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

% *Date of Decision : 28.05.2024*

\+ **RFA(COMM) 200/2024 and CM APPL. 31208/2024**

PC JEWELLER LTD ..... Appellant

Through: Mr Uttam Datt, Mr Abhishek Mishra and Ms Sonakshi Singh, Advocates.

versus

SUBHASH CHAND JAIN ..... Respondent

Through: Mr Ravi Gupta, Senior Advocate with Mr Dinesh Kumar Gupta and Mr Vidit Gupta, Advocates.

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

VIBHU BAKHRU, J. (*ORAL*)

1. Issue notice.

2. The learned counsel appearing for the respondent accepts notice.

3. The appellant has filed the present appeal impugning an order dated 22.03.2024 (hereafter *the impugned order*), whereby the learned Commercial Court had allowed the applications filed by the respondent under Order XIIIA of the Code of Civil Procedure, 1908 (hereafter *CPC*) and Order XII Rule 6 of the CPC, in CS(COMM) 207/2023 captioned *Sh. Subhash Chand Jain v. M/s PC Jeweller Limited*.

4. In terms of the impugned order, the suit preferred by the respondent was partially decreed. The learned Commercial Court has held that the

respondent is entitled to a decree of possession of Basement, Ground and First Floor of the Property bearing No.C-54, Preet Vihar, New Delhi-110092 as well as arears of rent at the rate of ₹8,50,000/- per month plus GST and applicable taxes from December, 2022 till April, 2023. The suit was partially decreed in the aforesaid terms.

5. The respondent, who is the plaintiff in the aforementioned commercial suit, had let out a property bearing No. C-54, Preet Vihar, Vikas Marg, New Delhi-110092 (hereafter *the demised premises*) along with all utilities to the appellant in terms of a registered Lease Deed dated 16.12.2009. The demised premises is a five-storey building built on a plot measuring 570 square yards.

6. The lease was for a period of nine years commencing from 16.12.2009. The monthly rent for the demised premises was agreed at ₹8,25,000/- (Rupees Eight lacs Twenty Five thousand only) for the initial period of three years with an increase of 15% after the expiry of every three years from the date of the commencement of the Lease Deed. In addition, the appellant was also liable to pay applicable taxes and all amenity charges for the use of the demised premises for commercial purposes.

7. The term of the lease expired on 15.12.2018 and a fresh Lease Deed dated 31.12.2018 was executed and registered by the parties. In terms of the said Lease Deed, the lease was for a term of one year commencing 16.12.2018 at the agreed monthly rate of ₹10,91,063/-. The appellant used the demised premises for running a jewellery showroom in addition to maintaining its office.

8. The respondent claimed that on 01.09.2019, the parties had orally

agreed to reduce rent payable by the appellant to ₹10,00,00/- per month in addition to the amenity charges and applicable taxes.

9. The respondent claimed that the said appellant continued to pay the rent till 31.03.2020. After the expiry of the Lease Deed dated 31.12.2018, the appellant's tenancy of the demised premises continued on a month-to-month basis.

10. The respondent claimed that in view of the outbreak of COVID-19, the appellant requested that the rent for the demised premises be temporarily reduced with effect from 01.04.2020. The respondent claimed that it agreed to the same and the monthly rent was, accordingly, reduced to ₹6,00,000/- per month in addition to amenity charges and applicable taxes. The respondent claimed that the appellant continued to pay the said rent till 31.08.2020. However, with the pandemic waning, the parties agreed to increase the rent to ₹9,00,000/- per month with effect from 01.09.2020. The appellant paid the said rent to the defendant till 31.03.2021.

11. The respondent claimed that with effect from 01.04.2021, the appellant vacated the second and third floor of the demised premises and handed over vacant possession of the same to the respondent. However, the appellant continued to occupy the remaining floors (basement, ground and first floor of the demised premises) with effect from 01.04.2021 at an agreed monthly rent of ₹8,50,000/-. It is stated that the appellant continued to pay the rent at the said rate of ₹8,50,000/- per month beside the applicable taxes, till 30.09.2022.

12. The rent along with GST was paid through banking channels after deducting tax deducted at source (TDS) at the applicable rate.

13. The respondent alleges that the appellant failed to pay the lease rental after 30.09.2022 despite several reminders. Additionally, it claims that the appellant also did not furnish proof of payment of electricity or water bills. In the circumstances, the respondent called upon the appellant to vacate the remaining part of the demised premises.

14. The respondent sent a legal notice dated 24.03.2023 by speed post and email demanding arears of rent and terminating the tenancy. In addition, the respondent also demanded use and occupation charges at the rate of ₹12,00,000/- per month if the appellant failed to vacate the demised premises within 15 days of the receipt of the legal notice.

15. In view of the above, the respondent instituted pre-suit mediation by making an application to Legal Service Authority, East District on 20.04.2023. However, the respondent stated that the appellant did not join the said proceedings. However, on 27.04.2023 and 15.05.2023, the appellant deposited a sum of ₹9,18,000/- each. Thus, an aggregating a total amount of ₹18,36,000/-.

