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

% *Date of Decision: 14.02.2024*

\+ **RFA(COMM) 53/2024 and CM Nos.9102/2024 & 9103/2024**

METENUO KECHU ALSO KNOWN AS PREETI ..... Appellant

Through: Mr K.C. Mittal and Mr Yugansh Mittal, Advocates.

versus

DIVISHT KAUSHIK & ANR. ..... Respondent

Through: Mr Mohit Mathur, Senior Advocate with Mr Rajat Wadhwa, Mr Bharat Garg, Mr Sumit Misra, Mr Anukalp Jain and Mr Aakash Mittal, Advocates along with respondents in person.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (*ORAL*)

1. The appellant has filed the present appeal impugning an order dated 05.12.2023 (hereafter *the impugned order*) passed by the learned Commercial Court in CS(COMM) No.315/2023 captioned *Divisht Kaushik & Anr. v. Metenuo Kechu* (also known as Preeti), whereby the respondents' application under Order XII Rule 6 read with Order XIIIA of the Code of Civil Procedure, 1908 (hereafter *the CPC*) was allowed and the respondents were granted a decree of possession of the property bearing No.181-C, first floor, Khirki Village, Malviya Nagar, New Delhi-110017 (hereafter *the suit property*).

FACTUAL CONTEXT

2. On 30.11.2018, Shri Satish Kumar, the then Karta of Satish Kumar & Sons HUF (plaintiff no.2 in the suit) had let out the suit property for commercial purposes, to the appellant (the defendant in the suit). The said parties had also entered into a rent agreement dated 01.12.2018 (hereafter *first lease agreement*) recording the terms of the lease.

3. The term of the lease was for eleven months – from 01.12.2018 to 30.10.2019. The monthly lease rent for the suit property was agreed at ₹65,000/- payable in advance, on or before seventh day of each calendar month. The appellant had also agreed to pay a security deposit of ₹1,30,000/-. The same was refundable after the expiry / termination of the first lease agreement and on the appellant handing over the actual, vacant, physical and peaceful possession of the suit property.

4. The respondents claimed that the appellant was irregular in payment of rent and that the cheques issued by the appellant were also dishonoured. It is stated that Sh. Satish Kaushik, since deceased, had accordingly sent a legal notice and instituted complaints under Section 138 of the Negotiable Instruments Act, 1881 (hereafter *the NI Act*) for dishonour of three cheques dated 29.10.2020, 12.11.2020 and 14.12.2020, for an amount of ₹65,000/- each.

5. Sh. Satish Kaushik expired on 29.12.2020 and is survived by his son (respondent no.1).

6. It is claimed in the plaint filed by the respondents that a sum of ₹8,45,000/- was due from the appellant as arrears of rent as on 30.06.2021. A tabular statement indicating the details of the amount due as on 30.06.2021, as set out in the plaint, is reproduced below:

"S. No.	**Details of Rent and Other Charges from 1st March 2020 till 30th June, 2021**	
1.	Rent from 1st March, 2020 till 30th June 2021 [INR 65,000 x 16 months]	INR 10,40,000/-
2.	Amount Received	INR 1,95,000/-
3.	Arrears as on 30th June, 2021	**INR 8,45,000/-"**

7. The respondents claimed in their plaint that as on 14.09.2021, the appellant's liability for payment of rent of the suit property had increased to ₹10,07,500/- as set out below:

"S. No.	**Details of Rent and Other Charges from 1st July 2021 till 14th September, 2021**	
1.	Rent from 1st July, 2021 till 14th September, 2021	INR 1,62,500/-
2.	Arrears Outstanding on 30th June, 2021	INR 8,45,000/-
3.	**Arrears as on 14th September, 2021**	**INR 10,07,500/-**
4.	Amount Received on 17.12.2021, 31.12.2021, 20.02.2022, 15.03.2022 adjusted towards above arrears	[INR 2,95,000/-]"

8. The respondents averred that notwithstanding the arrears of rent, the parties had entered into another rent agreement dated 14.09.2021 (hereafter *the lease agreement*). The second lease agreement stipulated that the lease would be on month-to-month tenancy for a maximum of eleven months commencing from 15.09.2021 to 14.08.2022. The second lease agreement also stipulated that the appellant would pay ₹1,10,500/- per month for four

months from August, 2021 to November, 2021. Thereafter, the appellant had agreed to pay ₹65,000/- per month from 15.01.2022 to 15.08.2022. The appellant also agreed to pay the outstanding utility bills (water and electricity).

