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

% *Date of Decision: 29.05.2024*

+ **RFA(COMM) 222/2024 and CM Nos.33383/2024, 33384/2024 and 33385/2024**

MUKESH SINGH

..... Appellant

Through: Mr Pramod Kumar Shrivastava,
Advocate.

versus

SUNITA MITTAL & ANR

..... Respondent

Through: Mr Gaurav Anand, Mr Ashutosh
Lohia and Ms Shraddha Bhargava,
Advocates.

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 a judgment dated 26.02.2024 (hereafter *the impugned judgment*) passed by the learned Commercial Court whereby the respondents' application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) in CS(COMM) 204/2023 captioned *Sunita Mittal and Anr. v. Mukesh Singh*, was allowed.

2. In terms of the impugned judgment, the learned Commercial Court had partially decreed the suit and had granted a decree of possession of the suit premises in favour of the respondents. The Court had directed the appellant to handover the possession of the suit premises within a period of



six weeks from the date of the impugned judgment.

FACTUAL CONTEXT

3. The respondents (plaintiffs in the suit) are joint owners of the land measuring approximately 2000 square yards comprising in Khasra No.22/21 situated in Village Raza Pur Khurd, Colony known as Z-Block, Mohan Garden, New Delhi-110059. The same includes the construed area of three rooms and a toilet admeasuring approximately 400 square feet. The said premises are referred to as *the suit premises*.

4. The respondents claimed that the appellant had approached them for leasing the suit premises for *inter alia* carrying on “tent and catering business”. The respondents had inducted the appellant as a tenant in the suit premises and had leased the same in terms of the successive lease deeds entered between the parties. The last lease agreement dated 17.02.2022 (hereafter *the Lease Agreement*) was entered into between the parties whereby the suit premises was let out to the appellant for a period of 11 months, commencing from 01.12.2021 to 31.10.2022 at a monthly rent of ₹60,000/-. It is not disputed that the Lease Agreement was registered with the concerned Sub Registrar of Assurances, Delhi.

5. According to the respondents, the appellant is a habitual defaulter and had delayed in payment of the lease rentals. In the circumstances, the respondents were not willing to renew the lease of the suit premises. The respondents claimed that they had informed the appellant of their intention to not renew the lease prior to its expiry on 31.10.2022. They claimed that



they had also called upon the appellant to handover the actual physical vacant and peaceful possession of the suit premises along with the fittings and fixtures after clearing the dues towards utility charges (water and electricity). However, the appellant had failed and neglected to handover the possession of the suit premises and continued to illegally occupy the same.

6. In these circumstances, the respondents sent a legal notice dated 27.01.2023 calling upon the appellant to handover vacant and peaceful possession of the suit premises. They also demanded arrears of rent due for the month of October, 2022 and damages at the rate of ₹6,000/- per day in terms of Clause 15 of the Lease Agreement with effect from 01.11.2022. As on the date of the notice, the said amount was quantified at ₹5,28,000/-. The respondents also claimed interest on the said amount at the rate of 2% per month. It is not disputed that the appellant did not send any written communication responding to the said notice.

7. In the aforesaid circumstances, the respondents filed the aforementioned suit CS(COMM) 204/2023, *inter alia*, praying for a decree of possession of the suit premises; recovery of a sum of ₹60,000/- towards arrears of lease rent for the month of October, 2022; recovery of an amount of ₹9,78,000/- as *mesne* profits for the unauthorized use and occupation of the suit premises from 01.11.2022 till the date of filing of the suit; a decree of damages at the rate of ₹6,000 per day from the date of the suit till handing over of the suit premises; and interest at the rate of 2% per month on the aforesaid amounts till realization in addition to the other reliefs.



8. The appellant filed his written statement. He claimed that he had invested a sum of ₹1,30,00,000/- (Rupees One Crore Thirty Lacs only) in Farm nos. 1 and 2, which are stated to comprise the suit premises. He stated that the parties had agreed that the rent would be adjusted against the said investments, but the respondents had resiled from their commitment. In addition, he claimed that he had paid a sum of ₹25,00,000/- as security in cash. He claimed that the respondents had agreed to repay the same along with the amount of ₹1,30,00,000/- spent by the appellant but had failed to do so.

