



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

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Judgment reserved on: January 08, 2024

Judgment pronounced on: February 27, 2024

+ CM(M) 1455/2023, CM APPL. 46265/2023 (stay)

MRS KANTI SINGH & ORS.

..... Petitioners

Through: Mr. Rajnish Ranjan and Mr.
Shivansh Srivastava, Advs.

versus

LORDS MARK INDUSTRIES PVT. LTD & ANR.

..... Respondents

Through: Mr. Shafiq Khan and Mr. Tariq
Muneer, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioners in the petition filed under Article 227 of the Constitution of India have approached this Court impugning the order dated 01.08.2023 passed by the Learned District Judge, Commercial Court-01, Patiala House Courts, New Delhi (hereinafter referred to as "Trial Court") in the case "Mrs. Kanti Singh & Ors vs. M/s Lord Marks Industries Pvt. Ltd" being CS(COMM) No. 99/2022 whereby the learned Trial Court returned the plaint under Order VII Rule 10 of the Civil Procedure Code, 1908 (hereinafter referred to as "CPC").

2. The relevant facts for the disposal of the present case are that the petitioners herein are the joint owners of the suit property bearing No.14E,



14th Floor, Hansalaya Building, 15 Barakhamba Road, New Delhi 110001.
The subject premises measures 930 sq. ft.

3. That on 13.06.2019, by way of a registered lease deed, the respondents took the said suit premises on rent. A sum of Rs.1,58,100 was consequently decided as the monthly rental amount, exclusive of taxes/levies and maintenance charges. The duration of the said lease deed was for a period of 3 years, commencing on 20.05.2019 and ending on 19.05.2022. The lease also stipulated a lock-in period of 2 years from the day of commencement to 19.05.2021. As per the Lease Deed, the lessee was required to pay the rent on the 7th day of every month along with payment for the consumption of gas, electricity and water, as and when these payments became due as per intimation received from the concerned department. A copy of the same was to be provided to the lessor at the end of every quarter. Maintenance charges were to be paid directly to "Hansalaya Properties" on the 7th day of every month and a copy of the same was to be furnished to the lessor. An interest free security deposit equivalent to four (04) months' rent i.e. Rs 6,32,400.00 was to be paid by the respondents to the petitioners. The same was completed vide RTGS transfers to the Petitioners. This amount was to be refunded at the expiry of the Lease after any adjustments/deductions for any dues owed by the respondents.

4. The respondents defaulted in payment of electricity charges, hence the petitioners herein were forced to pay a sum of Rs.67,584/ towards electricity charges up to the period of August 2019. Further, the respondents were not



regular with the payment of monthly rent and defaulted in the payment of the same during the period of September 2019 to November 2019. Despite repeated reminders, the respondents failed to pay the arrears and have failed to pay the rent from November 2019.

5. On 02.01.2020, the respondents vide an email, stated that they will be vacating the suit premises on 01.02.2020. The petitioners on 07.01.2020, terminated the lease deed vide a legal notice dated the 07.01.2020. However, the respondent did not vacate the suit premises, nor did they clear the arrears due for the lock-in period.

6. Subsequently, on 12.02.2020, the petitioners filed a suit for possession, arrears of rent and mesne profits which came to be tried by Additional District and Sessions Judge-04, Patiala House Courts, Delhi (hereinafter referred as 'ADJ'). An injunction order in the same suit was passed on 31.03.2020, whereby the respondents were restrained from subletting the suit premises or creating any third-party interests therein. In the meanwhile, the case was referred to mediation, which failed.

7. On 03.12.2020, the respondents herein filed an application under Order VII Rule 10 and 10A CPC along with his written statement whereby he contended that since the suit premises was taken up for commercial purposes, only a commercial court would have jurisdiction over the said matter. Vide order dated 05.04.2021, on joint request, the learned ADJ transferred the matter to the learned Principal District and Sessions Judge, Patiala House Courts. On 28.04.2021, the learned Principal District and



Sessions Judge assigned the matter to learned District Judge, Commercial Court, Patiala House Courts, Delhi.