16. Since the said amounts as demanded were not paid and the disputes remained unresolved, the respondent instituted the suit claiming possession of the part of the demised premises (basement, ground floor and first floor of the Property bearing C-54, Preet Vihar, Vikas Marg, New Delhi – 110092) which had not been handed over, along with arears of rent at the rate of 18% per annum and mesne profits at the rate of ₹12,00,000/- per month with effect from 01.05.2023 along with interest at the rate of 18% per annum.

17. Thereafter, the respondent instituted the suit before the learned Commercial Court, *inter alia*, praying for the decree of possession of the

basement, ground floor and first floor of the demised premises; arears of rent quantified at ₹50,15,000/- (₹42,50,000/- and GST of ₹7,65,000/-) till 30.04.2023; recovery of a sum of ₹14,16,000/-; mesne profit of ₹12,00,000/- along with GST; interest on the said amount quantified at ₹69,000/- till the date of the suit on arears of rent; *pendente lite* and future profits at the rate of ₹14,16,000/- per month (₹12,00,000/- plus GST at the rate of 18% per annum); a decree of mandatory injunction directing the appellant to clear the amenity charges and restore the condition of the premises and change the official address; and costs.

18. The appellant denied that the parties had agreed to increase the monthly rent to ₹9,00,000/- with effect from 01.09.2020. It claimed that since the footfalls of the showroom had not increased, it had requested the respondent to not to increase the rent. It also claimed that it was forced to vacate the second and third floor of the demised premises, and it also desired to vacate the entire suit premises as the same was not commercially viable. The appellant claimed that since part of the demised premises had been vacated, the rent for the remaining portion was agreed to be reduced to ₹4,50,000/-. The appellant claimed that it paid a sum of ₹8,50,000/- for initial months as the respondent was suffering certain financial difficulties. Thus, according to the appellant, the agreed rent for the remaining portion of the demised premises (basement, ground floor and first floor) was agreed at ₹4,50,000/- and not ₹8,50,000/- with effect from 01.04.2021.

19. It is clear from the above that the dispute between the parties are in a narrow compass. There is no dispute as to the demised premises had been let out by the respondent to the appellant in terms of a registered Lease Deed

dated 16.12.2009 for a period of nine years and thereafter, in terms of the registered Lease Deed dated 31.12.2018 for a period of one year. There is no dispute that after expiry of the term of the Lease Deed, the appellant's tenancy of the demised premises became a month-to-month tenancy. The respondent also does not dispute that the parties had agreed that the monthly rent of the demised premises with effect from 01.09.2019 would be reduced to ₹10,00,000/- per month and the appellant had continued to pay the same till 31.03.2020. The appellant also accepts that with effect from 01.04.2020, the parties had agreed that the monthly rent of the demised premises be reduced to ₹6,00,000/-. There is also no dispute that the lease rentals were paid through banking channels. There is also no cavil that the respondent had issued a legal notice dated 24.03.2023 terminating the said lease of the demised premises.

20. In view of the above, the controversy between the parties narrows down to whether the lease rent of the demised premises from ₹6,00,000/- to ₹9,00,000/- with effect from 01.09.2020 and further fixed at ₹8,50,000/- for part of the demised premises (basement, ground floor and first floor) with effect from 01.04.2021.

21. It is material to note that the appellant had accepted that it had paid the rent as agreed. Further, there is no dispute as to the payments made by the appellant. The respondent had produced the invoices raised and the amounts received. It had also filed a tabular statement indicating the invoice number, the period for which the said invoice was raised, the applicable GST and the amount received. There is no dispute that the invoices as mentioned in the said statement of accounts were raised by the respondent

and the amounts of the said invoices were made by the appellant. The said tabular statement is set out below:

