



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

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Date of decision: July 18, 2023

+ RFA(COMM) 143/2023, CM APPLs. 35972/2023 & 35973/2023 & 35974/2023

RAVINDER KUMAR

..... APPELLANT

Through: Mr. Ashu Kumar Sharma,
Ms. Puja Arora and
Ms. Deepti Bhardwaj, Advs.

versus

SAHIBA CHHABRA & ORS.

..... RESPONDENTS

Through: Mr. Harpreet Singh and
Mr. Rajesh Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 35974/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 35973/2023 (for delay)

This is an application filed by the appellant seeking condonation of 58 days delay in filing the appeal.

For the reasons stated in the application, the delay of 58 days in filing the appeal is condoned.

The application is disposed of.



RFA(COMM) 143/2023, CM APPL. 35972/2023

1. The challenge in this appeal is to a judgment / decree dated February 4, 2023 passed by the learned District Judge (Commercial Court-01) South-East, Saket Courts, New Delhi whereby the learned District Judge has while decreeing the suit being CS (Comm) No.239/2022 has stated as under:

“12. As such, defendant is liable to pay the following amounts to the plaintiffs.

Sr. No.	Particulars	Rate	Amount (Rs.)
01	Short fall rent of November, 2020	Rs.56,240/-	Rs.56,240/-
02	Rent from December 2020 to April 2021 (05 months)	Rs.80,000/-	Rs.4,00,000/-
03	Rent from May 2021 to September 2021 (05 months)	Rs.92,000/-	Rs.4,60,000/-
04	Notice period rent for 06 months	Rs.92,000/-	Rs.5,52,000/-
05	Unpaid maintenance charges	Rs.65,872/-	Rs.65,872/-
Total			Rs.15,34,112/-
06	Less Security Deposit	1,60,000/-	13,74,112/-
Amount payable			13,74,112/-



*13. The plaintiffs are therefore entitled to a sum of Rs.13,74,112/- along with interest@ 12% per annum from 01.04.2022 till realization of the amount. Defendant is therefore directed to pay a sum of Rs.13,74,112/- along with interest @12% per annum from 01.04.2022 till realization of the amount to the plaintiffs.
The plaintiffs are also entitled to costs.
Decree sheet be drawn.”*

2. It is the conceded case of the appellant herein that he was ex parte before the learned District Judge. He filed an application under Order IX Rule 13 / Order IX Rule 7 CPC for the setting aside the *ex parte* order. The application was dismissed resulting in filing of a review petition by the appellant. The same was also dismissed. He filed an application under Order VIII Rules 1 & 10 CPC for taking the written statement on record. The same was also dismissed.

3. The admitted facts are that, the respondents are owners of the premises bearing No.GF-7, Ground Floor, Plot No.7, TDI Centre, Jasola, New Delhi-110025 admeasuring 939 sq. feet. A lease agreement was executed between the parties on August 09, 2018. The same got registered on August 10, 2018, whereby the aforesaid premises was let out to the appellant herein for a period of nine years starting from May 01, 2018 at a monthly rent of ₹80,000/- per month along with maintenance charges.

4. The lease deed had a stipulation that the rent shall be enhanceable by 15% after every three years. It was the case of the respondents before the learned District Judge that from the month of November 2020, the entire rent was not paid to them by the



appellant herein. It may be stated here that there was a lock-in period of three years stipulated in the lease deed. There is no dispute that the lock-in period had expired on August 9, 2021.

5. It was the case of the respondents that on September 30, 2021 / October 1, 2021, they have received a notice dated September 29, 2021, from the appellant herein whereby the appellant terminated the lease agreement. It is also a conceded position that there was a force majeure clause in the lease deed.

6. It is the submission of the learned counsel for the appellant that the premises was taken on rent for running a liquor shop in terms of the license granted by the Govt. of NCT of Delhi and the same was terminated in the month of September 2021 resulting in the issuance of notice terminating the lease deed.

7. According to him, as a notice of six months was required to be issued for terminating the lease deed by the appellant herein, the judgment / decree which also made payable an amount of ₹5,52,000/- (₹92,000/- per month x 6 months) the same is not tenable. In other words, he submits that the learned District Judge should have waived the notice period of six months, consequently the amount of ₹5,52,000/- from the decretal amount as according to him, on the cancellation of license by Government of NCT, the lease got terminated automatically and hence the amount for six months is not payable. In support of his submission, he has drawn our attention to the lease deed wherein the termination clause and the force majeure clause are stipulated.



8. Though, the submission looks appealing on a first blush, but on consideration of the submission made by the learned counsel for the respondents that that no such reasons, i.e., the lease is being terminated because of cancellation of the license, were given by the appellant while terminating the lease deed in terms of the letter dated September 29, 2021 which we reproduce as under, it is clear that the plea is an afterthought.

Dated 29/9/2021

To
 Mrs. Sahiba Chakra w/o Mr. Pawan Dutt Singh Chakra
 R/o 11A/36, WEA, Koral Bagh Ex PW 1/5 (OSR)
 New Delhi - 110005

Subj: Termination of lease deed. (D) Comm. Contd. No. 1
 SE, Sahib
 17/12/22

Sir/mam

This is to inform you that I Ravinder Kumar
 So Late Sh. Phire Ram R/o H.W.O-45 Vill-Gharoli Buzji
 Basti Delhi - 110096 handed over the Keys of
 Vacant shop to the present owners of shop no.
 and there is no dues from my side if any
 dues is pending please adjust in my
 security of RS 10,14,120/- and rest of the security
 kindly requesting to you please refund me
 I am also enclosed the copy of security
 letter.

Thanking you
 Yours sincerely
 Ravinder Kumar

Date. 29/9/21

9. In fact, we note the lease deed contemplate that in the eventuality, the appellant intends to change the nature of user of the shop, the appellant shall do it after giving notice in that regard to the respondents. Admittedly, no such notice was given by the



appellant to the respondents. Hence, the plea of the learned counsel for the appellant that the notice period of six months need to be waived or decree could not have been passed for ₹5,52,000/- by the learned District Judge is unsustainable. Suffice to state, the appellant could have used the shop for any other purpose provided he has given an advance notice to the respondents. It follows, the lease deed would not have got terminated automatically. Hence, rent for the six months was payable.

10. During the course of his submissions, the learned counsel for the respondents states to put quietus to the dispute, the respondents are ready to waive the payment of the amount of three months notice period as against six months granted by the learned District Judge. In other words, the appellant must pay the complete decretal amount by deducting the amount for three months notice period (i.e., $92,000 \times 3 = ₹2,76,000$). This submission of the learned counsel for the respondents is acceptable to the learned counsel for the appellant on instructions, who also state the appellant shall pay the entire decretal amount after adjusting the amount of ₹2,76,000/- within six months. This submission is acceptable to the learned counsel for the respondents. So, we dispose of the appeal, by stating that the appellant shall pay to the respondents the complete decretal amount minus ₹2,76,000/- within six months from today. He shall file an undertaking in that regard before this Court within two weeks by sending a copy of the same to the learned counsel for the respondents. No costs.



CM APPL. 35972/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 18, 2023/aky