4. Rejoinder be filed within two weeks.

5. List on 02.11.2020.

6. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.”

Order dated 2nd November 2020

“1. The hearing was conducted through video conferencing.

2. Learned counsel for the respondent submits that without prejudice, respondent is willing to deposit a sum of Rs. 50 lakhs in total in all the pending cases. Let the respondent deposit a sum of

Rs. 50 lakhs in favour of Registrar General of Delhi High Court within six weeks.

3. List for consideration on 11.01.2021.
4. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.”

Order dated 18th December 2020

“CM APPLN. 33517/2020

1. The hearing was conducted through video conferencing.
2. Respondent seeks extension of time to deposit the amount as directed by order dated 02.11.2020. It is submitted that a sum of Rs. 10 lakhs is available and shall be deposited within two days and the balance sum of Rs. 40 lakhs would be deposited before the next date of hearing.
3. Learned counsel appearing for the petitioner submits that after this deposit further monthly amount shall become due @ Rs. 3 lakhs per month with effect from 01.09.2020.
4. Let the respondent deposit the said amount of Rs. 10 lakhs within three two and the balance amount of Rs. 40 lakhs before 11.01.2021 with the Registrar General of this Court. Respondent shall deposit the arrears of monthly amount which will now become due within four weeks.
5. List on 11.01.2021, date already fixed.
6. It is clarified that this deposit is without prejudice to the rights and contentions of the parties. The application is allowed in the above terms.
7. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.”

Order dated 4th March 2021

“These petitions have been heard through video conferencing.

1. The learned counsel for the petitioner prays for the release of the amount deposited by the respondent(s) with the Registry of this Court in terms of the order dated 18.12.2020 of this Court.
2. The dispute between the parties is as to whether the amount

being deposited by the respondents is as rent as demanded by the petitioner, or as interest as claimed by the respondent(s). This Court in its order dated 01.09.2020, had directed that the payment made by the respondent(s) shall be paid and received by the petitioner without prejudice to their rights and contentions as to whether the same is towards the rent or interest. Unfortunately, this order was not continued thereafter and the amount has been kept deposited with this Court.

3. The learned counsel for the respondent(s) maintains that the amount deposited with this Court is towards the interest payment and not for the payment of rent.

4. Without entering into this controversy as to whether the said payment is towards interest or rent, as the amount paid is admitted to be due to the petitioner, the same be released to the petitioner and be accepted by the petitioner without prejudice to its contentions that, in fact, rent is payable by the respondent(s) and not interest.

5. List for hearing on 15th April, 2021.”

8. Following the aforesaid orders, CM(M) 412/2020 was dismissed by a Coordinate Bench of this Court *vide* judgment dated 3rd August 2021, holding that there was no error in the decision of the learned ADJ to take up the application under Order VI Rule 17, filed by the petitioner, before hearing the application of the respondent under Order XII Rule 6 of the CPC.

9. Thereafter, the following orders came to be passed by the learned ADJ:

Order dated 7th October 21

"21 CS DJ 469/19

M/S BDR DEVELOPERS PVT. LTD. Vs. NARSINGH SHAH@ NARSINGSAH

07.10.2021

As per latest direction of Hon'ble High Court of Delhi *vide* Office Order No. 700/RG/DHC/2021 dated 30.09.2021, the cases

are being taken up through physical hearing and video conferencing by increasing days of physical hearing as per the Duty Roster, which is available on the official website.

Present: Sh. Akhil Sachar with Sh. Navin, Ld. Counsel for the plaintiff.

Sh. V. Thomas, Ld. Counsel for the defendant.

It is informed that the petition filed by the plaintiff before Hon'ble High Court of Delhi has already been dismissed. Now, this case has to be heard on application under Order 6 Rule 17 CPC filed by the defendant. Reply to the said application has been filed. Copy supplied.

Adjournment is sought on the ground that defendant has engaged a new counsel who needs time.