9. He claimed that the Lease Agreement was a false and fabricated document as plaintiff no.2 (respondent no.2) had pressurized him to sign the Lease Agreement without going through the same. He claimed that he had never accepted the contents of the Lease Agreement as he can neither read nor understand the English language. He claimed that the respondents had forcibly obtained his signatures on the Lease Agreement by threatening that if he did not do so, he would have to vacate the suit premises with immediate effect. In addition, he submitted that he was compelled to pay a sum of ₹8,00,000/- to one Mahinder Shukla as he was pressurized by the respondents to permit Mahinder Shukla to interfere with his business. He claimed that he vacated Farm no.1 (which he claimed was a part of the suit premises) in the month of August, 2022 and thus, the respondents are liable to pay a sum of ₹1,30,00,000/- as well as refund the security amount of ₹25,00,000/-.

10. The appellant had also challenged the maintainability of the suit as the



respondents had not exhausted the remedy of pre-institution mediation.

11. The respondents filed an application under Order XII Rule 6 of the CPC claiming a decree of possession in view of certain facts that were admitted by the appellant in its written statement.

12. The learned Commercial Court found that the material facts admitted by the appellant warranted a decree of possession on admissions and thus rendered the impugned judgment.

SUBMISSIONS

13. The learned counsel appearing for the appellant had assailed the judgment on two fronts. First, he submitted that the learned Commercial Court had failed to appreciate that the appellant had invested a sum of ₹1,30,00,000/- in developing the suit premises for its business and therefore, could not be evicted without being compensated for the same. Second, he submitted that the learned Commercial Court had failed to appreciate that the suit was not maintainable as the respondents had not initiated pre-institution mediation. He referred to the decision of the Supreme Court in ***Patil Automation Private Limited v. Rakheja Engineers Private Limited: (2022) 10 SCC 1***, whereby the Court had held that the provisions of Section 12A of the Commercial Courts Act, 2015 are mandatory.

REASONS AND CONCLUSION

14. We have heard the learned counsel for the parties.

15. At the outset, it is relevant to mention that there is no dispute that the



appellant was inducted as a tenant in the suit premises. Thus, the relationship of a tenant and landlord, between the parties, is admitted. There is no dispute that the appellant had paid the lease rent of ₹60,000/- till the month of September, 2022, but had failed to pay the rent thereafter. According to the appellant, the lease rentals were required to be adjusted against the investments made by him. However, it is not disputed that the appellant was paying the rent at the rate of ₹60,000/- per month for the period prior to October, 2022.

16. There is also no dispute that the appellant had executed the Lease Agreement. The term of the lease was 11 months – for the period from 01.12.2021 to 31.10.2022. The appellant claims that the Lease Agreement is fabricated as his signatures were obtained forcibly and without permitting him to read the same; however, he does not dispute that he had signed the Lease Agreement.

17. There is also no dispute that the appellant had not paid the lease rentals after September, 2022. According to the appellant, the same was required to be adjusted from the amounts expended by it.

18. It is also admitted that the parties had prior to entering into the Lease Agreement, entered into the similar lease agreement, whereby the suit premises had been leased to the appellant on payment of rent. The appellant has not placed on record the Lease Agreement. However, he has placed on record prior lease deed dated 04.02.2020. Thus, it is clear that the suit premises had been let out to the appellant in terms of successive agreements.



There is no dispute that the appellant had paid the lease rentals prior to September, 2022.

19. The Lease Agreement clearly specified the term of the lease, which has since expired. Admittedly, there is no document whereby the appellant can claim any interest in the suit premises after the expiry of the lease term.

20. In view of the above, it is clear that the relevant facts necessary for partially decreeing the suit for recovery of possession, were admitted. Admittedly, the suit premises were let out in terms of the Lease Agreement, which had since expired. It is not disputed that the respondent had issued a notice terminating the tenancy as calling upon the appellant to handover possession of the suit premises. There was no document on the basis of which the appellant could claim any interest in the suit premises.

21. The only controversy on merits sought to be raised by the appellant is in regard to the monetary claims. According to the appellant, the rent was required to be adjusted from the amounts spent by him on the suit premises. In addition, he also filed a counter claim praying for a decree of recovery for a sum of ₹1,55,00,000/- (Rupees One Crore Fifty Five Lacs only). Although the appellant had also prayed that the respondents be restrained from interfering in its possession of the suit premises, there is no sustainable basis for the same. The said claim was also founded solely on the basis that the respondents had agreed to pay the sum invested by the appellant and the security at the time of handing over of the suit premises. The said claim is contrary to the registered Lease Agreement.