8. On 07.08.2021, the petitioners filed an application under Order VI Rule 17 of the CPC, seeking amendment to its petition so as to comply with the provisions of the Commercial Courts Act, 2015 (hereinafter referred to as “C.C. Act”). The respondents herein, on 04.09.2021, filed an application under Order VII Rule 11 of the CPC stating that there has been no compliance of Section 12A of the Act. The respondents further went on to state that amount claimed by the petitioners in the suit herein is Rs.1,11,651/- and therefore in view of the Gazette Notification dated 07.07.2018, the Learned Trial Court does not have jurisdiction over the matter as this commercial dispute is of a value lower than Rs.3,00,000/-.

9. On 13.12.2021, the respondents filed their reply to the Order VI Rule 17 application of the petitioners and on 04.12.2021, the respondents preferred an application under Order VII Rule 10 and 10A of the CPC with the prayer for rejection of the plaint in view of the fact that it is in contravention of Section 12 and 12A of the Act and that the value of the said suit is to be computed on the basis of market value of the immovable property which is more than Rs. 12 Crores. Vide order dated 13.12.2021, the above stated application of the respondents was dismissed.

10. The respondents went on to challenge the order dated 13.12.2021 by way of a Civil Revision Petition being C.R.P No.20/2022, which was disposed of vide order dated 08.04.2022.



11. The respondents also filed a petition under Article 227 of the Constitution of India being C.M.(M) N0.190/2022 on 28.02.2022, challenging the order which directed that the case be transferred to the commercial court. The same was withdrawn stating that the impugned order had not been correctly placed and there were disparities in the petition. The respondents also withdrew the revision petition (C.R.P No.20/2022) on 08.04.2022, wherein the order stated that the respondents had remained non-committal in the payment of dues. Yet, another petition (C.M.(M) No. 418/2022) was filed on behalf of the respondents, challenging the order dated 01.07.2021 transferring the case to the Commercial Court. The same was disposed of vide order dated 05.05.2022 observing that prayer in petition is misconceived as there was no such order on record.

12. Thereafter, the amendment application filed by the petitioners was allowed and amended plaint was taken on record vide order dated 03.08.2022 and the respondent was directed to file his amended written statement within 30 days. However, the respondent filed his Written statement on 21.12.2022 i.e. after an expiry of 120 days. The petitioners accordingly moved an application under Order VIII Rule 10 of the CPC and the previous application moved Order XVA of the CPC was pending for disposal. During the course of arguments on the pending applications, the Learned Trial Court *suo moto* took an objection on the legality of the orders dated 05.04.2021 and 28.04.2021 in view of the judgment in the case of **Virendra Kumar vs Rekha Bhayana** [2022 SCC OnLine Del 2678] and reviewed the orders dated 05.04.2021 and 28.04.2021 and passed the



impugned order dated 01.08.2023 returning the plaint to be presented before the appropriate Court.

13. According to the petitioners, the impugned order dated 01.08.2023 raises a question of formative importance with respect to exercise of jurisdiction by learned Trial Court which are as below:-

“a) Whether a Civil Court has inherent power and jurisdiction to review its own order after 2 years, on the basis of a subsequent judgment of Superior Court even which was passed after more than 1 year of the order which has been reviewed?

b) Whether the power of review can only be exercised on an application by a litigant and only if the circumstances specified in Rule 1 of Order 47 exist?

c) Whether the Ld. Trial Court failed to appreciate that Explanation 1 Order 47 embodies "*Doctrine of Finality*" i.e. *interest reipublicae ut sit finis litium*" and it prohibits review or reversal or modification of an order in view of subsequent decision of a Superior Court in any other case?"

Submissions by the Petitioners:

14. Mr. Rajnish Ranjan, learned counsel appearing in support of the petition assailed the order dated 01.08.2023 asserting that it is manifest that the learned Trial Court has exercised the jurisdiction not vested in it. The Trial Court has erred by reviewing an earlier order on the basis of a subsequent order passed by a Superior Court which is impermissible under law.

