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

% ***Date of decision: 02nd March, 2023***

+ **RFA(OS)(COMM) 1/2023 & CM APPLs. 6485-90/2023**

BROMPTON LIFESTYLE BRANDS PVT LTD Appellant

Through: Mr. Salman Khurshid, Sr Advocate
with Mr. Nikhil Kohli, Mr. Gaurav
Gupta, Mr. Kushank Garg,
Mr. Akshaya Ganpath, Ms. Shabeena
Anjum, Ms. Sidra Khan and
Ms. Farheen Fatima, Advocates.

versus

RIVERIA COMMERCIAL DEVELOPERS LTD Respondent

Through: Mr. Rajiv Nayar and Mr. B.B. Gupta,
Sr. Advocates with Ms. Meghna
Mishra, Mr. Tarun Sharma,
Ms. Aishwarya Chaturvedi and
Ms. Yashodhara, Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J.(ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This appeal impugns the order dated 20.12.2022 disposing off two suits, one filed by the appellant bearing no. CS(COMM)266/2021 titled as *Brompton Lifestyle Brands Pvt. Ltd. v. Riveria Commercial Developers Limited*, which was pending before the Court of District Judge (Commercial Court)-01, Patiala House Court, New Delhi and another

suit filed by the respondent bearing no. CS (COMM) 640/2022 before this Court. In former suit, following relief was sought:

"a) Pass a decree of Permanent Injunction in favour of the Plaintiff and against the Defendant whereby permanently restraining the Defendant from dispossessing the Plaintiff from the suit shop i.e. shop bearing number G-5A, situated at ground floor of the building namely, The Chanakya, situated at Yashwant Place Commercial Complex, opposite Chanakyapuri Post Office, Chanakyapuri, New Delhi- 110021, without following due process of law,"

2. An interim relief had been granted to the appellant in the suit bearing no. CS(COMM)266/2021 to the following effect:-

"8..Keeping in view the interest of justice, defendant, his officers, employees, representatives, agents or any other person on his behalf is hereby restrained with immediate effect till next date of hearing to obstruct the ingress or outgress of the plaintiff or his employees or customers etc. in any manner whatsoever to/in the suit shop subject to condition that without prejudice to respective rights and contentions of the parties concerned, plaintiff will pay an amount of Rs.50 lakhs to the defendant on account of arrears of rent on or before 14.08.2021 and will pay the remaining admitted amount of arrears of rent to the tune of Rs.68 lakhs on or before 18.09.2021."

3. The suit before this court got dismissed in default, but was subsequently restored. No replication was filed. It is not in dispute that the entire records of the case bearing no. CS(COMM)266/2021, titled as *Brompton Lifestyle Brands Pvt. Ltd. v. Riveria Commercial Developers Limited*, had been filed in the subsequent suit preferred by the respondent i.e. CS

(COMM)640/2022. The suit bearing no. CS(COMM)266/2021 was transferred from Patiala House Courts to this Court and was disposed-off on 20.12.2022.

4. The appellant states that on the date, the impugned order was passed, the records of suit bearing no. CS(COMM)266/2021 had not been transferred from the Patiala House Court to this Court. Admittedly, the entire pleadings of the appellant's said suit had been filed by the respondent i.e. CS(COMM)640/2022 (P.P. 237-883, of this appeal) including the Written Statement and the orders passed in CS(COMM)266/2021. The Court is of the view that the objective of the procedure prescribed under the CPC is that the Court should have all the records pertaining to the suit so as to be able to adjudicate upon it. In effect, the learned Single Judge had the entire case records before him, albeit a copy of the same. It cannot be to the appellant's prejudice that suit was decreed as sought i.e. they would not be dispossessed from the premises except by due process of law.
5. The respondent's suit was decreed in view of the fact that the appellant had not paid rent from March, 2021 and the tenancy had been determined. The impugned order holds as under:-

"27. I have considered the submissions made by the learned counsels for the parties.

28. A copy of the Written Statement as also the Affidavit of admission/denial of documents filed by the defendant has been handed over to me during the course of hearing and the same has been taken into consideration by me for passing the present order.

