



\$~34

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

+ CM(M) 1749/2023

AJAY KUMAR GUPTA & ANR. Petitioners

Through: Mr. Advocate. (appearance not given)

versus

M/S DKS HOSPITALITY PVT LTD & ANR. Respondents

Through: Mr. HPS Sabharwal and Mr. Sakil Ahamad, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

22.03.2024

%

1. The present petition is under Article 227 of the Constitution of India impugning the order dated 03.08.2023 passed by the court of Additional District Judge-11, Central, Tis Hazari Courts, New Delhi ("Trial Court") in the suit bearing no. CS/DJ/506/2020 titled as "*Ajay Kumar Gupta & Anr. V. M/s DKS Hospitality Pvt. Ltd. & Anr.*"
2. The petitioners herein are the plaintiffs and the respondents herein are the defendants before the learned Trial Court.
3. Learned counsel for the petitioners submits that on 28.09.2020, the petitioners filed a suit for possession, recovery of arrears of rent, electricity & water charges & mesne profits against the respondents before the learned Trial Court.
4. Respondents entered appearance before the learned Trial Court and



filed their written statement in response to the suit of the petitioners along with reply to the above mentioned applications.

5. Petitioner also filed an application under Order XXXIX Rule 1 & 2 and Order XV-A of Code of Civil Procedure, 1908 (“CPC”). By virtue of application under Order XV-A of CPC, petitioners have been seeking deposit of arrears of rent, electricity and water charges by the respondents.

6. It is submitted on behalf of the respondents that in March, 2022, the respondents filed an application under Section 151 CPC for handing over the keys of premises. However, the keys were not handed over by the respondent.

7. Petitioners submit on behalf of the petitioners that vide order dated 03.08.2023 the learned Trial Court has erroneously dismissed the application filed by the petitioners under Order XV-A CPC seeking admitted rent from the respondents during the pendency of the trial without considering the submissions made by the petitioners that all the eating houses were not shut down although public was not using the restaurants but “take away” and “home delivery” facilities were available and electricity consumption bills of the premises reveals that respondents reading was operational. Moreso, the fresh documents i.e. the notification etc. have been placed on record, the copy of which has been furnished. However, the said documents were never brought to the notice of the learned Trial Court at the time of hearing of the application.

8. The learned Trial Court vide order dated 03.08.2023 has observed as follows:

“Therefore at this stage, prima facie the court cannot accept the contention of plaintiff that it was merely a governmental order which led to shut down of the restaurant of defendant and would not be



covered within the clause of natural calamity. Therefore, no order U/O XV-A CPC can be passed except for the period where the government had allowed the activities such as the one being run in the tenanted premises to be carried out. For calculation of that period, evidence shall be required to be led and thus at this stage, no order u/O XV-A CPC can be passed. The application at hand is accordingly dismissed.”

9. Essentially, the petitioners want to rely upon certain government notifications with respect to certain restaurants being operational for limited purpose to impress upon his arguments that respondents were not out of business during the entire period.

10. In these circumstances, the order dated 03.08.2023 is set aside and the case is remanded back to the learned Trial Court to re-hear the arguments on the application moved on behalf of the petitioner herein under Order XV-A CPC after considering the fresh documents placed on record / to be placed on record by the petitioners.

11. The learned Trial Court is directed to dispose of the application within six weeks from today.

12. It is needless to state that the observations made herein shall not tantamount to be an observation on the merits of the case before the learned Trial Court.

13. With above observations, the petition stands disposed of.

SHALINDER KAUR, J.

MARCH 22, 2024
SDS