Rent Account Statement of P.C. Jeweller Limited w.e.f. 01.04.2021 till Jan 2023

S.No.	Invoice date	Invoice No.	Rent month	Rent Amount	CGST@9%	SGST@9 %	Recd.	Delay
1	27.09.21	2021-22/GST 1	1/4/21 to 17/4/21	4,81,667	43,350.03	43,350.03	17.11.21	51 Days
2	27.09.21	2021-22/GST 2		Nil				
3	28.09.21	2021-22/GST 3	8/6/21 to 30/6/21	6,51,667	58,650.03	58,650.03	17.11.21	50 Days
4	30.09.21	2021-22/GST 4	July 21 to Sept.21	25,50,000	2,29,500	2,29,500	17.11.21	48 Days
5	04.10.21	2021-22/GST 5	Oct.21	8,50,000	76,500	76,500	17.11.21	44 Days
6	03.11.21	2021-22/GST 6	Nov.21	8,50,000	76,500	76,500	7.12.21	30 Days
7	03.12.21	2021-22/GST 7	Dec.21	8,50,000	76,500	76,500	28.12.21	21 Days
8	03.01.22	2021-22/GST 8	Jan.22	8,50,000	76,500	76,500	17.3.22	74 Days
9	02.02.22	2021-22/GST 9	Feb.22	8,50,000	76,500	76,500	29.3.22	51 Days
10	02.03.22	2021-22/GST 10	Mar.22	8,50,000	76,500	76,500	29.3.22	22 Days
11	05.04.22	2022-23/GST 1	April 22	8,50,000	76,500	76,500	7.5.22	30 Days
12	05.05.22	2022-23/GST 2	May.22	8,50,000	76,500	76,500	25.5.22	18 Days
13	03.06.22	2022-23/GST 3	June.22	8,50,000	76,500	76,500	27.6.22	20 Days
14	01.07.22	2022-23/GST 4	July. 22	8,50,000	76,500	76,500	29.7.22	22 Days
15	02.08.22	2022-23/GST 5	Aug, 22	8,50,000	76,500	76,500	20.8.22	13 Days
16	05.09.22	2022-23/GST 6	Sept. 22	8,50,000	76,500	76,500	12.10.22	25 Days
17	03.10.22	2022-23/GST 7	Oct.22	8,50,000	76,500	76,500	27.4.22	203 Days
18	31.01.23	2022-23/GST 8	Nov.22 To Jan.23	Nov.22 To Jan.23	2,29,500	2,29,500	15.5.23 (Only Rs.9,18,000 /- Recd.)	104 Days

22. It is clear from the above that the appellant had been making monthly payments against lease rentals in respect of the demised premises. Although, the appellant has disputed that the lease rent was increased to ₹9,00,000/- from 01.09.2020 till 31.03.2021, there is no dispute that the said lease rent was paid. There is some inconsistency in the written statement filed by the appellant in this regard. The appellant disputes that the rent was increased to ₹9,00,000/- with effect from 01.09.2020 till 31.03.2021. It also claims that the rent was reduced to half as the appellant had vacated the second and third floor of the demised premises. According to the appellant, it was agreed that the appellant would pay a sum of ₹4,50,000/-. It is apparent that if 50% of the rent is ₹4,50,000/-, then the monthly rent of the demised premises was, admittedly, ₹9,00,000/-. Thus, the appellant's bald denial that the rent had increased from ₹6,00,000 to ₹9,00,000/- with effect from

01.09.2020 is clearly of no value.

23. The appellant's case that the monthly rent of the remaining portion of the demised premises, that is, basement, ground and the first floor was reduced to ₹4,50,000/-, is clearly belied by the regular payments made by the appellant at the material time against the invoices raised by the respondent. The appellant had not only paid the lease rent in terms of the invoices (at the rate of ₹8,50,000/- per month), it had also paid the GST at the relevant rate of 18% on the value of the rent. Additionally, the appellant had also deducted TDS on the amount of monthly rent. The respondent has also produced Form 26AS, which reflects the tax deducted by the appellant and deposited to the credit of the respondent with the Income Tax Authorities. The same indicates that the tax was deducted on a monthly rental at the rate of ₹8,50,000/- and not ₹4,50,000/- as claimed by the respondent.

24. The appellant claims that although the monthly rent was ₹4,50,000/-, it had paid ₹8,50,000/- per month to support the respondent as the respondent was suffering from certain financial constraints. The said contention is clearly insubstantial. It stretches one's sense of credibility to accept that the appellant had made an advance of ₹4,00,000/- on a monthly basis to the respondent, without raising any objection as to the invoices raised by the appellant and after deducting the tax deducted at source and in addition, also paying GST on the lease rental of ₹8,50,000/- per month. There is no material on record, which even remotely supports the appellant's plea that rent was reduced to ₹4,50,000/-, per month. This plea is not in conformity with the pattern of payments made by the appellant, the TDS

deducted and deposited with the Income Tax authorities, and the GST paid on lease rentals.

25. We find no infirmity with the conclusion of the learned Commercial Court that the appellant had no prospect of succeeding in his defence as to the quantum of rent agreed between the parties.

26. It is also apparent that the plea raised by the appellant is a dishonest one and is only for the purposes of delaying the proceedings.

27. During the course of the proceedings, the learned counsel for the respondent also handed over the copy of the order sheets passed by the learned Commercial Court in the suit after the impugned order.

28. The order dated 24.05.2024 passed by the learned Commercial Court indicates that the respondent had tendered an affidavit by way of evidence on 24.05.2024 enclosing therewith copies of the invoices (Ex.PW1/5) and the said invoices were not objected to by the appellant. The invoices clearly set out the rate of monthly rental.

29. In view of the above, the present appeal is unmerited and dismissed with costs quantified at ₹2,00,000/-. The costs be paid to the respondent within a period of two weeks from date.

30. Pending application also stands disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 28, 2024
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