Accordingly, put up for argument on said application under Order 6 Rule 17 CPC on **04.12.2020**.

At this stage, Ld. Counsel for the plaintiff has also pointed out that the defendant is not making payment as per Order 15A CPC as passed earlier since January, 2021 onwards. Accordingly, the defendant is directed to show cause as to why his defence should not be struck off for noncompliance of previous order of this court as per Order 15 A CPC.

(Naresh Kumar Laka)
Additional District Judge-03,
South East District"

Order dated 4th December 2021

"16 CS DJ No. 469/19

M/s BDR Developers Pvt. Ltd. vs. Narsingh Shah@ Narsing Sah

04.12.2021

As per latest direction of Hon'ble High Court of Delhi vide Office Order No. 798/RG/DHC/2021 dated 29.10.2021, the cases are being taken up through physical hearing as well as video conferencing w.e.f. 22.11.2021.

Present: Sh. Akhil Sachar with Sh. Navin Baisla and Sh. Akshay Bhatt, Ld. Counsel for the plaintiff.

Sh. V. Thomas, Ld. Proxy Counsel for the defendant.

Adjournment is sought on the ground that counsel for the defendant has gone to Gwalior and he was supposed to come today but due to some health problem he could not come. Counsel for the plaintiff strongly opposed the said adjournment.

In view of the previous order sheet, this case is adjourned with a direction to the defendant to pay the cost of Rs. 2000 to the plaintiff for delaying the case.

It is also stated that defence of the defendant may be struck off as he has not complied with order of Hon'ble High Court of Delhi dated 01.09.2020 where direction was given to clear all the arrears of amount.

Copy of the said order is placed on record. Accordingly, the defendant is given last opportunity to clear all the outstanding amount by the next date of hearing failing which defendant is directed to show cause as to why his defence should not be struck off.

Put up for payment of cost and argument on pending application on **02.02.2022**.

(Naresh Kumar Laka)
Additional District Judge-03,
South East District"

Order dated 2nd February 2022

“18 CS DJ/469/2019

M/S BDR DEVELOPERS PVT. LTD. versus NARSINGH
SHAH@ NARSING SAH

02.02.2022

As per latest direction of Hon'ble High Court of Delhi vide Office Order No. I/RG/DHC/2022 dated 12.01.2022, the cases are being taken up through virtual hearing w.e.f. 17.01.2022 to 11.02.2022.

Present: Sh. Akhil Sachar, Ld. Counsel for the plaintiff.
Sh. Ahshwin Yaish, Ld. Counsel for the defendant.

Ld. Counsel for the defendant stated that no order was passed as per Order 15 A CPC by the Hon 'ble High Court of Delhi and a false submission was made on the last date by the counsel for the plaintiff. Ld. Counsel for the plaintiff disputed the said fact.

It is further stated by the Ld. Counsel for the defendant that

other suit filed by the defendant is pending in the court of Ms. Geetanjali, Ld. ADJ, South-East District and is listed on 14.02.2022 and an application seeking transfer of that case in this court will be filed very soon.

Accordingly, put up for further proceedings/arguments on **14.02.2022.**

(Naresh Kumar Laka)
Additional District Judge-03,
South East District”

Order dated 14th February 2022

“17 CS DJ 469/19
M/S BDR DEVELOPERS PVT. LTD. Vs. NARSINGH SHAH @
NARSING SAH

14.02.2022

As per latest direction of Hon'ble High Court of Delhi vide Office Order No. 67/RG/DHC/2022 dated 11.02.2022, the cases are being taken up through video conferencing and physical hearing on alternative days as per the Duty Roster, which is available on the official website.

Present: Sh. Akhil Sachar, Ld. Counsel for the plaintiff.
Sh. Ashwin Yaish, Ld. Counsel for the defendant.

