



2024:DHC:7342-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 21.08.2024
Judgment Pronounced on: 24.09.2024

+ **RFA(COMM) 64/2022 & CM APPL. 40935/2022**

NISHA

..... Appellant

Through: Mr. D.K Pandey, Advocate

versus

ANJALI MALHOTRA

..... Respondent

Through: Mr. Kunal Tandon, Mr. Jaspreet
Kapur, Ms. Niti Jain and Mr. Wasim
Ansari, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

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

AMIT BANSAL, J.

1. The present appeal is directed against the judgment and decree dated 31st May, 2022, passed by District Judge (Commercial), North West, Rohini District Courts, Delhi [hereinafter "Commercial Court"] in CS (COMM) No. 307/2022.
2. By way of the impugned judgment, the application filed on behalf of the respondent/plaintiff under Order XIII A of the Code of Civil Procedure, 1908 (CPC), as applicable to commercial suits, was allowed and summary judgment was passed in favour of the respondent and against the appellant/defendant. In terms of the summary judgment, a sum of Rs.5,01,270/- towards arrears of rent from 20th December, 2017 to 31st

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October, 2018, along with Rs.35,000/- towards maintenance and other charges were awarded to the respondent. In addition, *pendente lite* and future interest at the rate of 12% per annum was also awarded in favour of the respondent along with costs.

3. Briefly stated, the facts of the case relevant for the purpose of deciding the present appeal are set out hereinunder :-

3.1 The appellant and the respondent entered into a Lease Deed dated 30th November, 2015 in respect of Unit No.307, Third Floor, City Centre, Plot No.1B3, Twin District Centre, Sector-10, Rohini, New Delhi-110085 (hereinafter the “demised premises”). The said Lease Deed was duly registered.

3.2 The lease was for the purposes of running a spa and was for a period of five years, beginning 20th August, 2015 at a monthly rent of Rs.44,000/- excluding maintenance and other charges.

3.3 It was the case of the respondent that the appellant defaulted in payment of rent and stopped paying rent from 20th December, 2017 onwards. Further, the demised premises was sealed by Municipal Authorities in January, 2018, as the appellant did not have the requisite license to run the spa from the demised premises. However, on the undertaking of the appellant, the demised premises was de-sealed on 11th April, 2018.

3.4 Despite repeated requests, the appellant did not pay the rent. The appellant handed over possession of the demised premises to the respondent on 31st October, 2018, and promised to make the payment of arrears of rent



from 20th December, 2017 till 31st October, 2018 within a period of two weeks along with maintenance and other charges.

3.5 A legal notice dated 29th November, 2018 was issued on behalf of the respondent calling upon the appellant to pay a sum of Rs. 5,33,610/- towards rent and Rs. 1,67,000/- towards maintenance and other charges. However, the appellant failed to pay any amount due.

4. In these circumstances, the respondent filed the suit for recovery of Rs.5,01,270/- towards arrears of rent of the demised property and Rs. 35,000/- towards maintenance and other charges. The appellant contested the suit by filing a written statement, to which the respondent filed a replication.

5. After completion of pleadings, the respondent filed an application for summary judgment in terms of Order XIII A of the CPC, as applicable to commercial suits. The appellant filed a reply to the said application stating that the suit raised triable issues which can only be decided after leading evidence.

6. The Commercial Court *via* the impugned judgment allowed the aforesaid application for summary judgment filed on behalf of the respondent and decreed the suit in favour of the respondent for a sum of Rs.5,01,270/- towards arrears of rent from 20th December, 2017 to 31st October, 2018 along with Rs.35,000/- towards maintenance. Further, *pendente lite* and future interest at the rate of 12% per annum was also awarded in favour of the respondent along with costs of the suit.



7. Mr. D.K Pandey, Advocate, appearing on behalf of the appellant, has primarily challenged the impugned judgment on the ground that the impugned judgment failed to take into account the existence of an arbitration clause obtaining in the Lease Deed between the parties. It is submitted that the appellant had specifically pleaded in his written statement regarding the existence of the arbitration clause and therefore, it would not matter even if the appellant has not specifically moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to arbitration. In this regard, reliance is placed on the judgment of the Single Judge of this Court in ***Parasramka Holdings Pvt. Ltd. v. Ambience Private Ltd. & Anr.***, 2018:DHC:366.

8. Relying upon the aforesaid judgment, counsel for the appellant submits that the Commercial Court was obliged to refer the parties to arbitration in light of the arbitration clause obtaining in the Lease Deed.

