



\$~44

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

%

Date of Decision: 16.01.2023+ **RFA(COMM) 12/2024, CM Nos.2961-2963/2024**

M/S GURPRAKASH ENTERPRISE & ORS. Appellants

Through: Mr.Gurvinder Singh, Advocate.

versus

KAILASH SEWANI & ANR.

..... Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE RAVINDER DUDEJA****VIBHU BAKHRU, J.**

1. The appellants have filed the present appeal impugning the judgment dated 21.08.2023 (hereafter '**the impugned judgment**') passed by the learned Commercial Court in CS (Comm.) No. 123/2023 captioned ***Kailash Sewani v. M/s Gurprakash Enterprise & Ors.*** By the impugned judgment, respondent no.1's application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereafter '**CPC**') was allowed. And, the suit filed by respondent no.1 was decreed.

2. The aforementioned suit was filed by respondent no.1, *inter alia*, seeking possession of the property bearing no.D-35, Shop No. 4, Central Market, Lajpat Nagar-II, New Delhi-110024 (hereafter '**the demised property**'), and recovery of arrears of rent, *mesne profits* and damages from the appellants and respondent no.2.

3. Respondent no.1 is the owner of the demised premises and had executed a Lease Deed dated 12.08.2021 (hereafter '**the Lease Deed**') in

RFA(COMM) No.12/2024***Page 1 of 8***



favour of appellant no.1 in respect of the demised property for a period of six years commencing from 01.08.2021. In terms of the Lease Deed, the rent for the suit property was fixed at ₹1,50,000/- per month excluding electricity and water charges. The Lease Deed also provided for an annual increase of 5% in the monthly rent.

4. Appellant no.1 is a partnership firm and was arrayed as defendant no.1 in the suit. Appellant nos.2 and 3 are constituent partners of appellant no.1 firm and were arrayed as defendant nos.2 and 4 in the suit. Respondent no.2 claims that he was a partner in appellant no.1 firm but has since resigned. He was arrayed as defendant no.3 in the said suit.

5. Respondent no.1 (hereafter also referred as 'the plaintiff') had claimed that the defendants (the appellants and respondent no.2) had failed to pay the rent for the demised premises. Respondent no.1 claimed that the cheques issued for payment of rent for the months of July, August and September, 2022 were dishonored with the noting to the effect that the payment had been stopped by the drawer (defendant no.1/appellant no.1).

6. Respondent no.1 claimed that it had approached the appellants and respondent no.2 on several occasions. However, the appellants had failed and neglected to honour their commitments. In the aforesaid backdrop, respondent no.1 issued a legal notice dated 26.09.2022 terminating the Lease deed of the demised premises. Respondent no.1 demanded possession of the demised premises as well as sought damages, penalty and *mesne* profit in terms of the Lease Deed. Respondent no.1 further claimed that the appellants and respondent no.2 had deducted tax at source (TDS) – as the



cheques issued for payment of rent for the months of July, August, and September, 2022 were for amount of rent less TDS – however, the appellants and respondent no.2 had failed to deposit the same with the Income Tax Authorities.

7. In the aforesaid backdrop, respondent no.1 sought a decree for possession of the demised premises as well as recovery of arrears of rent at the rate of ₹1,50,000/- per month from July 2020 till termination of the lease. Respondent no.1 also sought recovery of damages/*mesne* profit for a sum of ₹1,50,000/- at the rate of ₹5,000/- per day in terms of the Lease Deed. Additionally, respondent no.1 sought a decree for recovery of penalty at the rate of ₹1,000/- in terms of the Lease Deed.

8. The appellants (defendant nos.1, 2 and 4) filed a joint written statement resisting the suit. They claimed that the Lease Deed was not validly executed. They also claimed that respondent no.1 had no *locus standi* to file a suit as he was not the owner of the demised property. Appellant no.3 (defendant no.4) had claimed that he was not liable to pay arrears of rent as he was not the partner at the material time when the Lease Deed was executed and he had not signed the Lease Deed.

9. Respondent No.2 (defendant no.3) claimed that he had resigned as a partner of appellant no.1 firm and therefore, was not liable for payment of rent due from appellant no.1.

10. Respondent No.1 filed an application under Order XII Rule 6 of the CPC, *inter alia*, claiming that all material facts were admitted. There was no dispute that the Lease Deed was executed between respondent no.1 and



appellant no.1. The Lease Deed was also signed by appellant no.2 and it is admitted that she was a partner of appellant no.1 firm. Appellant no.2 had also admitted the Lease Deed in the affidavit affirmed for admission and denial of the documents.

11. The learned Commercial Court observed that the Lease Deed was executed between the parties and was duly signed by appellant no.2 and respondent no.2. The court also noted that there was no other explanation in the written statement filed by the appellants for the occupation of the demised property. The learned Commercial Court noted that the Lease Deed was terminated by the notice dated 26.09.2022 on account of non-payment of rent for the months of July, August, and September, 2022.

SUBMISSIONS

12. The learned counsel appearing for the appellants submits that the learned Commercial Court has grossly erred in proceeding to decree the suit on the basis of admissions. He contended that appellant nos.1 and 3 had denied the Lease Deed. And, there was no admission on their part which would warrant a judgment on admissions.