9. It is the respondents' case that the appellant continued to default in payment of lease rent. She was irregular in the payment of lease rent and the cheques issued by her were also dishonoured. It is averred in the plaint that complaints were instituted under Section 138 of the NI Act before the Courts at Saket, New Delhi as certain cheques issued by the appellant were also dishonoured. The details of the complaints as mentioned in the plaint are set out below:

"Sr. No.	**Complaint Details =**	**Pending Before**
1.	Satish Kaushik & Sons HUF through its Karta Sh. Divisht Kaushik v. Metenuo Kechu bearing CC NI ACT/598/2022	Ld. MM (NI ACT) Digital Court-2, South, Saket Courts, New Delhi
2.	Satish Kaushik & Sons HUF through its Karta Sh. Divisht Kaushik v. Metenuo Kechu bearing CC NI ACT/2861/2022	Ld. MM (NI ACT) Digital Court-2, South, Saket Courts, New Delhi
3.	Satish Kaushik & Sons HUF through its Karta Sh. Divisht Kaushik v. Metenuo Kechu bearing CC NI ACT/4462/2022	Ld. MM (NI ACT) Digital Court-3, South, Saket Courts, New Delhi"

10. The appellant also claimed that she had made a complaint to the police alleging that respondent no.1 along with 4-5 persons (which she referred to as respondent no.1's '*gunda associates*') had entered the Spa run by her from the suit property and threatened her. However, the police

had not taken any action and therefore, the appellant filed a complaint case under Section 200 read with Section 190 of the Code of Criminal Procedure, 1873 (hereafter *the CrPC*). The appellant claims that she had filed an application under Section 156(3) of the CrPC against the respondents and his '*gunda associates*'.

11. On 11.03.2023, the respondents sent a legal notice in terms of Section 106 of the Transfer of Property Act, 1882 terminating the tenancy of the appellant and demanding vacant physical possession of the suit property. The respondents also demanded arrears on rent till the date of termination of tenancy, quantifying the said amount at ₹12,66,980/-. Thereafter, the respondents filed the suit [CS(COMM) No.315/2023] claiming the following reliefs:

> "a) Pass a decree of eviction/ejectment/possession in favour of the Plaintiffs and against the Defendant whereby the Defendant, her agents, servants, associates, attorneys, representatives and assigns, may be evicted and /or ejected from the suit property i.e. First Floor in/of 181-C, situated at Khirki Village, Malviya Nagar, New Delhi-11 0017 and the Plaintiffs be put in actual, physical and vacant possession of the same,
>
> b) Pass a decree in favour of the Plaintiffs and against the Defendant directing her to pay to the Plaintiffs a sum of INR 12,66,980/- as arrears of rent till 26th March, 2023,
>
> c) Pass a decree in favour of the Plaintiffs and against the Defendant directing her to pay to the Plaintiffs a sum of INR 2,13,340/- as mesne profits/ unauthorized use and occupation charges from 27th March, 2023 to 7th May, 2023 @ Rs. 1,60,000/- per month,
>
> d) Pass a decree in favour of the Plaintiff and against the Defendant towards pendente lite and future mesne profits from 8th May, 2023 till the delivery of actual, physical and vacant possession of the suit premises @ Rs. 1,60,000/- per month,
>
> e) Pass a decree in favour of the Plaintiffs and against the Defendant whereby directing the Defendant to pay to the Plaintiffs interest

pendente lite and future on the entire decretal amount @ 24% per annum or at such rate as this Hon'ble Court deems fit and proper till the date of actual payment from the date of its accrual,

f) For the purpose of relief as prayed in the above clauses (c) to (d) above, this Hon'ble Court may order an enquiry as to the rent as well as mesne profits under Order XX Rule 12 CPC and final decree in terms of the result of enquiry may be passed in favour of plaintiff and against such of the defendants as this Hon'ble Courts seems fit and proper. The plaintiff undertakes to pay additional/deficit court fee in terms of the orders of this Hon'ble Court."