15. It was submitted that the explanation to Order XLVII CPC is based on the doctrine of prospective overruling and does not have a retrospective



effect. Thus, when a decision is made in a particular case, it will have its operation in future. The mere reviewing of the order / judgment by taking judicial notice of a subsequent judgment will dilute the binding effect of the decision on interse parties as reopening of a concluded judgment / order will have far reaching adverse effect on the administration of justice. The petitioners places reliance on the judgment of the Hon'ble Supreme Court in the case titled as "**Shanti Devi Vs. State of Haryana and Ors**"(1999) 5 SCC 703.

16. It is further submitted on the basis of “**Kumaran Vaidyar & Ors vs K.S. Venkiteswaran & Ors**” MANU/KE/0007/1992, that a Civil Court does not *suo moto* have the power to review an order. Thus, having no inherent power to review its order that too after a period of two years, the interim order if not set aside, will have great ramification on the rights of the parties. The petitioners also contended that the impugned order is not sustainable as a review can only be exercised by a litigant on an application moved by him on basis of circumstances specified as Order XLVII Rule 1 that embodies the “Doctrine of Finality”. The learned Trial Court could examine the maintainability of the suit as on date of passing the impugned order and not as it stood two years after.

17. It is also submitted that the learned Trial Court failed to consider that the respondent had previously filed two petitions challenging the transfer order passed by learned District & Sessions Judge, but withdrew the same. Thus the impugned order has attained finality. Therefore, the impugned order cannot be challenged at this stage. Reliance placed on **Municipal**



Corporation of Delhi vs Sunni Majlis Aukaf &Ors
[MANU/DE/0072/1968].

Submission by the Respondent:

18. Responding to the aforesaid submissions, Mr. Shafiq Khan learned counsel for the respondent submits that as per Clause 25 of the Lease Deed, the suit premises was let out to the respondent for office purposes, which is squarely covered under section 2(1)(c) of the Commercial Courts Act. Therefore, the procedure and protocol to be followed in commercial suits is applicable to the present case which is different from non-commercial suits. The CPC or any other statute is not vested with the power to transfer a commercial suit from the general civil court to a commercial court. The process in transferring the suit to a commercial court is non-est. Any such transfer imputed on either of the parties bears no consequence. Thus, vide impugned order, the aforesaid defect has been corrected by returning the plaint. Reliance placed on the case of **Virendra Kumar vs Rekha Bhayana** [2022 SCC OnLine Del 2678]. Further reliance was placed on **Sanjay Aggarwal &Anr vs Hemant Sharma** [CM(M) 749/2022] & **Shri Sali Sales vs Shri Shyam Collection** [CM(M) 693/2022].

19. This Court has given anxious consideration to the contentions of the learned counsels and also perused the record as well as the impugned order.

20. The petitioners have questioned the correctness of the view as expressed in the terms of the impugned order observing that the present suit being commercial in nature, the plaint is to be returned to the plaintiff under Order VII Rule 10 CPC, if the suit is filed as a non commercial suit, to be



instituted afresh according to law. The petitioner further questioned that whether the learned Trial Court is justified in *suo moto* reviewing the previous orders dated 05.04.2021 and 28.04.2021 vide which, the suit was transferred to commercial court instead of returning the plaint.

Analysis and Findings

21. Before considering the rival submissions of the parties, it is necessary to reproduce the provision of Section 15 of Commercial Courts Act, 2015 which is as under:-

“15. Transfer of pending cases.

(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court: Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case



may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 3 [with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.”

22. Section 16 of the Act provides for amendments to the provisions of the CPC in their application to commercial disputes and is reproduced as under:-

“Section 16: Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.

16. (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High



Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”

23. Section 18 of the Act empowers the High Court(s) to issue directions in the form of notification and practice directions to supplement the provisions of Chapter II of the C.C. Act and the CPC with respect to the hearing of a commercial dispute of a specified value.

24. A plain reading of the aforesaid provisions provides for transfer of the pending cases relating to commercial disputes to the Commercial Courts, however, the overall administrative control with respect to implementation of above provisions remains vested with the High Court(s).

