



2024:DHC:8191



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Order: 08.10.2024

+ RC.REV. 196/2018, CM APPL. 18699/2018, CM APPL. 51994/2018, CM APPL. 13553/2019 & CM APPL. 36565/2023
MOHAN SINGHPetitioner

Through: Ms. Aakanksha Kaul, Advocate with
Petitioner in person.

versus

VISHAN DASS NARANGRespondent

Through: Mr. Kuldeep Kumar & Mr. G.P.
Lenka, Advocates.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (ORAL)**

CM APPL. 51994/2018, CM APPL. 13553/2019 & CM APPL. 36565/2023 [for Direction for user and occupation charges]

CM APPL. 18699/2018 [for stay]

1. The above applications, i.e., CM APPL. 51994/2018, CM APPL. 13553/2019 and CM APPL. 36565/2023, have been filed by the Respondent/landlord seeking directions to Petitioner/tenant to pay user and occupation charges.
2. Learned Counsel for the Respondent/landlord submits that the prayers in the said Applications are same, and thus, the Respondent/landlord will only press CM APPL. 51994/2018.
3. Accordingly, CM APPL. 13553/2019 and CM APPL. 36565/2023 are dismissed as withdrawn.
4. Learned Counsel for the Respondent/landlord submits that the subject premises is a Basement Hall, admeasuring 15X45 ft., situated at Premises



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No. II-I-56 Lajpat Nagar -II, New Delhi – 110024 [hereinafter referred to as “subject premises”].

4.1 Learned Counsel for the Respondent/landlord submits that the subject premises is on mixed land use and can be used for commercial as well as residential purposes. The subject premises are being used as a godown and that the user and occupation charges in the sum of Rs.2 lakhs per month are due and payable for such a godown.

5. Learned Counsel for the Petitioner/tenant submits that the subject premises is being used as a godown.

6. Learned Counsel for the Petitioner/tenant, on instructions from the Petitioner/tenant, who is present in Court today, submits that the Petitioner/tenant is not in a position to pay any user and occupation charges, much less pay user and occupation charges for the last six years.

7. Learned Counsel for the Respondent/landlord submits that in terms of the judgment of the Supreme Court in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ and *Martin and Harris Private Limited and Another v. Rajendra Mehta and Others*², once the Eviction Order has been passed, the tenant is required to pay the use and occupation charges at market rent till the final disposal of the Revision Petition.

8. Concededly, the Revision Petition has been pending for the last six years. However, in view of the fact that the Eviction Order was passed on 04.01.2018 [hereinafter referred to as “Impugned Order”], and that the Petitioner/tenant has stated that the Petitioner/tenant is unwilling/not able to

¹ (2005) 1 SCC 705

² (2022) 8 SCC 527



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make any payment of user and occupation charges, this Court deems it expedient to vacate the interim orders/orders of protection passed by the Court on 07.05.2018.

9. Interim order dated 07.05.2018 is hereby vacated.

9.1 Accordingly, CM APPL. 18699/2018 is disposed of.

RC.REV. 196/2018

10. With the consent of the parties, the matter is taken up for final hearing and disposal today itself.

11. Learned Counsel for the Petitioner/tenant submits that the grievance of the Petitioner/tenant is that the Petitioner/tenant remained unserved till 14.07.2017. Reliance is placed on report of Process Server dated 14.07.2017, with regard to summons dated 03.06.2017, which are annexed at PDF Page 246 of the Trial Court Record.

11.1 Learned Counsel for the Petitioner/tenant further submits that considering the date of service of 14.07.2017, since the Leave to Defend Application was filed on 27.07.2017, it is within the prescribed statutory period. It is, thus, submitted that the Impugned Order cannot be sustained.

11.2 Learned Counsel for the Petitioner/tenant further submits that the Petitioner/tenant was served with defective summons as the same were not in compliance with the provisions of Section 25B (2), (3)(a) and (b) of the Delhi Rent Control Act, 1958 [hereinafter referred to as the "DRC Act"].

12. Learned Counsel for the Respondent/landlord refutes the submission of the Petitioner/tenant. It is contended that it is the admitted case of the Petitioner/tenant that the summons in the Eviction Petition was served on the



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Petitioner/tenant on 07.06.2017. He submits that annexed at Annexure P-6 is a copy of memo of appearance which sets out that the summons were received on 07.06.2017 and that the next date of hearing is 19.07.2017. He submits that this memo of appearance is signed both by the Petitioner/tenant as well as his Counsel.