*29. In **Uttam Singh Dugal & Co. Ltd. v. Union Bank of India & Ors.**, (2000) 7 SCC 120, the Supreme Court explained the object of Order XII Rule 6 of the CPC in the following words:-*

"2. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed. "

*30. In **Delux Dentelles Pvt. Ltd. & Ors. v. Ishpinder Kochhar & Ors.**, MANU/DE/0227/2015, a Division Bench of this Court reiterated the guiding principles for exercising powers under Order XII Rule 6 of the CPC, as under:-*

"44. It is settled law that where the defence taken by a defendant is devoid of merit or of a kind which is not

recognized by law, a decree on admission would follow. (See the decision of a Division Bench of this Court reported as 193 (2012) DLT 613 Universal Finance Traders Ltd. vs. Lunar Diamonds Ltd & Ors).

45. In this regard, it would be most apposite to note the following observations made by a Single Judge of this Court in the decision reported as 2000 (54) DRJ 654 Ved Prakash & Anr vs. Mis Marudhar Services Ltd & Anr:-

"It would be pedantic an approach to maintain that an admission can only be considered to have been made where a particular party specifically agrees to the correctness of a statement made in pleadings by the opposite party. The admission must be drawn from the totality of the circumstances of the case; the Court is not powerless to review them entire defense presented in the written statement. It is only in those instances where, from other attendant facts the Court is of the view that despite them existence of admission triable issue have arisen, that its discretion should be exercised. There would be no justified for the exercise of 'discretionary powers' where no triable issues have arisen."

(Emphasis Supplied)

31. Keeping the above object of the provision and its ambit and scope in mind, I proceed to consider the present application.

*32. As held by this Court in **Geeta v. Mohd. Raza and Anr.**(supra), in suit for ejectment, the plaintiff has to establish the following:-*

"13. In a suit for ejectment, a plaintiff has to establish the following:-

(i) Relationship of landlord and tenant

(ii) Tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958.

(iii) There is no registered subsisting lease agreement.

(iv) Tenancy has been terminated and the respondent tenant has failed to hand over possession.

33. The relationship between the plaintiff and the defendant as a landlord-tenant stands admitted by the defendant in the Written Statement filed in the present Suit.

34. It is also not denied in the Written Statement that the rent of the tenanted premises is more than Rs.3,500/- and, therefore, it is not a 'protected tenancy' under the DRC Act.

35. It is also not disputed that the Lease Deed is an unregistered document. Though, the learned counsel for the defendant has urged that the Lease Deed could not be registered for the fault of the plaintiff, and that in terms of the Lease Deed, the possession of the Suit Premises was to be handed over to the defendant only on the registration of the Lease Deed, however, as the possession was handed over without the registration of the Lease Deed, the plaintiff cannot seek eviction of the defendant prior to the expiry of the terms of lease provided in the Lease Document, in my opinion, the said submissions are only to be stated to be rejected. The said submissions would not make any difference inasmuch as the fact remains that the Lease Deed has not been registered by the parties. Being an unregistered document, the Lease Deed can at best be read as collateral evidence under Section 49 of the Registration Act, 1908. The effect of non-registration of the Lease Deed is one in law and the parties cannot waive the effect of such non registration or be estopped from taking benefit thereof. The lease between the parties is, therefore, month to month under Section 106 of the Transfer of Property Act, 1882.

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39. As far as the submission of the learned counsel for the defendant that the Lease Deed is deficiently stamped, the same is accepted by the learned senior counsel for the plaintiff. However, the learned senior counsel for the plaintiff submits that the Stamp

Duty on the said document, though payable by the defendant, shall be paid by the plaintiff. He further submits that, in fact, the plaintiff is not relying on the said document as the oral lease is evident from the conduct of the parties and their admission.

*40. The effect of the Lease Deed being deficiently tamped is in Section 35 of the Stamp Act, that is, it shall not be admissible in evidence. In any case, due to the non-registration of the Lease Deed also it cannot be read in evidence. The terms of the Lease Deed therefore, cannot be read. The said effect has been explained by the Division Bench of this Court in **Delux Dentellers** (supra), as under:*

"35. Section 35 of Stamp Act provides that instruments not duly stamped is inadmissible in evidence and cannot be acted upon. The relevant portion of said Section is extracted below:-

"35. Instruments not duly stamped inadmissible in evidence, etc –No instrument chargeable with duty shall be admitted in evidence for any purposes by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that –

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion. "

36. *Having regard to Section 35 of Stamp Act, unless the stamp duty and penalty due in respect of the instrument is paid, the instrument cannot be admitted in evidence and court cannot act upon the instrument. Section 35 of Stamp Act is distinct and different from Section 49 of Registration Act in regard to an unregistered document. Section 35 of Stamp Act does not contain a proviso as appended to Section 49 of Registration Act enabling the instrument to be used to establish a collateral transaction.*