Counsel for the plaintiff states that the defendant did not pay the amount which he agreed/offered before the Hon'ble High Court of Delhi in a petition which was pending there. Ld. Counsel for the defendant states that firstly the said direction was not given under Order 15A CPC and secondly the said order was not extended further on subsequent hearing and the defendant is not a lessee/tenant in the suit property, therefore he is not liable to pay the said amount. Same is disputed by other side.

2. After hearing submissions from both sides, it came on record that the defendant claimed himself to be a borrower of some amount allegedly taken from the plaintiff and he has also admitted about loan transaction as well as interest amount.

3. On the other hand, the Ld. counsel for the plaintiff argued that the defendant was not a borrower but a tenant and in that capacity he is liable to pay arrears of rent for which orders were passed by the Hon'ble High Court of Delhi.

4. The aforesaid claims of the respective parties are subject to further evaluation and they will be decided later on. However, in view of the specific admitted plea of the defendant with regard to

loan transaction and payment of interest amount in the past, the defendant is directed to pay the amount equivalent to the said alleged interest (irrespective of the fact whether it was interest or rent) from the period of non-payment i.e. January 2021 till date within 30 days to the plaintiff. The defendant will also continue to pay the said amount as per agreed terms on month to month basis to the plaintiff till further order. This order has been passed to protect the interest of the plaintiff by virtue of power under Section 151 CPC r/w Order 12 Rule 6 CPC and it is subject to final decision.

5. The Ld. counsel for the defendant states that there are other connected cases which are pending in other courts and a transfer petition is already pending today for clubbing of all cases in one court.

6. Accordingly put up for arguments on the pending applications on 23.04.2022.

(Naresh Kumar Laka)
Additional District Judge-03,
South East District.”

10. Against the afore-extracted order dated 14th February 2022, the petitioner approached this Court by means of CM(M) 297/2022 (*Narsingh Shah v. BDR Developers Pvt. Ltd.*).

11. In the said petition, the petitioner, on 12th April 2022, submitted that he was willing to deposit the amount directed by the learned ADJ vide the order dated 14th February 2022 *supra*, with a caveat that the payment be not taken as having been made under Order XV-A of the CPC. The said submission of the petitioner, and the observation of the court which followed, as contained in paras 4 to 7 of the order dated 12th April 2022 passed by this Court in CM(M) 297/2022, read thus:

“4. Learned counsel for the petitioner states that the petitioner is ready to pay the amount as directed by the trial court vide Impugned order to the respondent/plaintiff, but said payment shall not be taken as made under the provisions of Order XV-A of the CPC.

5. The trial of the suit before the concerned trial court is at the

initial stage. It is for the concerned trial court to decide the nature of legal relationship between the concerned parties on 'the basis of pleadings, documents and evidence to be led by the parties. Learned counsel for the respondent/plaintiff states that any observation made in this order may affect or cause serious prejudice to the rights and contentions of the respondent/plaintiff during the trial.

6. The petitioner/defendant shall continue to make the payment as directed in para 4 of the Impugned order. However, it is made clear that the payments of amount as per Impugned order dated 14th February, 2022 shall be without any prejudice to the rights and contentions of both the parties and pleas to be raised before the trial court for disposal of the application under Order XII Rule 6 of the CPC.

7. This petition alongwith pending applications stands disposed of.”

12. Thereafter, the learned ADJ came to pass orders dated 23rd July 2022 and 5th November 2022, of which the latter stands impugned in the present petition and which already stand reproduced in para 1 *supra*. The order dated 23rd July 2022 reads as under:

“M/s BDR Developers Pvt. Ltd. Vs. Narshing Shah @ Narshing Shah

23.07.2022

Present: Sh. Akhil Sachar, Ld. Counsel for Plaintiff
Sh. Ashwin Vaish, Ld. Counsel for Defendant.

