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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 08.02.2024

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**RFA(COMM) 38/2024 CM APPL 7829/2024 CM APPL 7830/
2024****MR SANJAY****..... APPELLANT**Through: Mr. Ashwini Kumar Mishra,
Advocate with appellant in person.

versus

MRS DALJEET KAUR PANDEY**..... RESPONDENT**Through: Mr. Gurmehar S Sistani, Mr. Varun
Mehalwat and Ms. Natasha Thakur,
Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J: (Oral)****CM APPL 7830/ 2024** [Application for exemption]

1. Allowed, subject to all just exceptions.
2. The Application stands disposed of.

RFA(COMM) 38/2024 CM APPL. 7829/2024 [Application for stay]

3. Issue Notice. Learned Counsel appearing on behalf of the Respondent accepts Notice.
4. With the consent of the parties, the matter has been taken up for hearing and disposal today.
5. The present Appeal has been filed impugning the order and judgment dated 07.12.2023 [hereinafter referred to as "Impugned Judgment"] passed by the District Judge (Commercial Court -09) Central District, Tis Hazari Courts, Delhi [hereinafter called "learned Commercial Court"] where an Application under Order XII Rule 6 [hereinafter



called “the Application”] of the Code of Civil Procedure, 1908 [hereinafter called “CPC”], has been allowed and a partial decree for possession and costs *qua* the relief of possession has been passed by the learned Commercial Court in favour of the Plaintiff/Respondent [hereinafter called “the Landlord”] and against the Appellant/Defendant [hereinafter called “the Tenant”].

- 5.1 By the Impugned Judgment, it has been held that the Landlord is entitled to obtain the possession of two counters situated at ground floor in the property at No. 5616, Basant Road, Pahar Ganj, New Delhi – 110055 [hereinafter called “subject premises”]. The Impugned Judgment further directed that *qua* the relief of arrears of rent/damages/use and occupation charges/*mesne profits*, *pendent lite* and future interest as prayed in prayers ‘b’ to ‘f’ of the Plaint, would continue.
6. Briefly, the relevant facts are that the Landlord filed a suit for recovery of possession of the subject premises as well as for arrears of rent and damages in the sum of Rs. 2.75 lakhs and *mesne profits* for the unauthorized use and occupation of the property at the rate of Rs.40,000/- per month. It was averred in the Plaint that the Landlord is the owner and landlord of the subject premises, which was let out to the Tenant on 02.07.2019 for a period of 11 months, on the basis of an oral agreement. Thereafter, the tenancy was reduced to writing and an agreement dated 31.07.2019 was executed between the parties.
- 6.1 It is not disputed that the monthly rental was Rs. 25,000/- per month payable in advance by the Tenant to the Landlord. The tenancy was for commercial purposes, and at the time of the entering into tenancy,



the Tenant had given the Landlord a sum of Rs. 1,00,000/- as interest free security deposit.

- 6.2 Since, the tenancy had expired by efflux of time on 01.06.2020 and the Tenant continued to remain in occupation of the subject premises, a notice dated 07.08.2020 under Section 106 of the Transfer of the Property Act, 1882 [hereinafter called “TPA”] terminating the tenancy was sent by the Landlord to the Tenant.
- 6.3 The legal notice was replied to by the Tenant on 18.08.2020, however, since the possession of the subject premises was not handed over, the Landlord was constrained to file proceedings for the recovery of the possession of the subject premises. Accordingly, a suit for possession and arrears of rent/damages/use and occupation charges/*mesne profits*, *pendent lite* and future interest was filed by the Landlord before the learned Commercial Court.
- 6.4 In his Written Statement filed before the learned Commercial Court, the Tenant admitted the jural relationship of a Landlord and a Tenant between the parties. However, it was contended on behalf of the Tenant that the subject premises are 2 counters, one each on ground floor and first floor, which were leased out to the Tenant for a period of 10 years and as such the Tenant is in possession of the property since 15.08.2017. It was further averred that the Landlord had taken advance rent for the months of June, July, and August, 2020, after expiry of the Lease Agreement between the parties and that too at an increased rent, thus the tenancy stood extended. It was also contended that the possession of the counter on the first floor was forcefully taken by the Landlord.



7. The Landlord filed the Application for judgment on admissions contending that there were unequivocal admissions on behalf of the Tenant, in as much as:
- (i) The relationship of the landlord and tenant was admitted between the parties;
 - (ii) The rent was admitted at being more than Rs. 25,000/- per month [hence, it was not a protected tenancy¹]; and
 - (iii) The tenancy was validly terminated under the provisions of Section 106 of the TPA.
- 7.1 A reply to the Application was filed by the Tenant contending that the possession of the Tenant is authorised in view of the oral agreement for sale entered into between the Tenant and the Landlord on 15.08.2017, for which an advance sale consideration of Rs. 20,10,000/- was paid.
8. The learned Commercial Court found that the tenancy was a '*month to month*' tenancy which had expired by efflux of time. It was further found in the facts of the present case that there was nothing on record to suggest the tenancy of the Tenant had been renewed by the Landlord and that the contention of the Tenant, that there was an oral agreement for sale of the subject premises had already been dealt with by the predecessor Court by its order dated 07.01.2023. Thus, the Application was allowed by the Impugned Judgment.
9. Aggrieved by the Impugned Judgment, the present Appeal has been filed.
10. The learned Counsel for the Tenant has submitted that the Written