25. It is relevant to refer to the case of **Virendra Kumar vs Rekha Bhayana** (supra) wherein the learned Single Judge of this Court considered the issue regarding return of plaint under Order VII Rule 10 CPC relating to a commercial suit instituted as an ordinary suit and held as under:-

“14. Commercial Courts are different from non-Commercial Courts. If a commercial suit is instituted before a Civil Court, it is, clearly, instituted before a Court other than the Court before which it should have been instituted. Order VII Rule 10 (1), in such circumstances, directly comes into play and requires the suit to be returned to the plaintiff to be instituted before the appropriate Court, i.e., the Commercial Court.

17. "It is trite that, where an action is required to be performed in a particular manner, it has to be performed in that manner alone and all; other modes of performing the action ipso facto stand foreclosed".



18.Ambalal Sarabhai Enterprises Ltd. MANU/SC/1378/2019: (2020) 15 SCC 585, in my view, cannot be distinguished merely on the ground that the said case involved an insurance in which a non-commercial suit had been filed before the Commercial Court. The principle that, in such a case, the plaint is required to be returned to the plaintiff to be re-presented before a competent forum, in my view, would apply equally, where a commercial suit is instituted before a Civil Court.”

26. Further in two subsequent cases reported as **Sanjay Aggarwal & Anr vs Hemant Sharma** (supra) and **Shri Sali Sales vs Shri Shyam Collection** (supra), it is observed as under:-

“Following the judgment of the Supreme Court in **Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP** 1, I have already taken a view in more than one case that, ‘if a commercial suit is filed on the non-commercial side, the court has necessarily to return the plaint for being filed as a commercial suit being filed as a commercial suit.’”

27. It is further relevant to refer to the case of **Narender Kumar vs. M/s Om Daily Needs Retailing Pvt. Ltd. & Anr.**; FAO (Comm) 92/2023 whereby the learned Division Bench of this court considered the similar issue of returning the plaint of a suit which, though originally filed before the Court of learned ADJ was transferred by learned Principal District and Sessions Judge to a commercial court. The learned Division Bench upheld the order returning the plant rather than transferring the suit to District Judge, Commercial Court.



28. The Hon'ble Supreme Court in **Ambalal Sarabhai Enterprises Ltd.** [(2020) 15 SCC 585], upheld the recourse to Order VII Rule 10 of the CPC directing return of the plaint.

29. In sum and substance, the aforesaid judgments highlight the principle of law that once a suit though instituted as non-commercial suit is found to be of commercial in nature, the plaint must be returned in exercise of power under Order VII Rule 10 CPC. Also, on return of the plaint, the plaintiff may, after making necessary corrections in the pleadings, present the plaint before the court of competent jurisdiction.

30. In due consideration of the above laid principles of law and reverting back to the present case, it transpires that on 05.04.2021, learned ADJ-04 sent the matter to learned Principal District and Sessions Judge for transferring it to commercial courts on an objection being taken as ordinary civil courts' jurisdiction was barred by C.C. Act. Subsequent to transfer of the case to District Judge (Commercial Court)-01, Patiala House Court, New Delhi, an application under Order VII Rule 10 and 10A CPC came to be moved seeking rejection of the plaint in view of it being in contravention of Section 12 and Section 12A of the Commercial Courts Act, 2015 which was dismissed on 13.12.2021. The District Judge (Commercial Court) specifically found that there was no contravention of the mandatory provision of Section 12A of the Act as in the present case urgent interim relief was prayed and granted by the learned ADJ-04 on 12.02.2020. The observation of the learned District Judge (Commercial) are as follows:-

“...I have no hesitation to conclude the though initially suit was



not tagged as commercial suit and was filed as an ordinary suit, still urgent interim relief was prayed in the matter and from that criteria also, section 12A of Commercial Courts Act was not applicable at that stage.”

31. The respondents challenged the order dated 13.12.2021 by way of a Civil Revision Petition which was disposed of vide order dated 08.04.2022. Subsequent thereto a CM(M) petition filed on 28.02.2022 impugning the same order was withdrawn by respondents. Even, another CM(M) petition bearing No. 418/2022 challenging order dated 01.07.2021 transferring the case to commercial court was disposed of. Thus, the order dated 01.07.2021 transferring the suit to commercial court and order dated 13.12.2021 dismissing the application under Order VII Rule 10 and 10A CPC remained unchallenged.