Ld. counsel for plaintiff has submitted that the defendant has not complied with the order dt. 14.02.2022 by not paying the amount as directed therein and a tabulation has been filed whereby outstanding rent till 31.01.2022 is shown as Rs.38,50,000/-, which as per Ld. counsel till July, 2022 has been plied up to the tune of Rs.54,50,000/-. In support of this Ld. counsel for plaintiff has also placed on record order of Hon'ble High Court of Delhi dt. 12.04.2022.

Ld. counsel for defendant submits that he is not disputing payment of the outstanding amount as per the order of this court as well as of Hon'ble High Court of Delhi, however, he is seeking some time to clear the dues and also to verify the tabulation filed today.

Be that as it may, 03 months time be granted to the defendant to clear the entire outstanding subject to verification of the tabulation. However, to balance the interest of the plaintiff as well, the defendant is directed to pay 50% of the total amount of Rs.54,50,000/- to the plaintiff by 30.09.2022. It is made clear that in case 50% of the amount is not paid by the said date, the plaintiff is at liberty to bring it to the notice of the court for taking proper steps against the defendant.

It is also made clear that the aforementioned amount is a consolidated amount of all the five connected matters filed on behalf of the plaintiff.

At this stage, it is submitted by Ld. counsel for the defendant as regard to shop no.F-15 which is the subject matter of suit no.467/20 I 9, the plaintiff does not have any locus to proceed with the suit as admitted up suit property has already been sold to some other party. In regard to this Ld. counsel for the plaintiff submits that the plaintiff is claiming rent in regard to this suit property till July 2020 and not thereafter.

To the extent of question of locus of plaintiff to proceed the suit in respect of Shop no.F-15, Ld. counsel for defendant has raised a valid point in regard to which clarification should be furnished on behalf of plaintiff on the next date of hearing.

List now for verification of payment of 50% amount as directed, argument on applications U/o 6 Rule 17 CPC and U/o 12 Rule 6 CPC on 05.11.2022.”

Rival contentions and analysis

13. A reading of the impugned order discloses that the decision to strike off the defence, of the petitioner, in the event of default, on the part of the petitioner, to clear the entire outstanding rent payable to the respondent till that date (5th November 2022) has been taken under Order XV-A(2) of the CPC. This is apparent from the fact that the learned ADJ has specifically relied on the show cause notice, purportedly issued under Order XV-A(2) of the CPC on 7th October 2021.

14. I may observe, in this context, that I have already opined in

Rashi Misra v. B. Kalyana Raman¹, that Order XV-A (1) and Order XV-A(2) are required to be strictly complied with. In other words, there must be (i) in the first instance, a direction for deposit of arrears of rent and/or of future monthly rent under Order XV-A(1), (ii) a default, by the tenant, in complying with the order, (iii) a show cause notice, by the court to the allegedly defaulting tenant, requiring him to show cause as to why his defence be not struck off on account of non-compliance with the direction for deposit and (iv) consideration of the reply, if any, submitted by the tenant in response to such show cause notice.

15. I have also had occasion to observe that, where the CPC specifically envisages issuance of a show cause notice the legislative intent has to be given due primacy and importance. The exercise of issuance of show cause notice, cannot be reduced to a formality. It is not permissible, therefore, for the court to, on being informed by the landlord that there has been no compliance, by the tenant, with the order of deposit passed under Order XV-A(1), to merely question the tenant in court as to why he has not complied with the order and straightway proceed to strike off the defence of the tenant, holding that no satisfactory explanation was forthcoming.

16. The fact that Order XV-A(2) envisages consideration, by the court, of the reply submitted by the tenant to the show cause notice issued under the said provision, implies that time must be given to the tenant to respond to the show cause notice. In other words, while it is certainly permissible for the learned Trial Court to orally put the allegedly defaulting tenant on notice under Order XV-A(2) as to why

¹ MANU/DE/1650/2022

his defence be not struck off for non-compliance with the order of deposit, the tenant has to be given time to respond to the said show cause notice. The duration of time so granted is not of importance; what is necessary is that a meaningful opportunity to reply must be extended by the allegedly defaulting tenant. Even a days', or two days' time might, on occasion and depending on the facts and circumstances, suffice. Time for submitting a written response to the show cause notice has, however, to be granted howsoever short. In case the tenant does not submit a written response within the period granted, the court would be well within its authority in striking off the tenant's defence. If, however, a response is submitted, that response has to be considered before a decision to strike off the defence is taken. That, in my view, is the inexorable protocol envisaged by Order XV-A(1) and Order XV-A(2), which cannot, in law, be compromised.