12. Along with the above mentioned plaint, the respondents filed an application under Order XVA read with Order XXXIX Rule 10 of the CPC alleging that the appellant was in unauthorized possession of the suit property and she was not paying any charges towards the use and occupation of the suit property. The respondents claimed that the appellant was also liable to pay *mesne profits* at the rate of ₹1,60,000/- per month and prayed for an order / direction, directing the appellant to pay the arrears of rent till 26.03.2023 amounting to ₹12,66,980/- and, to continue payment of user charges / *mesne profits* at the rate of ₹1,60,000/- per month. The respondents also filed an application, styled as application under Section 12A of the Commercial Courts Act, 2015 (hereafter *the Commercial Courts Act*), praying that the parties be exempted from pre-suit mediation under Section 12A of the Commercial Courts Act.

13. Summons in the suit were issued on 29.05.2023 and the suit was directed to be listed on 03.08.2023. In the meanwhile, the appellant filed the Written Statement on 26.07.2023 with an application seeking condonation of delay of seventeen days in filing the written statement. The learned Commercial Court allowed the said application and condoned the delay. It was also noticed that the written statement was not accompanied

with an affidavit of admission / denial of documents and accordingly, the learned Commercial Court granted two weeks' time to the appellant to cure the defects. The appellant was also granted time to file a reply to the respondents' application under Order XVA read with Order XXXIX Rule 10 of the CPC and the matter was, thereafter, listed on 13.09.2023.

14. On 13.09.2023, the learned Commercial Court re-listed the matter for hearing submissions on the application under Order XVA read with Order XXXIX Rule 10 of the CPC on 03.10.2023. The said order is not on record.

15. In the meanwhile, on 27.09.2023, the respondents filed an application under Order XII Rule 6 of the CPC read with Order XIIIA of the CPC and sought a summary judgment for eviction of the appellant from the suit property.

16. The said application was heard and disposed of in terms of the impugned order.

17. The learned Commercial Court found that the appellant had admitted the relationship of tenant and landlord, and there was no denial of the said jural relationship. The appellant had not disputed the execution of the second lease agreement or the receipt of the legal notice dated 11.03.2023 terminating the said lease. The learned Commercial Court further held that in view of the above, the respondents were entitled for a decree of eviction and accordingly, directed the appellant to handover actual, vacant, physical possession of the suit property on or before 31.12.2023.

SUBMISSIONS

18. Mr. Mittal, learned counsel appearing for the appellant has assailed the impugned order on, essentially, two fronts. First, he submitted that the suit was not maintainable and was liable to be rejected as the respondents had not complied with the provisions of pre-litigation mediation as contemplated under Section 12A of the Commercial Courts Act. He relied on the decision of the Supreme Court in ***Yamini Manohar v. T K D Keerthi: 2023 SCC OnLine SC 1382*** in support of his contention that the suit filed by the respondents is not maintainable.

19. Next, he referred to the order dated 03.10.2023 passed by the learned Commercial Court and submitted that the parties had agreed that the appellant would pay a sum of ₹1,00,000/- per month with effect from 01.06.2023 which was accepted by the respondents. He submitted that appellant had paid the said amount in cash and therefore, the impugned order evicting the appellant was liable to be set aside.

REASONS AND CONCLUSION

20. At the outset it is material to note that the appellant had not raised any objection before the learned Commercial Court regarding non-compliance of Section 12A of the Commercial Courts Act. According to the respondents, the parties were referred to mediation in another proceedings but, their disputes remained unresolved. In addition, the respondents had claimed that they were seeking urgent reliefs under Order XVA read with Order XXXIX Rule 10 of the CPC seeking a deposit of the occupation charges. According to the respondents, the appellant had unauthorizedly continued to occupy the suit property without payment of any charges.

21. As noted above, the appellant had not raised any objection on account of non-compliance of provisions of Section12A of the Commercial Courts Act before the learned Commercial Court. The appellant had not filed any reply to the respondents' application to contest the grounds as stated in the application. The Written Statement filed by appellant also mentioned that the Court of the learned Metropolitan Magistrate had referred the parties to mediation. According to the appellant, the mediation proceedings had failed as the respondents had not joined the proceedings but had deposited two other cheques for encashment. The appellant claimed that the cheques issued by her were not against the rent but for security.

22. It is relevant to note that the respondents had also sought interim order for deposit of occupation charges as the appellant was occupying the suit property without payment of any rent or charges.

23. In view of the above, there was no contest to the appellant's case that the parties had attempted to resolve the disputes through mediation and that the appellant had sought urgent reliefs. Thus, we find no merit in the contention that the suit was liable to be dismissed on account of parties not attempting pre-litigation mediation.