32. It is to be noted that petitioners filed an application under Order VI Rule 17 CPC seeking amendments to its petition so as to comply with the provisions of Commercial Courts Act which was allowed by learned Trial Court on 03.08.2022 and amended plaint along with list of dates and events, brief synopsis, statement of truth and amended list of documents, with the documents, were taken on record. The said findings are also unchallenged, thus, the non-commercial suit filed by the petitioners confirmed to all the essential protocol prescribed under Commercial Courts Act for instituting a commercial suit.

33. Thereafter, the learned District Judge, Commercial Court -01, *suo moto* took an objection on the legality of the orders dated 05.04.2021 and 28.04.2021 in view of a subsequent judgment of **Virendra Kumar vs**



Rekha Bhayana (supra) and returned the plaint under Order VII Rule 10 Code of Civil Procedure, 1908 to be presented before a Court of competent jurisdiction.

34. Prior to venturing to decide the issue as to whether the learned District Judge (Commercial Court), in the peculiar facts of the present case is justified to *suo moto* review the previous orders and return the plaint to be instituted afresh before Commercial Court, it is important to note down the provision of Order XLVII Rule 1 CPC, which reads as under:-

“Application for review of judgment.

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed



or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

35. The issue concerning review jurisdiction came up before the Hon’ble Supreme Court in case of **S. Murali Sundaram vs. Jothibai Kannan & Ors.** [2023 SCC OnLine SC 185]. The Hon’ble Supreme Court held as under:-

“15. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of *Perry Kansagra* (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:

"(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning



on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*."

16. It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.

17. In the case of *Shanti Conductors (P) Ltd.* (supra), it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It is further observed that an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review under Order 47 Rule 1 CPC."

36. In case of **Shanti Devi Vs. State of Haryana and Ors** (supra), it was observed:-

"2. However, we have gone through the review petition and the grounds urged therein. The contention that the judgment sought to be reviewed was overruled in another case subsequently is no ground for reviewing the said decision. Explanation to Order XL VII Rule 1 of the CPC clearly rules out such type of review proceedings."



37. Thus, it is evidently recognised that review jurisdiction is limited in the sense that by observing the review power, a mistake can be corrected but it cannot be used to substitute a view. Moreover, review jurisdiction cannot be exercised to rewrite a judgment, the issue in relation to which has been finally decided as the Review Court does not sit in appeal over its own order.

38. Order VII Rule 10 CPC mandates return of plaint for approaching the competent court. The law provides that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. It is no more *res integra*, that a court of District Judge, Commercial Court is a court of competent jurisdiction for holding trial of a commercial suit.

39. Pertinently, the present suit is being tried by the Court of competent jurisdiction i.e., District Judge, Commercial Court. Moreover by following the amendment procedure, the non-commercial suit of the plaintiff has been amended and is now a commercial suit as per the provisions of the Commercial Courts Act and thereby confirms to the protocol and procedure of a commercial suit. Moreover, the impleadment of Section 12A of the Commercial Courts Act has also been removed as is apparent from the order dated 13.12.2021 passed by the learned District Judge, Commercial Court. The learned Trial Court has adopted a hyper technical view by *suo moto* reviewing the orders dated 05.04.2021 and 28.04.2021 and passing the impugned order on the basis of the judgment titled as **Virendra Kumar vs**



Rekha Bhayana (supra) which was passed subsequent to the passing of the aforesaid transfer orders.

40. In view of the above, at this stage the return of the plaint under Order VII Rule 10 CPC will not serve any purpose rather it will be an excessively technical approach and will defeat the ends of justice. Needless to say, in case the parties have not approached the Mediation Centre for peaceful settlement of their disputes, opportunity may be afforded by the learned Trial Court to the parties.

41. Accordingly, the impugned order dated 01.08.2023 is set aside. Learned Trial Court is directed to proceed with the trial of the commercial suit, as per law.

42. Consequently, the present petition along with pending application stands allowed.

SHALINDER KAUR, J.

FEBRUARY 27, 2024
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