37. *In the instant case, the lease-deed dated November 21, 1999 is an unstamped and unregistered instrument. In view of prescriptions contained in Section 35 of Stamp Act and Section 49 of Registration Act, the lease-deed dated November 21, 1999 is inadmissible in evidence and the defendant No. 1 cannot rely upon the terms of said lease to claim or enforce right of renewal contained in the said lease.*

38. *Neither can the plaintiff rely upon the lease-deed in question for purposes of rent being enhanced by 10% each year.*

39. *With respect to reliance upon the lease deed in question, we find that the plaintiff as well as the defendants are taking mutually destructive pleas to their own case. The plaintiff asserts that the defendant cannot rely upon the lease-deed for enforcement of the clause contained therein which gives the defendant an option to have the lease renewed for a further term of 11 years on the ground that the document is not registered, but would rely upon the lease-deed for the term contained therein that rent would be increased by 10% every three years. Per contra, the defendants would rely upon the lease-deed pertaining to the clause of renewal of the term of the lease for a period of 11 years but would*

deny the right to the plaintiff to rely upon its term of the rent to be increased by 10% every three years.

40. The document in question cannot be relied upon by either party to enforce the term favourable to it. "

*43. On the issue of termination of the Lease Deed, the, defendant again admits the receipt of notice dated 08.03.2021. In terms of the judgments **Nopany Investements (P) Ltd.**(supra) and **M/s Jeevan Diesels & Electricals Ltd.** (supra), even if the notice period is held to be deficient, the filing of the present suit itself would be a notice to the defendant for termination of the lease by the plaintiff.*

44. The submission of the defendant that the plaintiff, by accepting the rent and/or by entering into negotiation for a settlement has waived the termination notice, also cannot be accepted. The defendant filed a suit before the learned District Judge seeking an order of injunction against the plaintiff from evicting the defendant without following 'due process of law'. The suit was filed sometime in August 2021, that is, almost immediately after the notice of termination. The plaintiff, in turn, filed the present suit, inter alia, seeking eviction of the defendant from the suit premises on or about September 2021. The landlord/plaintiff cannot be expected to not accept the rent that is offered by the tenant/defendant or not explore possibility of an amicable settlement after serving the tenant/defendant with a notice of termination of the lease. The plaintiff, by its very conduct, has shown that there was no waiver of the notice of termination by it.

45. Even otherwise and as noted hereinabove, in fact, the very filing of the present suit can be treated as a notice of termination of the lease and be acted upon as far as the present application is concerned.

46. This now brings me to the submission of the learned counsel for the defendant that the present suit having been converted into a 'Commercial Suit' under the CC Act, does not comply with the

mandatory requirement of a pre-suit mediation under Section 12A of the CC Act.

47. In this regard, it is to be noted that the present suit was filed as an Ordinary Suit in September 2021. It was only by an order dated 21.07.2022, that the present suit was converted into a Commercial Suit and numbered as such.

48. Along with the present suit, the plaintiff had filed an application seeking an ad interim ex-parte injunction, being I.A.12809/2021, as also an application under Order XV-A Rule 1 of the CPC, being I.A. 12810/2021, praying for a direction to the defendant to pay the arrears of rent. Finding prima facie merit in both these applications, ex-parte interim order/directions were passed by this Court vide order dated 30.09.2021.

49. Section 12A of the CC Act states that a suit 'which does contemplate any urgent interim relief under the CC Act shall not be instituted unless the plaintiff exhausts the remedy of pre institution mediation. In the present case, not only did the plaintiff pray for but was granted 'urgent interim relief'. Clearly, therefore, the plaintiff was entitled to institute the present suit without initiating pre-institution mediation on a plain reading of Section 12A of the CC Act.

*50. A Division Bench of this Court, in its judgment titled **Chandra Kishore Chaurasia v. RA Perfumery Works Private Ltd**, 2022 SCC OnLine Del 3529, has also rejected the similar submission by observing as under:-*

"29. A plain reading of Sub-section (1) of Section 12A of the Commercial Courts Act, 2015 indicates that the institution of a suit, which does not contemplate any urgent interim relief, is proscribed unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with the procedure as may be prescribed. There is no ambiguity that a suit, which contemplates urgent interim relief, is excluded from the rigor of Section 12A(1) of the Commercial Courts Act, 2015.

Thus, a plaintiff seeking to institute a suit involving urgent interim relief(s) is not required to exhaust the remedy of pre institution mediation.