17. What is required to be seen is, therefore, whether the said protocol was followed in the present case, before the impugned order dated 5th November 2022 came to be passed by the learned ADJ.

18. As already noted, the learned ADJ proceeds on the premise that the show cause notice under Order XV-A(2) was issued on 7th October 2021.

19. A reading of the order dated 7th October 2021 discloses that the learned ADJ has, in the said order, referred to default, on the part of the petitioner, in making payment as directed under Order XV-A of the CPC *from January 2021 onwards*.

20. Mr. Vaish, learned Counsel for the petitioner, submits that there is, in fact, no order passed under Order XV-A of the CPC, calling upon the petitioner to make monthly payment w.e.f. January 2021. As such, he submits that the basic premise on which the show cause notice was issued on 7th October 2021 was itself fallacious.

21. As against this, Mr. Sachar seeks to place reliance on the order dated 1st September 2020, read with the subsequent order dated 18th December 2020, passed by this Court in CM(M) 412/2020.

22. To this, Mr. Vaish responds by submitting that, in the first instance, the order dated 1st September 2020 was not an order passed in the suit and that what is required by Order XV-A is non-compliance with an order of deposit passed in the suit.

23. This argument of Mr. Vaish, I may straightway observe, is not acceptable. Order XV-A only requires an order of deposit, either of arrears of rent and/or of monthly deposit of future rent, to have been passed before the show cause notice alleging default in compliance with the said order comes to be issued. There is no format prescribed for the show cause notice. Neither does the provision require the order for deposit to be specifically passed under Order XV-A. All that the court is required to see in XV-A(1) is, therefore, whether (i) the suit is a suit by a lessor/owner for eviction of a lessee or for recovery of rent and mesne profits and (ii) whether there is any direction, by the court, to the allegedly defaulting tenant, to deposit the arrears upto the date of the order and/or, thereafter, to continue to deposit monthly rent.

24. If, therefore, any order has been passed by the Court, in a suit of the nature envisaged by Order XV-A(1) directing deposit of arrears upto the date of the order and rent in future, that would suffice as an order of deposit for the purposes of Order XV-A(1), whether it purports, or does not purports, to have been passed under the said provision. If such an order is not complied with, there is, *ex facie*, non-compliance with the meaning of Order XV-A(2).

25. Further, in my view, it is not necessary that the order of deposit under Order XV-A(1) must be passed in the suit. That, in my opinion, would be defeating the purpose of Order XV-A(1) and also imputing, to the provision, an unwarrantedly narrow interpretation. Any order of deposit, emanating from a suit of the nature envisaged by Order XV-A(1) would be eligible to be treated as an order of deposit for the purposes of Order XV-A(1), be it passed in the suit or in any proceeding emanating from the suit such as a petition under Article 227, a revision under Section 115 or an appeal under Section 92 or Order XLIII of the CPC.

26. As such, Mr. Sachar is justified in contending that the order dated 1st September 2022, read with the order dated 18th December 2020, passed by this Court in CM (M) 412/2020 is entitled to be treated as an order of deposit under Order XV-A(1).

27. In that view of the matter, if there has been no compliance, by the petitioner, with the aforesaid direction of deposit as passed by this court in the various orders passed in CM (M) 412/2020, that would suffice as a ground to issue a show cause notice proposing the striking

off of the defence of the petitioner.

