

\$~54

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

%

Judgment delivered on: **17.01.2023**

+ CM(M) 66/2023 & CM APPL. 2092/2023(Stay)

M/S SETH ENTERPRISES PVT LTD

..... Petitioner

versus

M/S NIMITAYA PROPERTIES LTD

AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Dinesh Kumar Gupta, Mr. Vidit Gupta
and Mr. Chetan Singh, Advs.

For the Respondent : Mr. Sudhir Nandrajog, Sr. Adv. with Mr.
Sumit G. Gehlot, Mr. Nikhil, Bhalla, Mr.
T. S. Thakraon and Mr. Rukun Vadhera,
Advs.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 2093/2023(Exemption)

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 2094/2023 (Exemption from Trial Court Record

3. This is an application seeking exemption from filing Trial Court Record.

4. Exemption allowed subject to all just exceptions.
5. Application stands disposed of.

CM(M) 66/2023 & CM APPL. 2092/2023(Stay)

6. The petitioner challenges order dated 29.10.2022 passed by the learned Trial Court whereby the learned Trial Court had decided the three applications namely, one under Order I Rule 10 Code of Civil Procedure, 1908, (hereinafter referred to as 'CPC') the other under Order VII Rule 11, CPC and the third under Order XV-A, CPC.

7. Mr. Gupta, learned counsel for the petitioner submits that so far as the order in respect of under Order I Rule 10 CPC is concerned, since the same was allowed in his favour, he is not impugning the same.

8. Mr. Gupta submits that the petitioner is pressing the petition in respect of Order VII Rule 11 CPC which was dismissed by the learned Trial Court as well as the application under Order XV-A CPC whereby the petitioner was directed to deposit the arrears of rent commencing from 15.04.2015 through till 14.04.2017, relevant paragraph is extracted hereunder:

"In the present case, I consider the rent amount in the admitted lease deed dated 20/05/2013 to be the best yardstick to calculate the deposit amount under Order XV-A CPC. As per the lease deed between the parties the rent was Rs. 4,25,000/- per month for the period from 15/04/2013 till 14/04/2015. As per the own case of the defendant in the written statement, the plaintiff had initially agreed to extend the lease by another 2 years with increase of 15% but later on turned dishonest and claimed increase of 25% which was refused by the defendant. It is the case of the defendant in the written statement, that after the expiry of the lease the plaintiff had taken cheque from the defendant after agreeing for extension of lease for a further period of two years at

increased rent of 15%. In the aforesaid facts and circumstances, and considering the stand taken by the defendant in its written statement, I would hold that it would be appropriate to direct the defendant under Order XV-A CPC to deposit amounts in the Court towards use and occupation charges at the rate of Rs. 4,25,000/- per month plus increase of 15% thereupon, for the period from 15/04/2015 till 14/04/2017, and similarly, further amounts calculated with 15% increase every two years till 15/11/2020. The defendant is directed to deposit the aforesaid amounts in the Court within two months from today.”

9. Mr. Nandrajog, learned senior counsel for the respondent submits that the issue raised in application under Order VII Rule 11 CPC was already framed as a preliminary issue No.2 which stood decided by the impugned order.

10. After some arguments and with consent of the parties, this Court passes the following directions:-

(i) Preliminary issue No.2 which was decided vide the impugned order, shall now be framed as an ordinary issue to be adjudicated during trial.

(ii) In so far as the order in respect of the application under order XV-A of Code of Civil Procedure is concerned, the petitioner shall deposit the 50% of the amount as ascertainable from para 46 of the impugned order and remit the same before the learned Trial Court in two tranches. The first tranche being payable within three months from today and the second instalment within three months thereafter.

11. In view of the aforesaid, nothing remains for further adjudication.
The petition stands disposed of with no order as to costs.

TUSHAR RAO GEDELA, J .

JANUARY 17, 2023/ms