¹ Tenancy protected under the Delhi Rent Control Act, 1958



Statement filed by the Tenant before the learned Commercial Court was not taken on record till 30.08.2022 and the Application under Order XII Rule 6 of CPC was dated 30.03.2022. It was further contended that this Application does not reflect in order sheets dated 31.03.2022, 17.05.2022, and 11.07.2022 of the learned Commercial Court. Since, the Written Statement was not on record on the date of filing of the Application, the Impugned Judgment emanating from the Application, is invalid and should be set aside.

- 10.1 It was further contended by the Tenant that the Rent Agreement relied upon by the learned Commercial Court was in English and the Tenant, being semi-literate did not understand the document. This is evident from the fact that the Rent Agreement was signed by the Tenant in Hindi and not in English.
- 10.2 It was additionally contended that the Landlord had forcibly taken over possession of one counter on the first floor from the Tenant during the pendency of the present case. Thus, a triable issue had been raised with respect to the possession and occupation of the Tenant which ought to have been decided prior to passing of the Impugned Judgment.
11. *Per contra*, learned Counsel for the Landlord has contended that the Tenant has concealed documents and has deliberately failed to file all the relevant documents and the orders of the learned Commercial Court. Reliance was placed on the copy of the order dated 31.10.2022 of the learned Commercial Court which was not part of the record but was handed over by the learned Counsel for the Landlord to submit that the Application was taken on record by the learned Commercial



Court on 31.10.2022.

- 11.1 The learned Counsel for the Landlord further submits that by an order dated 30.08.2022, the learned Commercial Court took on record the Written Statement filed by the Tenant and, thereafter, the Application was taken on record on 31.10.2022.
- 11.2 It was additionally averred that the Written Statement filed by the Tenant contained unequivocal admissions based on which the Application was allowed and a decree was passed by the learned Commercial Court in terms of the site plan attached with the Plaint.
12. The record shows that the suit was filed on 09.02.2021 and the Written Statement was filed belatedly and was taken on record only after the Tenant filed an Application under Section 151 CPC seeking condonation of delay in filing the same. By its order dated 30.08.2022, the learned Commercial Court permitted the Tenant to file its Written Statement subject to payment of costs for the delay caused in the case.
- 12.1 As stated above, once the Written Statement was taken on record on 31.10.2022, an Application under Order XII Rule 6 CPC was filed by the Landlord and taken on record on that date. The relevant extract of order dated 31.10.2022 is reproduced below:

*“...At this stage, counsel for plaintiff Sh. Varun Mehlawat along with plaintiff has appeared. **Cost of Rs.25,000/-imposed on the last date of hearing has been paid today to the plaintiff.** The copies of the applications filed u/O.6 Rule 17 CPC and u/O.1 Rule 10 CPC have been supplied. Replication has also been filed. Copy given. **Counsel for the plaintiff has also filed an application u/O.XXXIX Rule 10 and u/O.XII Rule 6 CPC. Copy supplied to the defendant** Case is adjourned to 09.11.2022 for reply and arguments on the aforesaid application.....”*



[Emphasis is ours]

- 12.2 Thus, the Tenant's contention that the Written Statement was not on record when the Application was filed is belied from the record itself.
13. We are unable to agree with the contentions of the learned Counsel for the Tenant that being illiterate, the Tenant was not aware of the terms and conditions of the Rent Agreement. The Tenant admits to being in occupation of the subject premises since the year 2017 and paying a rental of Rs. 25,000/- per month to the Landlord. In fact, it is averred by the Tenant that there was an increase in the rental subsequently as well, which fact has been denied by the Landlord. Since, the basic terms of the tenancy as set forth above, were not disputed by the Tenant, the contention of the learned counsel for the Tenant that the Tenant was semi-literate and thus, unaware of the terms of the Rent Agreement is also misconceived. In any event, this averment does not form part of the Written Statement.
14. In the application under Order XII Rule 6 of the CPC, the unequivocal admissions made by the Tenant in his Written Statement with respect to the tenancy in question as well as receipt of the legal notice were set out. The relevant extract of the application is reproduced below:-

"12. That there are clear and unambiguous admissions made by the Defendant in its written statement :

***"Para 2 (Preliminary Objections):** The agreement dated 31.07.2019 is a document that followed the oral arrangement. between the parties..... the present agreement brings into light the factum of oral arrangement between the parties as the agreement itself states that the possession was given to the defendant on 02.07.2019 and it was signed and notarized later on 31.07.2019.*



Para 4 (Reply on merits): As admittedly the rent agreement expired on 01.06.2020 the conditions of the rent agreement cannot be levied upon the parties after its expiration.

