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

% ***Date of Decision 06.07.2023***

+ **FAO (COMM) 18/2023 & CM APPL. 2607/2023**

VARUN MAURYA

..... Appellant

Through: Mr. T.M. Shivakumar, Mr. S.V.
Rateria & Ms. Priyanka Singh,
Advocates.

versus

SUMIT CHAUHAN

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under Section 13 of the Commercial Courts Act, 2015 read with Order XLIII and Section 104 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed against the Order dated 30.11.2022 passed in CS (COMM) 427/2022 titled "*Varun Maurya vs. Sumit Chauhan*" by the District Judge, (Commercial), (Digital) 07/South East-Saket Courts, Delhi, wherein the appellant/Varun Maurya sought a recovery of Rs. 1,42,34,756/- along with interest @ 18% per annum under Order XXXVII of CPC from the respondent/Sumit Chauhan.
2. The defendant/respondent was served on 15.06.2022 through his mother but he did not put appearance.
3. Learned counsel for the plaintiff/appellant submitted that the plaintiff/appellant is entitled to a judgment in his favour immediately.



4. Learned District Judge in the impugned Order dated 30.11.2022 observed that the claim of the plaintiff/appellant was based on a registered Lease Deed dated 05.10.2020 *vide* which the defendant/respondent was given four shops at Grandley Cinema Building (now known as Indian Mall), New Friends Colony, Delhi for a period of nine years on a monthly rent with GST of Rs. 3,54,000/-. In terms of the Lease Deed, the rent was to be enhanced by 15% in every three years. There was a lock-in period of three years. It was further stipulated in the Lease Deed that in case of two consecutive defaults in payment of rent, the lease shall stand terminated, and the defendant/respondent shall be liable to pay illegal occupation charges at the rate of Rs. 20,000/- per day.

5. The plaintiff/appellant had claimed the arrears of rent w.e.f. April, 2021 to November, 2021. The plaintiff/appellant has also sought Rs. 3,00,000/- per month for the balance lock-in period w.e.f. December, 2021 to 04.10.2023 along with interest @ 18% for delay in payment of the rent for the period April, 2021 to November, 2021, and for illegal occupation charges at the rate of Rs. 20,000/- per day w.e.f. 11.05.2021 till 01.12.2021.

6. The plaintiff/appellant had placed reliance on the Order dated 22.08.2016 passed by this Court in *CS(COMM) 299/2016* and the Judgment dated 05.09.2019 passed by this Court in *CRP 42/2019* to submit that it was not open now to the Court to reconsider the issue of maintainability of the Suit under Order XXXVII of CPC, 1908. The learned District Judge, Commercial, however, observed that the plaintiff/appellant had claimed illegal occupation charges from 11.05.2021 to 01.12.2021 and had also claimed arrears of rent. The plaintiff/appellant cannot claim the penalty as well as arrears. Moreover, there was no termination of lease by the



plaintiff/appellant despite two consecutive defaults and, therefore, his claim for illegal occupation charges was *prima facie* not maintainable. The claim for rent for the balance period under the lock-in clause was also not maintainable under Order XXXVII of CPC, 1908 for which reliance has been placed on the decision of this Court in Zoom Communications (P) Ltd. vs. Brij Mohan Punj 2021 SCC OnLine Del 4167. It was observed that in view of the legal position as explained, the claim for damages on account of vacation of property before the expiry of lock-in period, was also not maintainable under XXXVII of CPC, 1908.

7. Reliance has also been placed on the decision of this Court in Sarla Devi & Ors. vs. Daya Ram & Ors. 1994 SCC OnLine Del 689, wherein it was held that the maintainability of the Suit under Order XXXVII of CPC, 1908 can be challenged by the defendant even without filing the appearance or application for leave to defend. If the defendant can question the maintainability of a Suit under Order XXXVII, there is nothing which debars the Court from ignoring the law just because of appearance has not been filed by the defendant.

8. Aggrieved by the impugned Order dated 30.11.2022 directing the Suit registered as a commercial Suit to be tried as a civil Suit, the present Appeal has been filed.

9. **Submissions heard.**

10. The Suit for Recovery has been filed on account of arrears of rent, including GST for balance lock-in period and damages for illegal occupation and for interest @ 18% on various amounts.

11. In the case of M.C. Agrawal HUF Vs. Sahara India & Ors. 183 (2011) DLT 105, it has been categorically held that merely because there is



a stipulation in the Lease Agreement in regard to the quantum of damages, the same would not become *per se* admissible. It is for the plaintiff/appellant to prove the actual damages by way of evidence and also to prove mitigation of losses in terms of Sections 73 and 74 of the Contract Act, 1872. There is no quantification of the damages which have been claimed for the lock-in period. The plaintiff/appellant has also not been able to show any stipulation for the payment of interest @ 18%. The arrears of GST also need to be established by documents/evidence.

12. Accordingly, the learned District Judge, Commercial has rightly observed that if there is any inherent question involved in regard to the maintainability of the Suit under Order XXXVII of CPC, 1908, the Court cannot be bound by the summons which may have been issued, since it raises the question of inherent jurisdiction.

13. The learned District Judge, Commercial has rightly directed the Suit though filed under Order XXXVII of CPC, 1908 to be treated as an ordinary Commercial Suit.

14. Accordingly, we find no infirmity in the impugned order and the present Appeal along with pending application is hereby dismissed.

SURESH KUMAR KAIT, J

NEENA BANSAL KRISHNA, J

JULY 6, 2023
S.Sharma