12.1 In addition, learned Counsel for the Respondent/landlord seeks to rely upon the Leave to Defend Application, filed on behalf of the Petitioner/tenant, more specifically on paragraphs 1, 3 and 4 to state that the summons were received on 07.06.2017.

13. A Coordinate Bench of this Court by its order dated 07.05.2018 while passing interim directions, set out that whether power to condone the delay in filing an Application for Leave to Defend is available with this Court is the subject matter of reference to a larger Bench in the matter of ***Director Directorate of Education & Ors. vs. Mohd. Shamim & Ors.***³, and had passed interim directions, staying the execution of the Impugned Order awaiting the judgment in this matter.

14. The reference culminated into a decision by a Division Bench of this Court on 29.11.2019 in the ***Directorate of Education*** case. A Division Bench of this Court, after discussing the law on this aspect, answered the reference holding that in order for an application for extension of time to file Leave to Defend to be allowed, a dual test, needs to be fulfilled. The tenant is required to show that he was prevented by reasons beyond his control from applying for Leave to Defend within the prescribed time. In addition, the tenant is to make out a substantial case of consideration of the

³ 2019 SCC OnLine Del 11490



Application for Leave to Defend. The Division Bench further held that the power to condone the delay is not available with the Rent Controller but the High Court has such power subject to the conditions as set out above, being satisfied. The relevant extract of the order passed by the Division Bench in the *Directorate of Education* case is set out below:

“25. We, therefore, hold that merely because the Controller has passed an order of eviction in a proceeding governed under Section 25B, on failure of the tenant to, within the prescribed time, apply for leave to defend and merely because the Controller vide Prithpal Singh supra has been held to be not empowered to recall the said order, would not prevent this Court from, in exercise of powers under proviso to Section 25B(8), considering once a case for the landlord to be not entitled to an order of eviction to be deemed admission following non-filing of leave to defend within the prescribed time, the said order cannot be said to have been made according to law and would qualify as being contrary to law and liable to be set aside.

26. Having held so, we answer the question no.(A) framed in the referral order in the affirmative and with the condition that this Court would be empowered to set aside the order of eviction only if the tenant passes the dual test of prevented by reasons beyond control from applying for leave to defend within the prescribed time (as distinct from every default) and if makes out a substantial case for consideration of the application for leave to defend. We, however, in deference to Prithpal Singh supra choose/opt to not answer the question (B) framed in the referral order.

27. We answer the reference accordingly.”

[Emphasis supplied]

15. The primary ground raised by the Petitioner/tenant is that service was incomplete in view of the defective summons. In addition, it has been contended that the payment of Rs. 12,000/- was made for construction of a second basement by the Petitioner/tenant. It is the admitted case of the parties that the payment was adjusted at a monthly rent of Rs. 1,000/- for each of the three premises taken on rent from the Respondent/landlord i.e., two basements and a ground floor which form subject matter of the present



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Petition being R.C Rev 196/2018 and connected R.C. Rev No. 197/2018, and R.C. Rev No.198/2018.

15.1 It is thus contended that since the triable issues were raised in terms of the judgment of the **Directorate of Education** case, a substantial defence had been raised by the Petitioner/tenant, entitling the Petitioner/tenant to Leave to Defend.

16. The Respondent/landlord, on the other hand, contends that the summons were duly served on the Petitioner/tenant and in the summons itself, it is stated that the tenant is required to appear within 15 days of service thereof to obtain leave of the controller to contest the Application for Eviction. In addition, it is contended that the Petitioner/tenant did not approach the Court with clean hands. The Impugned Order was challenged by the Petitioner/tenant in a Review Petition and the same was dismissed with costs by order dated 11.04.2018 by the learned Trial Court which costs have not been paid till today by the Petitioner/tenant.

17. It is further averred that the Petitioner/tenant has been in continuous occupation of the subject premises which is in a prime location in South Delhi area being right next to the Central Market, Lajpat Nagar, New Delhi. The premises is abutting a Master Plan Road and have been declared a “Mixed Land Use Premises”. It is thus contended by the Respondent/landlord that the Respondent/landlord is entitled to user and occupation charges/damages in the sum of Rs. 2 lakhs per month for the subject premises.

