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

% *Date of decision: 05.03.2024*

+ **RFA(OS)(COMM) 17/2019**

M/S PRIYANAV WELLNESS PVT LTD Appellant

Through: Mr Ashok Mahajan, Advocate.

versus

PRADYUMAN KUMAR AGGARWAL & ORS Respondent

Through: Mr Rahul Gupta with Ms Mansha Gupta and Mr Raghwendra Pratap Rao, Advocates for respondent nos.1 to 4.

Mr Manoj K. Garg with Mr Pulkit Atal, Advocates for respondent no.5.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal is directed against judgment and order dated 15.01.2019 passed by the learned Single Judge. The operative directions issued by the learned Single Judge, which are contained in paragraph 21 of the said order, read as follows:

“21. A decree is accordingly passed (i) in favour of the plaintiff and jointly and severally against the two defendants, of recovery of an amount computed at the rate of Rs.7,00,0.00/- per month with effect from 9th June, 2017 till 12th October, 2018 together with interest at 9% per annum on arrears thereof with effect from the end of the month for



which the rent / mesne profits are due till the date of payment; (ii) against the defendant no.1 for recovery of Rs.8,36,000/- and Rs. 1,23,666/-; and, (iii) costs of the suit with counsels fee assessed at Rs. 1,00,000/-."

2. It is not in dispute that the subject suit property was given on rent by respondent nos.1 to 4 [hereinafter referred to as "landlords"] in favour of respondent no.5 i.e., defendant no.1[hereinafter referred to as "tenant"].
3. In the suit filed by the landlords for ejectment and recovery of arrears of rent and mesne profits [i.e., CS (COMM) 29/2018], concededly, a decree for ejectment was passed against the tenant on 14.09.2018. The record shows, and something which the learned counsel for the appellant [hereinafter referred to as "appellant/occupant"] accepts, that the possession of the suit property was handed over on 12.10.2018. As a matter of fact, the keys were handed over in court on that date, when proceedings were held in CS (COMM) 29/2018.
4. Counsel for the appellant/occupant says that it had no liability towards the payment of rent or mesne profits, since the initial lease deed, i.e., the registered lease deed dated 30.06.2015, was executed between the landlords and the tenant.
 - 4.1 For this purpose, our attention has been drawn by the counsel for the appellant/occupant to the order dated 14.09.2018 passed by the learned Single Judge in the application preferred by the landlords under Order XII Rule 6 of the Civil Procedure Code, 1908 [hereinafter referred to as "CPC"].
5. It is also pointed out by the counsel for the appellant/occupant that an appeal was preferred with the division bench by the tenant, against the order dated 14.09.2018. Based on the order passed by the Division Bench dated



16.10.2018, in which the learned Single Judge's order dated 14.09.2018 is referred to as well, it is contended that the appellant/occupant could not have been mulcted with any liability.

6. It is stated that a perusal of the order dated 14.09.2018 read with Division Bench's order dated 16.10.2018 would show that evidence had to be led with regard to rent/mesne profits.

7. Learned counsel for the appellant/occupant concedes that the said entity was paying rent @ Rs.7 lakhs per month to the tenant.

8. The moot question that arises in the appeal is: whether the appellant/occupant should be called upon to pay compensation to the landlords, after the lease was determined?

9. The record shows, and something which is not disputed on behalf of the appellant/occupant, that the lease was determined on 31.12.2017. As per Clause 2(v) of lease deed dated 30.06.2015, the tenant was not authorized to create a sub-tenancy. Clause 2(v) reads as follows:

"2(v) The LESSEE shall have no right and/or authority under any circumstances to assign, sublet, underlet, mortgage, or grant license to use or otherwise part with the possession of THE DEMISED PREMISES or any part thereof. Change in constitution in the LESSEE company shall tantamount to sub-letting for the purposes of this clause. It is clarified that the possession of THE DEMISED PREMISES shall not be parted away to anybody by the LESSEE under any circumstances."

[Emphasis is ours]

10. Therefore, any private arrangement to buy or lease between the tenant and the occupant which had been reached without the landlords' knowledge, could not have possibly compromised the landlords' interest. It is in this context that a decree for possession/ejectment had been passed on



14.09.2018, which was sustained by the Division Bench *via* its order dated 16.10.2018.

11. The arguments advanced on behalf of the occupant that evidence had to be led would have been relevant, if the landlords were seeking mesne profits in excess of the rate at which occupation charges were paid by the occupant to the tenant. As indicated above, the user charges were paid by the occupant to the tenant at the rate of Rs.7 lakhs per month.

12. The learned Single Judge in the impugned order, in our view, has correctly noticed that no evidence contrary to the provisions of Section 92 of the Indian Evidence Act, 1872 can be led in the face of the registered lease deed obtaining between the landlords and the tenant. Therefore, the conclusion arrived at by the learned Single Judge was that framing an issue and allowing parties to lead evidence concerning mesne profits would only delay and/or deprive the dues of the landlords.

12.1 We tend to agree with the view taken by the learned Single Judge in this behalf.

13. We may also note that the tenant is presently represented by the counsel for the liquidator.

14. It is the submission of the counsel for the liquidator that the occupant's name was struck off from the register maintained by the Registrar of the Companies (RoC). Since dues were owed to the tenant, an application had to be moved before the concerned bench of National Company Law Tribunal [hereinafter referred to as "NCLT"] for restoring the name of the occupant on the RoC.

14.1 In this context, a hard-copy of the order dated 20.01.2022 passed by the NCLT has been placed before us.



14.2 A perusal of the said order shows that since according to the liquidator, money was owed to the tenant, the NCLT restored the name of the occupant on the RoC.

14.3 In other words, it is the say of the liquidator that the occupant is a creditor and owes money. That said, it is not disputed on behalf of the landlords by Mr Rahul Gupta that the operative part of the order dated 15.01.2019 will have to be modified.

15. As indicated above, the tenancy was, admittedly, determined on 31.12.2017. Therefore, between 09.06.2017 and 31.12.2017, the money that was payable had the attributes of rent, and consequently, the liability with regard to the same can only fall only on the tenant. However, for the period commencing from 01.01.2018 and ending on 12.10.2018, when possession of the suit property was handed over by the occupant to the landlords, the liability morphed into mesne profits, and hence would have to be shouldered jointly and severally by the tenant and the occupant.

16. Subject to the operative part of the judgment and decree being modified to this extent, the remaining part is sustained. The appeal is disposed of in the aforesaid terms.

17. We make it clear though that the right of the occupant to contest any amounts that the liquidator for the tenant may claim will not be impeded by what is stated hereinabove.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 5, 2024/ tr