9. *Per contra*, Mr. Kunal Tandon, Advocate, appearing on behalf of the respondent submits that the appellant failed to file an application under Section 8 of the Arbitration and Conciliation Act, 1996 before the Commercial Court for referring the matter for arbitration. Nor did the appellant make any prayer in the written statement for referring the disputes for arbitration. In fact, the appellant, in his written statement, did not dispute the jurisdiction of the Commercial Court. To be noted, the appellant itself had filed a counter claim against the respondent in the same suit.

10. Counsels for the parties have filed written submissions in support of their submissions.



11. We have heard the parties and perused the material on record.
12. The main thrust of the submission of the counsel for the appellant is that in view of the arbitration clause existing in the Lease Deed between the parties, the Commercial Court should have referred the parties to arbitration.
13. In this regard, he has placed reliance on a pleading made in paragraph 5 of his written statement. For the ease of convenience, the same is set out below:

“5. That the suit of the plaintiff is liable to be dismissed with heavy costs because it is the plaintiff who always violates the terms and conditions of the Clause No.19 “ARBITRATION CLAUSE” of Lease Deed dated 30.11.2015.”

14. A perusal of the aforesaid extract from the written statement reveals that the appellant had sought dismissal of the suit as the respondent had violated the terms and conditions of Clause 19 of the Lease Deed, which contained the arbitration clause.
15. Pertinently, there is no assertion to the effect that in view of an arbitration clause in the Lease Deed, the dispute between the parties fell within the ambit of the arbitration clause and hence, the parties should be referred to arbitration. Given this position, one would have to unravel from surrounding circumstances whether the appellant was desirous of having the *inter se* disputes referred to arbitration. There are three significant circumstances obtaining in the case which negate the appellant's stand that she had made a plea that the disputes between the parties be referred to arbitration.



15.1 First, no application was filed on behalf of the appellant under Section 8 of the Arbitration and Conciliation Act, 1996 seeking reference to arbitration.

15.2 Second, the counsel for the appellant failed to rebut the contention of the respondent that the appellant itself had filed a counter claim in the aforesaid suit. The filing of the counter claim clearly indicates that the appellant had consented to the jurisdiction of the Commercial Court and had in effect, given a go-by to the arbitration clause.

15.3 Third and more importantly, the appellant in her written statement, in reply to a specific assertion in paragraph 21 of the plaint with regard to the Commercial Court having jurisdiction over the dispute, did not dispute the same. For ease of reference, the said paragraph is extracted below :-

“That the contents of Para No. 21 of the suit need no reply being jurisdiction para.”

16. The reliance placed by the appellant on the judgment of the Single Judge of this Court in ***Parasramka Holdings*** (supra) is misconceived as the said judgment is distinguishable on facts. There is nothing to indicate that the defendant in the said case had filed a counter claim in the suit proceedings, as in the present case.

17. Further, the pleading in the written statement filed by defendant in the said case with regard to existence of arbitration clause, was quite distinct from the pleading made in the present case. The specific pleading of the defendant in the written statement in ***Parasramka Holdings*** (supra) as extracted in the judgment of the learned Single Judge is set out below:



“5. That there are separate Arbitration Clauses between the Plaintiff and Defendant No.1 and the Plaintiff and Defendant No.2. all disputes and differences arising between the Plaintiff and Defendant No.1 and the Plaintiff and Defendant No.2 are liable to be referred to the separate arbitration of a sole Arbitrator to be nominated by Defendant No.1 and Defendant No.2 respectively. The Plaintiff without invoking Arbitration has filed the above suit. The above written statement is being filed without prejudice of the rights of the Defendants to refer the disputes to the Arbitration.”

[emphasis is ours]

18. The aforesaid factors lead us to conclude that the appellant had consented to the continuation of the suit proceedings before the Commercial Court. The appellant never took any tangible steps, other than a vague pleading in the written statement, for reference of the dispute(s) to arbitration. Furthermore, as noted above, the appellant went on to file a counter claim in the suit.

19. As regards the other submission of the appellant that the amount claimed in the legal notice dated 29th November, 2018 is more than the amount claimed in the suit, the Commercial Court has correctly observed that the difference could have been on account of mistake in the amount mentioned in the legal notice. Clearly, the appellant cannot claim any benefit on this count.

20. It is further contended on behalf of the appellant that it had paid rent till March, 2018. The aforesaid contention of the appellant has been rejected by the Commercial Court on the ground that the appellant did not file any documents in support of the aforesaid submission, whereas the respondent had filed bank statements in support of its submission that it had not received any rent till March, 2018.



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21. In view of the discussion above, in our opinion, the Commercial Court has correctly come to the conclusion that the appellant did not have any real prospect of defending the present case and accordingly proceeded to pass a summary judgment in accordance with Order XIII A of the CPC.

22. Accordingly, there is no merit in the present appeal and the same is dismissed along with pending application.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

SEPTEMBER 24, 2024
ds

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