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

% Judgment delivered on: 15th May, 2023

RFA(COMM) 121/2022

+ RFA(COMM) 121/2022

BALIRAM SINGH

..... APPELLANT

versus

RADIANT CASH MANAGEMENT SERVICES PVT LTD

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant: Sh. Vaibhav Prakash, Advocate (through VC)

For the Respondent: Sh. Arav Kapoor, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns the order dated 22.11.2021 whereby the Commercial Court has decreed the suit for recovery filed by the respondent seeking a recovery of sum of Rs. 9 lacs along with interest @ 36% per annum.

2. Respondent is engaged in the business of providing cash management services at various locations throughout the country. It had taken on rent premises bearing no. 31, Ground Floor, F.I.E.,

Patparganj, Delhi from the appellant on monthly rental @ of Rs. 1,50,000/- vide lease agreement 10.09.2015 for a period of nine years. Respondent had furnished a security deposit equivalent to six months' rent i.e. Rs. 9 lacs, refundable at the time of vacation of the premises.

3. The lease further stipulated that respondent would be entitled to terminate the lease by giving a two months' notice in writing.

4. Respondent exercised his rights to terminate the lease and gave a three months' notice dated 09.03.2016 proposing to hand over the premises on 30.05.2016 and sought refund of the security deposit of Rs. 9 lacs.

5. The premises were vacated on 30.05.2016. However, the security deposit was not refunded.

6. Since the appellant failed to refund the security deposit amount of Rs. 9 lacs, subject suit was filed. After service upon the appellant, one Mr. Neeraj Sharma, Advocate entered appearance on behalf of the appellant on 21.10.2019 and sought time to file written statement. No written statement was, however, filed.

7. Despite lapse of over a year on 23.12.2020, the trial court had noticed that written statement had not been filed and the period of 120 days stood expired from the last appearance of 21.10.2019. The right to file written statement was closed and the case was placed for evidence of the respondent. After 28.04.2021, defendant/ appellant even stopped appearing in the suit. The evidence was recorded *ex*

parte and no cross-examination was conducted on behalf of the appellant. Subject judgment was thereafter rendered by passing of a decree in favour of the respondent for a sum of Rs. 9 lacs along with simple interest @ 36% per annum from the date of filing of suit till the date of realization of actual amount.

8. Learned Counsel for the appellant submits that there is an error in the appeal memo in as much as they have stated that respondent had not paid rent for the last month, however, the rent for the last month had been received.

9. He further submits that the respondent had caused substantial damage at the time of vacating the premises as such the security deposit was adjusted towards the damage caused. He submits that no amount is liable to be paid to the respondent and in fact appellant has a claim against the respondent towards the damage caused.

10. We are unable to accept the contention of the learned Counsel for the appellant for the reason that appellant, when served with the summon of the suit, failed to file written statement. Appellant even failed to appear and cross-examine the witnesses of the respondent. In view of the fact that no defence had been raised by the appellant to the suit, there was no cause for the trial court not to pass the decree of recovery as has been done.

11. The contention of the learned Counsel for the appellant that substantial damage was caused is also not borne out from the record. Apart from merely sending a reply to the legal notice, appellant had

not made any claim against the respondent towards the alleged damage caused to the premises. No set off, counter-claim or independent suit has been filed by the appellant till date seeking recovery of any amount, towards the alleged damage of the property. It may be noticed at this juncture that the premises was handed over by the respondent on 30.05.2016 and seven years have already elapsed and till date no claim has been raised by the appellant.

12. It may also be noticed that subject suit is a commercial suit and appellant failed to file the written statement within the period prescribed by law. Accordingly, we find no infirmity in the view taken by the trial court in passing the decree for a sum of Rs. 9 lacs.

13. We may, however, note that the trial court has awarded simple interest @ 36% per annum. This award of interest @ 36% is passed relying on Clause-14 (i.e. Consequences of Termination) of the lease agreement dated 10.09.2015 which stipulates that security deposit shall carry interest @ 36% per annum compounded every month from the date on which refund is due till its repayment.

14. We also notice that the lease agreement between the parties was not registered. In terms of Section 49 of the Registration Act 1908, respondent would not be entitled to enforce any clause of the unregistered document. Consequently, respondent is not entitled to interest @ 36% per annum in view of the fact that the lease deed was not registered. Consequently, the judgment and decree to the said extent is liable to be modified.

15. We also notice that the trial court has awarded interest only from the date of filing of the suit and no pre-suit interest has been awarded and there is no reason mentioned in the impugned judgment as to why the interest for the pre-suit period has been denied. Consequently, we modify the decree to the extent that the appellant shall be liable to pay a sum of Rs. 9 lacs with simple interest @ 12% per annum from 30.05.2016 till realization. The decree is accordingly modified to the above extent. Decree-sheet be prepared in accordance with law.

16. Appeal is disposed of in the aforesaid terms.

CM APPL. 55882/2022 (for condonation of delay in filing) & CM APPL. 55883/2022 (for condonation of delay in re-filing)

17. Since we have already dealt with the case on merits, delay in filing and refiling of the appeal is condoned.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

15th MAY, 2023
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