18. Lastly, it is contended that the Petitioner/tenant owns several properties while the Respondent/landlord has no other alternate premises.



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Thus, the Petitioner/tenant has failed to make out any case for grant of Leave to Defend.

19. The record shows that an Eviction Petition was filed wherein it was stated that the subject premises is required by the Respondent/landlord for opening a ladies garment boutique to be run by his daughter-in-law. It was stated that she would run a boutique as well install sewing machines and the subject premises was best suited for this kind of business given its location adjacent to Central Market and that the subject premises was required to open such a boutique.

20. As stated above, the only ground that was taken by the Petitioner/tenant in his Application for Leave to Defend filed on 27.07.2017 were that the summons were not in accordance with Schedule III of the DRC Act and were not duly served on the Petitioner/tenant. It was further stated that the summons received failed to set out the next date of hearing and that since, the Courts were closed for vacation from 10.06.2017 to 30.06.2017, the Petitioner/tenant could not appear.

20.1 The Application for Leave to Defend further goes on to state that the summons are not in accordance with law as they failed to inform the next date of hearing. In addition, it is stated therein that upon receipt of summons, the Petitioner approached his regular Counsel who was unavailable as he was travelling. It is further stated therein that the other Counsel of the Petitioner/tenant was hospitalised at that time.

20.2 It was further stated by the Petitioner/tenant, that he went to the Court to enquire about the case and on 05.07.2017, he was informed about the case and the next date of hearing. In addition, it is also stated that on 19.07.2017,



once again the Petitioner/tenant appeared before the Court. Learned Counsel for the Respondent/landlord thus submits that the Leave to Defend Application was rightly disallowed.

20.3 Paragraphs 1, 3 and 4 of the Leave to Defend Application [annexed at page 143 and 144 of the case file] are extracted below:

“1. The Respondent was served with summons in the present proceedings filed under section 14(1)(e) read with section 25B of the Delhi Rent Control Act, 1958 on 07.06.2017.

xxx

3. Be that as it. may, upon receipt of the summons the Respondent no.2 tried to approach his regular counsel i.e. Mr. Manish Kumar, however, it was informed that he had gone abroad during summer vacations. Thereafter, the Respondent No.2 tried to approach his other counsel Mr. J.P. Sharma who also takes care of matters of the Respondents in trial courts, however, unfortunately, at that point of time MR. J.P Sharma was hospitalized and could not be approached.

4. It is submitted that the courts were closed from 10.06.2017 till 30.06.2017 and therefore, during the aforesaid period the Respondents could not appear before this Hon'ble Court. On 05.07.2017, the Respondent no.2 went to the Court and inquired about the case. Consequently, the Respondent No.2 was informed about the next date of hearing which was 19.07.2017. It is stated that the Respondent no.2 being unaware of the legal requirements of filing

leave to defend, in his own wisdom filed an application entering appearance, under a conception that the summons will be issued to his address.”

[Emphasis supplied]

21. Since, the learned Trial Court record was available, the summons were examined by the Court during the hearing. The summons set out the date of the order, the proceedings and also that they were issued on 03.06.2017. The record also shows that the summons are in accordance with Schedule III of the DRC Act. The service report for the issue of summons sets out that the summons were issued on 03.06.2017 but remained



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unserved.

21.1 The contentions of the Petitioner/tenant are belied from the record and his pleading itself. A memo of appearance was filed along with a copy of site plan by Petitioner/tenant on 05.07.2017. Thus, even if the report of Process Server of 14.07.2017 were to be taken into consideration as being unserved, the fact that the first summons was received by the Petitioner/tenant admittedly on 07.06.2016, the Leave to Defend was not filed within 15 days thereof.

22. In addition, the summons clearly set out therein that the Petitioner/tenant is required to appear before the Controller within 15 days of the service to obtain Leave to Defend. Although the report of the process server dated 14.07.2017 sets out that the summons was unserved. However, much prior to the said date, the Petitioner/tenant had entered appearance before the Court and filed his memorandum of appearance. The Petitioner/tenant also appeared on 05.07.2017 and 19.07.2017 before the Court.