28. The show cause notice dated 7th October 2022 alleges default, on the part of the petitioner, in paying monthly rent with effect from January 2021. What, therefore, is required to be seen is whether prior to 7th October 2021, there was any order directing the petitioner to deposit rent from January 2021 onwards on a monthly basis. If there was, the default alleged in the show cause notice dated 7th October 2021 would stand committed and the petitioner would be liable to suffer the consequences thereof.

29. Mr. Vaish has taken me through the orders passed by this Court in CM (M) 412/2010, which already stand reproduced hereinabove.

30. In CM (M) 412/2010 , by order dated 1st September 2020, this Court directed clearance of the entire arrears of rent at the rate of ₹ 50,000/- per month till that date, i.e., till 1st September 2020. This order was, thereafter, modified by order dated 2nd November 2020, which specifically directed the petitioner to deposit a sum of ₹ 50 lakhs with the learned Registrar General of this Court within six weeks. Neither of these orders envisaged payment, by the petitioner, of future monthly rent.

31. The subsequent order dated 18th December 2020 again reiterates the direction for deposit of ₹ 50 lakhs and grants extension of time in that regard. It further records the submission of the learned Counsel for the respondent that, w.e.f. 1st September 2020, the petitioner was required to deposit rent at the rate of ₹ 3 lakhs per month. Having recorded the said submissions, the order proceeds to direct deposit of

(i) ₹ 10 lakhs within three months, (ii) the balance ₹ 40 lakhs before 11th January 2021 and (iii) “arrears of monthly amounts which will now become due” within four weeks.

32. Etymologically and legally, the word “arrears” must necessarily refer to payments which became due and payable prior to the date when that order was passed.

33. P. Ramanatha Aiyar, in his *Advanced Law Lexicon*, defines “arrears” as “money owed but not yet paid”. In *Dhan Singh Ramkrishna Chaudhari v. Laxminarayan Ramkishan*², “arrears” has been held to mean “money unpaid at the due time”. To the same effect is the judgment of a Full Bench of High Court of Calcutta in *Kripa Sindhu Mukerjee v. Annanda Sundari Debi*³.

34. Viewed any which way, “arrears” can only refer to amounts which were due and unpaid at that point of time. They cannot, therefore, refer to payment of rent with effect from January 2021.

35. According to Mr. Vaish, apart from the amount of ₹ 50 lakhs as directed by the order dated 2nd November 2020, arrears of ₹ 9 lakhs became further payable for the months after 1st September 2020, which were deposited by the petitioner within the time granted by the court. He also points out that, by order dated 4th March 2021, this Court had directed the said amount to be released to the respondent.

36. Mr. Sachar, learned Counsel for the respondent, seeks to point

² (1974) 2 SCC 293

³ 1907 SCC OnLine Cal 124

out that, even if one were to proceed on the above reasoning, the arrears payable would be for the months September, October, November and December 2020, which would amount to ₹ 12 lakhs and not ₹ 9 lakhs. Inasmuch as the petitioner had not deposited the rent for the month of December 2020, he submits that the petitioner could not be said to have complied with the order dated 18th December 2020.

37. Mr. Vaish contests this submission.

38. It is not necessary for me to enter into that nuanced area, especially as the show cause notice dated 7th October 2021 been invoked order XV-A *on the premise that there was default on the part of the petitioner in payment of monthly rent w.e.f. January 2021.*

39. There is no order passed either by the learned ADJ or by this Court in CM (M) 297/2022 directing deposit of future monthly rent. On the date when the show cause notice dated 7th October 2021 came to be issued, therefore, there was, in fact, no order under which the petitioner would be required to pay monthly rent after the date of the order. Even if there was a default in payment of monthly rent w.e.f. January 2021, therefore, that could not justify issuance of the show cause notice on 7th October 2021.