13. Next, he submitted that respondent no.2 (defendant no.3 in the suit) had filed applications under Order VII Rule 11 of the CPC and under Order I Rule 10 of the CPC for dismissal of the suit and for deletion of his name from the array of parties. Respondent no.2 had claimed that he had resigned as a partner of appellant no.1 firm in April, 2022 and therefore, was not liable for appellant no.1's liability arising after his resignation. It was pointed out that the said applications were dismissed by the learned



Commercial Court by an order dated 05.08.2023 observing that the “....defence of retirement deed as alleged is a triable issue and cannot be considered in the present facts and circumstances at this stage”

14. The learned counsel submitted that the learned Commercial Court had ignored the earlier orders which clearly stated that there were triable issues, and had proceeded to allow the suit on admissions.

15. Lastly, he submitted that it was open for the learned Commercial Court to decree the suit by a summary judgment under Order XIII A of the CPC, if the Court was of the view that there was no possibility of the appellants succeeding in their defence, however, the learned Commercial Court could not decree the suit on admissions as appellant nos.1 and 3 (defendant nos.1 and 4 in the suit) had not admitted to the existence of the Lease Deed.

REASONS & CONCLUSION

16. We have heard the learned counsel for the appellants.

17. At the outset, it is relevant to note that respondent no.2 has not appealed the impugned judgment. The present appeal has been preferred by the appellants (defendant nos.1,2 and 4 in the suit) and there is no dispute that the appellant nos.2 and 3 are the constituent partners of the appellant no.1 firm. Undeniably, there is a controversy whether respondent no.2 could be fastened with the liability of payment of rent for the months of July, August, and September, 2022 as it is his case that he had retired as partner of appellant no.1 firm in April, 2022. However, this controversy is not relevant



as far as the appellants are concerned. The appellant nos.2 and 3 are admittedly partners of appellant no.1 firm and therefore, are liable for the amounts recoverable from appellant no.1 firm. As noted by the learned Commercial Court, there is no dispute as to the execution of the Lease Deed. Appellant no.2 had not disputed that the Lease Deed was signed by her and respondent no.2 (defendant in the suit) on behalf of appellant no.1 firm as its constituent partners. Appellant no.2's signature on the Lease Deed was admitted. It is also material to note that Lease Deed was registered at the material time.

18. A joint written statement was filed of the appellants denying that any *“valid lease agreement was ever executed between the Plaintiff and Defendant no.1 or Defendant no.4”*. On the basis of this assertion, they had further pleaded that respondent no.1 had no *locus standi* to file the suit. However, it was not denied that the Lease Deed was executed by appellant no. 2. In response to respondent no.1's averment that a Lease Deed was executed for a period of six years and the lease period commenced from 01.08.2021, the appellants had made a bald assertion that no such Lease Deed was executed. However, in the affidavit filed by appellant no.2 for admission and denial of documents, the Lease Deed was admitted and therefore, the same was not required to be proved.

19. In view of the above, the appellants contention that there was no unequivocal admission of the Lease Deed, is unmerited. Mere bald denial that no such deed was executed, in response to the averment regarding the attributes of the Lease Deed, cannot be construed as a denial. Whilst it was averred that that the Lease Deed was not valid qua appellant nos.1 and 3,



Appellant no.2 had admitted the Lease Deed in an affidavit of admission and denial of documents.

20. It is material to examine the defences raised by the appellants in their written statement. The appellants had claimed that there was no valid lease deed between respondent no.1 and appellant nos.1 and 3 and therefore, respondent no.1 did not have a *locus standi* to file the suit against the said appellants. Second, they claimed that there was no privity of contract between respondent no.1 and appellant no.3. This contention was sought to be supported on the ground that appellant no.3 was not a signatory to the Lease Deed. Third, it was contended that respondent no.1 is not the owner or the landlord /lessor of the demised property and therefore, had no locus to file the present suit. Fourth, it was contended that the suit was liable to be dismissed as it did not contain the sufficient description of the demised property. In addition, it was also pleaded that respondent no.1 had not come with clean hands and had concealed the vital facts and therefore, the suit was liable to be dismissed.

21. It is apparent that the averments made in the written statement are without any substance. There is no explanation as to why the Lease Deed was invalid. It is claimed that respondent no.1 is not the owner or the landlord of the demised property. However, there is no averment or material on record to suggest that some other person is the owner of the demised property. Admittedly, appellant no.1 was in possession of the demised property for its business and there is no explanation whatsoever as to how the appellants and respondent no.2 came to possess the demised property.



22. As noted above, the execution of the Lease Deed is not in question. In the circumstances, the bald averment that respondent no.1 is not the owner of the demised premises, is of no consequence. Such a bald averments do not raise any triable issue. The contention that the plaint does not sufficiently describe the demised property is also *ex facie* unmerited. The averment that respondent no.1 has not approached the Court with clean hands is also bereft of any basis. It is clear that the defences sought to be raised by the appellants in their written statement are illusory.

23. There is no dispute as to the material facts and the same warranted decreeing the suit on admissions. First, it is admitted that the Lease Deed was executed by appellant no.2 and respondent no.2. It is admitted that appellant no.2 and respondent no.2 were partners of appellant no.1 firm at the material time. There is not dispute that appellant no.1 firm was put in possession of the demised premises. There is no dispute that appellant no.1 firm had failed to pay the rent as agreed in the Lease Deed for the period from July, 2022 onwards. In the given circumstances, we find no infirmity in the impugned judgment.

24. The appeal is, accordingly, dismissed. All pending applications are also dismissed.

25. No order as to costs.

VIBHU BAKHRU, J

RAVINDER DUDEJA, J

JANUARY 16, 2024
RK/GSR

RFA(COMM) No.12/2024

Page 8 of 8