24. The contention that since the appellant had agreed to pay the amount of ₹1,00,000/- per month with effect from 01.06.2023, the same precluded the learned Commercial Court from rendering the decision on admissions is without merit. It is relevant to refer to the order dated 03.10.2023 passed by the learned Commercial Court, which reads as under:

> "03.10.2023

Present: Sh. Bharat Garg, learned counsel for plaintiff.
Ms. Shabnam Sheikh, learned counsel for defendant.

<u>Plaintiff's application under Order 15-A CPC r/w Order 39 Rule 10 CPC</u>

Matter is listed today for disposal of the application under Order 15-A CPC r/w Order 39 Rule 10 CPC.

Part arguments heard.

During the course of arguments, learned counsel for defendant has stated that the defendant is ready to make payment @ Rs.1,00,000/- per month from 01.06.2023. She has stated that during this period from 01.06.2023, the defendant has already paid @ Rs. 65,000/- per month and the balance payment from 01.06.2023 shall be paid by the defendant latest by 30.11.2023 and she will continue to make the payment @ Rs.1,00,000/- per month by 15th day of each month till further orders.

The proposal has been accepted by learned counsel for the plaintiff on instructions, but without prejudice to his rights.
The payments be made as above by defendant.

<u>Plaintiff's application under Order 12 Rule CPC r/w Order 13-A CPC</u>

Replication along with an application under Order 12 Rule 6 CPC r/w Order 13-A CPC was filed on behalf of the plaintiff on 27.09.2023.

Reply, if any, to the application under Order 12 Rule 6 CPC may be filed with advance copy to the other side.

To come up for further proceedings on **<u>05.12.2023</u>**."

25. The said order indicates that the appellant had agreed to pay the amount of ₹1,00,000/- per month by fifteenth day of each month till further orders. Although, Mr. Mittal submitted that the appellant had paid the said amount, the respondents stoutly disputed the same. Concededly, there is no

receipt or acknowledgment of the amount claimed to have been paid by the appellant in terms of the order dated 03.10.2023. Mr. Mittal submitted that the said amount was paid in cash. *Prima facie,* we are unable to accept that the order dated 03.10.2023 was complied with. In any view of the matter, the said order did not preclude the learned Commercial Court from passing a judgment on admissions.

26. There is no dispute as to the material facts warranting passing a decree for eviction. The fact that the appellant was a tenant in the suit property is not disputed. The lease agreements, which are also admitted, expressly record that the tenancy is on month-to-month basis and in any event would not exceed eleven months. Concededly, the appellant had received the legal notice dated 11.03.2023 under Section 106 of the Transfer of Property Act, 1882 whereby, the tenancy was terminated. Mr. Mittal has been unable to point out any credible defence which would entitle the appellant to retain the possession of the suit property in view of the aforesaid admissions.

27. In view of the above, we find no infirmity with the impugned order.

28. Before concluding, it is also relevant to note that after the impugned order was passed, the appellant had filed an application seeking extension of time to vacate the suit property and to deposit the balance arrears of rent. The said application was listed on 04.01.2024 and at the request of the learned counsel for the appellant was renotified for hearing on 25.01.2024. The operative part of the order dated 25.01.2024 reads as under:

> "In view of the submissions made in the application, the

time to vacate the premises and to pay the balance of arrears of rent is extended till 15.02.2024, failing which the Execution Proceedings shall be initiated against the Defendant.

The Defendant who is present in person in the Court undertakes to vacate the premises by 15.02.2024 and to hand over the vacant and peaceful possession of the premises in question to the Plaintiff and to pay the balance arrears of rent on or before 15.02.2024.

Re-notify on 16.02.2024."

29. It is apparent from the above that the appellant had given an undertaking to the learned Commercial Court to vacate the suit property from 15.02.2024 and hand over the vacant possession on 15.02.2024.

30. Notwithstanding the aforesaid undertaking, the appellant has now approached this Court for an interim relief seeking stay of the impugned order. In our view it is impermissible for the appellant to seek any such relief in view of the undertaking given to the learned Commercial Court.

31. In view of above, the present appeal is dismissed with costs quantified at ₹25,000/-. The costs shall be paid to the respondents within a period of two weeks from date. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 14, 2024
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