Para 8 (Reply on Merits): It is submitted that reply notice dated 18.08.2020 was not false or frivolous. It categorically refuted the contents and claims of the illegal notice dated 07.08.2020.

Which entitles the Plaintiff to claim judgment on the basis of admissions made by the Defendant. Even otherwise, having regard to the claim of the Defendant, there is nothing on record to suggest contrary to the documents available on record.

- 14.1 Since, the tenancy was admittedly not made by a registered instrument, in terms of provisions of Section 106 of the TPA², it was deemed to be a lease from a 'month to month' determinable on the part of either party by giving a 15 days' notice, to be calculated from the date of receipt of notice by the Tenant.
- 14.2 The notice determining the tenancy was admittedly given by the Landlord on 07.08.2020 and received by the Tenant. A reply dated 18.08.2020 was also sent by the Tenant. Thus, the tenancy of the Tenant stood validly terminated in August, 2020 itself. The Tenant, however, continued to be in possession and occupation even thereafter, making him liable to pay *mesne* profits/damages for the unauthorised occupation and in use of the subject premises.

² 106. **Duration of certain leases in absence of written contract or local usage.**—(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice. (2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice. (3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section. (4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.



15. The only other contention that has been raised by the Tenant is that the Landlord has dispossessed him from the first floor of the subject premises. From an examination of the Plaint, it can be seen that the Suit was filed for recovery of two counters on the ground floor as was more specifically described in the site plan annexed along with the Plaint. The site plan which has been annexed along with the Plaint refers to only two counters on the ground floor. Neither the Plaint, nor the site plan refers to any counter on the first floor.
- 15.1 As stated above, the contention of the Tenant that there was an oral agreement for sale entered into by the parties and monies in the sum of Rs. 20,10,000/- in cash has been paid by the Tenant to the Landlord, no document was placed on record by the Tenant. In fact, it was an averment made belatedly only after the filing of the Written Statement. Learned Trial Court has dealt with the contention in terms of its orders dated 07.01.2023 as well as the Impugned Judgment. Thus, this Court is not required to advert any further on this aspect.
16. In any event, if the Tenant has any grievance against the Landlord *qua* any other premises, or an oral agreement for sale, he may agitate the same by filing an appropriate proceeding in accordance with law. The present proceeding, which is a suit for ejectment and recovery of possession and *mesne* profits/damages is, *qua* two counters on the ground floor alone.
17. The object of the Commercial Courts Act, 2015 is to provide for a speedy disposal of commercial disputes between parties. The record shows however, that the Tenant has delayed the adjudication of the Suit at every stage.



- 17.1 The Suit was filed by the Landlord on 09.02.2021. Although, the Tenant was served on 05.09.2021, no Written Statement was filed in the permissible period of 120 days³. The learned Commercial Court thus closed the right of the Tenant to file his Written Statement and posted the matter for evidence of the Landlord on 31.03.2022.
- 17.2 The Tenant appeared with his counsel on 31.03.2022. Thereafter on 17.05.2022, the Landlord [PW-1] was examined and discharged and the evidence of the Landlord was closed. On that date, an *ad interim* direction was also passed restraining the Tenant from “*selling, transferring or creating any third party interest in respect of the suit property i.e two counters situated at Ground Floor in the property no.5616, Basant Road, Pahar Ganj, New Delhi-110055 till the final disposal of the present suit*” as well.
- 17.3 Since, the Tenant had not filed any Written Statement, the evidence of Defenant was also closed and the case was put up for final arguments. The matter was thereafter listed for hearing on 29.08.2022 when an application under Section 151 CPC was filed by the Tenant praying that the Written Statement be taken on record and he be allowed to contest the Suit.
- 17.4 As discussed above, it was thereafter, pursuant to a detailed order dated 30.08.2022, making note of the conduct of the Tenant in delaying these proceedings, that the Written Statement was then taken on record by the learned Commercial Court subject to payment of costs.

³ Order V Rule 1 (1) Code of Civil Procedure, 1908



- 17.5 Since no plausible defence was raised in the Written Statement, on 31.10.2022 the Landlord filed an application for judgment on admissions under the provisions of Order XII Rule 6 CPC, which has been allowed by the learned Commercial Court.
18. Thus, the Tenant has, at each stage of the proceedings, caused a delay. It is not disputed that even after passing of the partial decree by the learned Commercial Court, the subject premises have not been handed over by the Tenant.
19. The conduct of the Tenant before this Court is also not above board. The Appeal was filed without disclosing the complete orders of the learned Commercial Court and making averments which were contrary to the record. The grounds raised before this Court also do not qualify as defences in an ejectment suit.
20. The Court deems it appropriate in such a situation to award costs to discourage the filing of frivolous appeal and for taking substantial time of the Court.
21. For the reasons above, the Appeal stands dismissed with costs quantified at Rs. 50,000/-. The costs shall be paid to the Landlord within two weeks. All pending applications also stand dismissed.

TARA VITASTA GANJU, J

VIBHU BAKHRU, J

FEBRUARY 08, 2024/r