22. The learned Commercial Court had also found that the appellant's claim that he had invested ₹1,30,00,000/- in renovation of the suit premises was not reconcilable with the appellant's claim that he was forced to sign the Lease Agreement. The learned Commercial Court also reasoned that if there was any pressure on the appellant, at the time of execution of the Lease Agreement, he had ample opportunity to complain about the same to the concerned Sub-registrar with whom the said document was registered. The learned Commercial Court also did not accept the appellant's claim that he had already vacated part of the suit premises as the site plan furnished by the respondents along with the plaint had not been denied. The appellant seeks to retain possession of the suit premises on the ground that the appellant had agreed to pay the cost of renovation as well as ₹25,00,000/-, which he claimed, was paid in cash. The learned Commercial Court did not accept the same and in our view rightly so. There were no details as to when and how ₹25,00,000/- had been paid to the respondents as security. There is also no material to establish that the appellant had invested ₹1,30,00,000/- for renovation of the suit premises. The registered Lease Agreement did not mention any such security deposit or any obligation to refrain from taking over possession of the suit premises. Since the tenancy had been validly terminated, the appellant could not be permitted to retain the suit premises on the basis of the counter claims.

23. The appellant had also produced a photocopy of the document dated 21.12.2022 purportedly signed by the respondents, whereby the respondents had acknowledged that they had received a sum of ₹25,00,000/- as security



in the year 2018 and they would return a sum of ₹1,55,00,000/- (the security and the amount spent by the appellant) to the appellant. The respondents disputed the said document. They claim that their signatures have been lifted from another document and a photocopy has been prepared.

24. It is material to note that the signatures of respondent no.1 on at least two pages of the document are absolutely identical. The signatures of respondent no.1 appearing on the two separate pages of the document (photocopy of the purported agreement) are reproduced below:

It is apparent from the above, the two signatures on different pages of the document are the same, which is not possible.

25. The appellant claims that he does not have the original document. However, there are no reasons why the original of the said document, which is for the benefit of the appellant, could not be retained by him. *Prima facie*, we find merit in the contention that the said photocopy has been fabricated. However, it is not necessary to examine this question in any detail as the impugned judgment was rendered solely on the basis of certain admitted facts, and is confined to restoring the possession of the suit premises to the respondents as the term of the lease is expired. The question regarding



monetary claims and counter claims be considered by the commercial court at a later stage.

26. The second question to be questioned is whether the suit was liable to be dismissed as the respondents had not recourse to pre-institution mediation as required under Section 12A of the Commercial Court Act, 2015.

27. In the present case, the respondents had filed applications under Order XXXIX Rules 1 and 2 of the CPC, *inter alia*, praying that the appellant and his representatives, officials and labourers be restrained from parting with possession of the suit premises. The respondents claimed that the appellant had threatened them that he would transfer the suit premises to other persons and the respondents would be unable to recover the possession from them. The respondents apprehended that the appellant would do so in order to harass them. The respondents had also filed an application under Order XXXIX Rule 10 of the CPC praying that an urgent order directing the appellant to pay the rental as well as the agreed amount of ₹6,000/- per day for continuing to occupy the premises. The appellant had been continuing to occupy the suit premises without paying any rent or charges. In the said context, the respondents had also sought interim orders directing the appellant to secure their claims for payment of arrears of rent and *mesne* profits.

28. We are unable to accept that the claim for urgent relief was not *bonafide* or as a ruse to overcome the provisions of Section 12A of the Commercial Courts Act, 2015. The question whether the suit involves



urgent interim relief is required to be considered from the stand point of the plaintiff. However, it cannot be a subterfuge. In *Yamini Manohar v. T.K.D. Keerthi: 2023 SCC OnLine SC 1382*, the Supreme Court had explained as under:

“9.The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff.

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10. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established.”

29. In the present case, we are unable to accept that the plaintiff/respondent’s plea for urgent relief was not bonafide or a subterfuge to overcome the requirements of Section 12A of the Commercial Courts Act, 2015. In view of the above, we are unable to accept that the suit filed is not maintainable. We concur with the view of the learned Commercial Court.

30. The appeal is unmerited and, accordingly, dismissed with costs quantified at ₹25,000/-. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 29, 2024/RK