40. Mr. Sachar relies on the judgment of a Division Bench of this Court in *Raghubir Rai v. Prem Lata*⁴, particularly on paras 22 to 24 thereof, which read thus:

⁴ 211 (2014) DLT 516(DB)

“22. Though Order XVA is titled as "Striking Off defence in a suit by a lessor" but the same is not confined to striking off of defence only. The same, independently of Order XXXIX Rule 10 CPC, vests in the Court the power for issuing a direction for deposit. While so empowering the Court, as rightly held by the learned Single Judge, a departure was made from the language of Order XXXIX Rule 10 CPC. While under Order XXXIX Rule 10 CPC, a direction could be issued only for deposit/payment of admitted amount, the word “admitted” is conspicuous by its absence in Order XV-A of the CPC. A discretion has been vested in the Court to issue direction for deposit of "such amount" as the Court may direct. Such departure from language of an earlier existing provision is a tool of interpretation. There is abundant authority to the effect that when the situation has been differently expressed, the legislature must be taken to have intended to express a different intention. The Supreme Court in *The Western India Theatres Ltd. Vs. Municipal Corporation of the City of Poona*⁵ held that the legislature having substituted the word "reduced", earlier existing, with the word "modify", this change must have been made with some purpose and the purpose could only be to use an expression of wider connotation so as to include not only reduction but also other kinds of alteration; accordingly, the contention to interpret "modify" as "reduce" , because in the marginal note the word "reduce" remained, was rejected. Reference may also be made to *Khatris Hotels Pvt. Ltd. Vs. Union of India*⁶, where, finding the legislature to have designedly made a departure from the language of Article 120 of the Limitation Act, 1908, in enacting Article 58 of the 1963 Act, by introduction of the word "first" between the words "sue" and "accrued", it was held that if the suit is based on multiple causes of action, the period of limitation will begin to run from the date when the cause of action first accrued.

23. We are therefore unable to agree with the contention of the counsel for the appellant/defendant that the Court, in exercise of powers under Order XV-A of the CPC, is incapacitated from directing deposit at a rate higher than that admitted by the defendant.

24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant / defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have admitted the same or disputed / controverted the same. Similarly, in a suit between the owner of immovable property and an unauthorized occupant, Order XV-A empowers the Court to direct

⁵ AIR 1959 SC 586

⁶ (2011) 9 SCC 126

the defendant who though may not be liable to be ejected/dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression.”

41. The aforesaid passages merely set out the purpose and justification behind the enactment of Order XV-A. There can be no cavil with the proposition set out therein. The provision, however, as enacted has to be complied with as it stands. The court cannot permit relaxation of the rigour of Order XV-A merely by referring to its avowed purpose.

42. As such, the judgment of the Division Bench of this Court in **Raghubir Rai⁴** does not persuade me to take a view other than that which I am inclined to take.

43. The issuance of the show cause notice on 7th October 2021 being thus misguided, and a show cause notice under Order XV-A(2) being a *sine qua non* before the defence of the petitioner could be struck off, the impugned order dated 5th November 2022, which proceeds on the basis of the show cause notice dated 7th October 2021, to the extent it strikes off the petitioner’s defence is also unsustainable in law.

44. The impugned order cannot, therefore, sustain either on facts or in law. Accordingly, it is quashed and set aside.

45. Mr. Sachar sought to point out, during arguments, that even after 7th October 2021, the petitioner had undertaken, before the court to make deposits with which the petitioner is in default.

46. That, however, is not an aspect with which this Court needs to concern itself with the present case, which invokes the supervisory jurisdiction of this Court with respect to the order dated 5th November 2022. If there has been any default in payment after 7th October 2021, and if, as Mr. Sachar contends, those defaults could constitute the basis for a fresh action under Order XV-A, this order would not preclude the court from proceeding in accordance with law.

47. I do not, therefore, express any opinion in that regard.

48. In view of the aforesaid discussions, this petition is allowed with no orders as to costs.

NOVEMBER 23, 2022

dsn

C. HARI SHANKAR, J.