30. The contention that it would be necessary for the plaintiff to file an application seeking exemption from the provisions of Section 12A of the Commercial Courts Act, 2015, is unmerited. This Court cannot accept the said contention for several reasons.

31. First of all, there is no provision under Section 12A of the Commercial Courts Act, 2015 that requires the plaintiff to make any such application in a suit which involves urgent interim relief. As stated above, if the suit involves urgent interim relief, Section 12A of the Commercial Courts Act, 2015 is inapplicable and it is not necessary for the plaintiff to enter into a pre-institution mediation.

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33. This Court also finds it difficult to accept that a commercial court is required to determine whether the urgent interim relief ought to have been claimed in a suit for determining whether the same is hit by the bar of Section 12A(1) of the Commercial Courts Act, 2015. The question whether a plaintiff desires any urgent relief is to be decided solely by the plaintiff while instituting a suit. The court may or may not accede to such a request for an urgent interim relief But that it not relevant to determine whether the plaintiff was required to exhaust the remedy of pre-institution mediation. The question whether a suit involves any urgent interim relief is not contingent on whether the court accedes to the plaintiff's request for interim relief.

34. The use of the words "contemplate any urgent interim relief" as used in Section 12(1) of the Commercial Courts Act, 2015 are used to qualify the category of a suit. This is determined solely on the

frame of the plaint and the relief sought. The plaintiff is the sole determinant of the pleadings in the suit and the relief sought.

35. This Court is of the view that the question whether a suit involves any urgent interim relief is to be determined solely on the basis of the pleadings and the relief(s) sought by the plaintiff. If a plaintiff seeks any urgent interim relief, the suit cannot be dismissed on the ground that the plaintiff has not exhausted the pre-institution remedy of mediation as contemplated under Section 12A(l) of the Commercial Courts Act, 2015.

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37. This Court is unable to accept that it is necessary for a court to read in any procedure in Section 12A of the Commercial Courts Act, 2015, which makes it mandatory for a plaintiff to file an application to seek leave of the court for filing a suit without exhausting the remedy of pre-institution mediation, irrespective of whether the plaintiff seeks urgent interim relief or not.

51. That apart, the defendant itself pleads that the plaintiff did, in fact, initiate talks of arriving at an amicable settlement with the defendant prior to instituting the present Suit, however, the same failed. Therefore, it does not lie in the mouth of the defendant today to plead that plaintiff must also have been initially burdened to institute pre-institution mediation under the provisions of Section 12A of the CC Act in the present case.

52. As far as the submission of the learned counsel for the defendant that the affidavit with the present application is not in a proper form as required in Appendix-I to the Schedule to the CC Act, again is liable to be rejected. It is well-settled that even if there is any defect in the affidavit filed with the present application, the same is a curable defect; the same cannot defeat the right of a plaintiff to the relief claimed. In any case, I do not find any such defect in the affidavit filed by the plaintiff to the present application.

53. In view of the above, as all ingredients for the grant of a decree of eviction have been satisfied by the plaintiff based on the admissions of the defendant itself, and even exercising powers under Order XIII-A Rule 3 of the CPC as applicable to commercial disputes of a specified value wherein, I find that there is no possibility of the defendant having any defence to the present suit so far as it claims the relief of possession of the Suit premises from the defendant, an order of eviction directing the defendant to hand over the actual and vacant physical possession of the suit premises being shop bearing number G-5 A, situated at ground floor of the building namely, 'The Chanakya', situated at Yashwant Place Commercial Complex, opposite Chanakyapuri Post Office, Chanakyapuri, New Delhi-110021 to the plaintiff is passed in favour of the plaintiff and against the defendant.

54. The application is allowed in the above terms. Let a decree-sheet be drawn up accordingly.

6. The learned Senior Advocate for the appellant submits that the principle of promissory estoppel will apply on the basis of the tenancy agreement between the parties, albeit unregistered; that a lot of investment was made by the appellant on the underlying assumption that the tenancy would continue for the period as was mentioned in the lease deed; therefore, the appellant's right would be prejudiced if the appellant is asked to suddenly vacate the premises. However, it is not in dispute that this issue was never raised at the time of passing of the impugned oral order.
7. Elsewhere, the claims and counter-claims of the parties are still pending

adjudication. It will be open to the appellant to pursue its reliefs as may be available in law.

8. We see no reason to interfere with the impugned order.

9. The present appeal, along with pending applications, if any, stands dismissed in the above terms.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

MARCH 02, 2023/sk/sd

