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

+ **RFA(COMM) 68/2022 & CM APPLs. 42081/2022, 42082/2022, 42083/2022, 40050/2023, 40051/2023**

M/S BABA BILLIARDS ACADEMY

..... APPELLANT

Through: **Mr. R.K. Singh and Mr. Vishal
Sharma, Advocates.**

versus

SHRI DEEPAK GUPTA

..... RESPONDENT

Through: **None.**

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Date of Decision: 18th October, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal challenges the Judgment and Decree dated 07th June, 2022 passed by the learned District Judge (Commercial Court) East District, Karkardooma Courts, Delhi. By way of the impugned Judgment, the suit of the respondent herein has been decreed and the appellant herein has been held liable for payment of Rs. 5,80,500/- to the respondent towards arrears of rent.

2. Facts of the case are that the respondent is the owner of basement (lower ground floor) situated on the Southern Side of property bearing no.



S-529, School Block Mother Dairy Road, Shakarpur, Delhi-110092 measuring 1300 sq. feet (“suit property”). The suit property was leased out by the respondent to the appellant herein on a monthly rent of Rs. 10,000/- vide notarized lease agreement dated 1st January, 2002, which was to be renewed periodically. As per the respondent, the said lease agreement was lastly renewed till 31st December, 2017, when the agreed monthly rate of rent was Rs. 31,270/-. On account of non-payment of the monthly rent and arrears by the appellant, the lease was terminated vide legal notice dated 8th January, 2020.

3. As per the case put forward on behalf of respondent before the learned Trial Court, he was busy in taking care of his ailing wife who was diagnosed with cancer. The appellant took advantage of this fact and started making default in payment of the monthly rent. The respondent, thus, terminated the tenancy of the appellant and called upon him to hand over the vacant and peaceful possession of the suit property. The appellant neither cleared the arrears of rent nor paid the occupation charges, penalty and damages, as agreed upon between parties in the lease agreement. The appellant vacated the suit property in July, 2020 without clearing the outstanding rent.

4. Thus, suit for recovery was filed on behalf of respondent for recovery of arrears of the rent without claiming any damages, interest or other charges. By the impugned Judgment and Decree, the suit of the respondent was decreed wherein the appellant herein was directed to pay a sum of Rs. 5,80,500/- to the respondent towards arrears of rent. Hence, the present appeal has been filed.

5. On behalf of the appellant, it is contended that there was a fresh agreement between the parties w.e.f. 23rd January, 2018 till 31st December,



2020, according to which the appellant had to pay a monthly rent of Rs. 21,500/- only. At the request of the respondent, the appellant was paying monthly rent of Rs. 21,270/- by way of cheques and balance Rs. 10,000/- by cash for the period 1st January, 2016 to 1st December, 2017.

6. It is contended that since the wife of the respondent was seriously ill, he asked the appellant to pay the complete rent in cash w.e.f. 1st January, 2018. Since the respondent was busy in his wife's treatment, the appellant did not ask for its receipt. It is also claimed that the appellant had paid refundable security deposit of Rs. 50,000/- to the respondent at the time of letting out of the suit property, which was liable to be adjusted.

7. Perusal of the documents on record show that a fresh Lease Agreement dated 23rd January, 2018 was executed between the parties, wherein the rent was reduced to Rs. 21,500/- per month. The appellant made oral averments that he had paid rent @ Rs. 21,500/- to the respondent in cash for the period w.e.f. 01st January, 2018 to 30th April, 2019. However, this Court notes that except for oral averments made on behalf of the appellant, there is nothing on record to show that any rent in cash was paid by the appellant to the respondent for the aforesaid period. The appellant did not disclose any source of the cash payment of rent for the aforesaid period. No ledger statement or balance sheets etc. were produced by the appellant to prove that rent in cash was paid for the aforesaid period. It is also to be noted that the fact of receipt of any cash payment was denied by the respondent herein. Thus, the learned Trial Court has rightly held that the appellant was in arrears of rent for the period from 1st January, 2018 to 30th April, 2019, i.e. for 16 months @ Rs. 21,500/- per month.

8. It is also pertinent to note here that the appellant, in his cross-



examination as DW-1 before the learned Trial Court, has categorically admitted that he stopped payment of rent from September, 2019 till July, 2020. He deposed that he did not pay the rent for the aforesaid period because the tenanted premises had become inhabitable and despite assurance by the respondent, he failed to conduct the repair work till August, 2019. However, the learned Trial Court has rightly held that as per Clause 12 of the Lease Agreement dated 23rd January, 2018, all repairs/maintenance liability was required to be taken care of by the appellant herein. The appellant was duty bound to get the repairs conducted himself and he could not have stopped payment of rent on the ground that the respondent had failed to get the repairs conducted.

9. Since the appellant admitted that he had not paid the rent from September, 2019 to July, 2020, the respondent has rightly been held entitled for the arrears of rent for the period from 1st September, 2019 to 30th July, 2020 @ Rs. 21,500/- per month.

10. The contention as raised on behalf of appellant that he had paid a security amount of Rs. 50,000/- to the respondent which was liable to be adjusted towards the arrears of rent, is found to be without any merit. It is noted that as per Clause 4 of the Lease Agreement, if the second party, i.e. the appellant herein, fails to pay the lease money for three consecutive months, the security deposit would be forfeited. Since as per its own admission the appellant had not paid rent after September, 2019 till July, 2020, in terms of Clause 4 of the rent agreement, the security deposit paid by the appellant stood forfeited. Therefore, the appellant cannot claim any benefit or adjustment for it in the arrears of rent.

11. In view of the aforesaid discussion, this Court finds no infirmity in the



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Judgment and Decree passed by the learned Trial Court. Accordingly, the present appeal is dismissed, along with the pending applications.

MINI PUSHKARNA, J

MANMOHAN, J

OCTOBER 18, 2023
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Signature Not Verified

Digitally Signed By: CHARU
CHAUDHARY
Signing Date: 21.10.2023
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