22.1 Since the Application for Leave to Defend/Contest the Eviction Petition is required to be filed within 15 days from the date of receipt of summons. There is no significance as regards of the next date of hearing. The response of a tenant is required to be filed within 15 days in terms of Sub-section (4) of Section 25(B) of the DRC Act and the third Schedule of the DRC Act.

23. Thus, quite clearly the Petitioner was aware of the proceedings and in pursuance of receipt of summons on 07.06.2017, he first made enquires with his lawyers and when they were found to be unavailable, he himself visited



the Court on 05.07.2017 and filed a memo of appearance through his Counsel and went to Court on 19.07.2017 as well.

23.1 As stated above, the memo of appearance sets out that he had received summons on 07.06.2017. The memo of appearance being brief is extracted below:

“1. That the abovesaid case is pending before the Hon’ble, Court and the same is fixed for appearance of the defendant.

2. That the defendant received a summon for appearance from this Hon’ble Court on 7.6.2017.

3. That the appearance of the defendant be entered in the present case.

4. That the address of the defendant is “SH. MOHAN SINGH, PROPRIETOR OF ADAMS INTERNATIONAL, S/O LATE BALWANT SINGH, R/O I-56, BASEMENT HALL 15’X45’, LAJPAT NAGAR-II, NEW DELHI-110024”, to serve the summons.

PRAYER

It is, therefore, most respectfully prayed that the appearance of the defendant may kindly be taken on record, in the interest of justice.

Sd/-
DEFENDANT

NEW DELHI
DATED 5.7.2017

(MOHAN SINGH)
S/O LATE BALWANT SINGH
R/O I-56, LAJPAT NAGAR-II,
NEW DELHI”

[Emphasis supplied]

23.2 Subsequently, an Application for leave to contest/defend was filed by the Petitioner/tenant wherein in addition to setting out that summons have been received on 07.06.2017, there is an admission by the Petitioner/tenant that he went to the Court on 05.07.2017 and enquired about the case.



24. The record also shows that in the Application for Leave to Defend, no grounds have been taken that would entitle the Petitioner/tenant for leave. The relationship of the landlord-tenant is not disputed. With respect to the *bona fide* need, it has been contended in the Affidavit dated 27.07.2017 filed along with the Application for Leave to Defend/Contest sets out that the Respondent/landlord has not set out the exact area needed to run the boutique shop, and in any event, some another portion of the first floor can be used by the daughter-in-law of the Respondent, to run her boutique shop. The Respondent/landlord has in the Eviction Petition, has clearly set out that the boutique shop will require space for instalment of machinery for tailoring, staff, display area and even storage. As such the space available on the first floor, is insufficient to run the boutique shop, without utilizing the subject premises.

24.1 The Supreme Court in the case of ***Prativa Devi (Smt) v. T.V. Krishnan***⁴ has held that tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. This Court while relying on the ***Prativa Devi case*** has in the ***R.S. Chadha (thr. SPA) v. Thakur Dass***⁵ held:

“13.1 It is settled law that the tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. It is also not for the Courts to adjudicate that the landlord has a bonafide need or not. The Courts will generally accept the landlords need as bonafide. The Supreme Court in the case of Prativa Devi (Smt) v. T.V. Krishnan [(1996) 5 SCC 353] has directed:

⁴ (1996) 5 SCC 353

⁵ 2024 SCC OnLine Del 47



“2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjung Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.”

13.2 In any event, it is only the Respondent/landlord and his family who can decide what is sufficient space as per their needs and requirements. Sufficiency of residential accommodation for any person would essentially be dependent on multiple factors, including his living standard and general status in society. In view of the fact that admittedly the Respondent/landlord has a large family, it is not open to the Petitioner/tenant to contend that requirement of 6 rooms as pleaded by the Respondent/landlord, is not bonafide.

13.3 The Trial Court has dealt with the sufficiency of accommodation of the Respondent/landlord in the Impugned Order. This Court finds no reason to impugn these findings.”

[Emphasis supplied]

25. The primary ground that has been sought to be agitated by the



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Petitioner/tenant is that in the year 2003, the Respondent/landlord had filed a civil suit seeking recovery of possession of the subject premises, *mesne profits/damages* which was dismissed on 30.09.2011. It is thus contended that the copy of the order dated 30.09.2011 passed by the learned District Judge Central Delhi shows that the suit was dismissed as being barred by the provisions of Section 50 of the DRC Act since the rate of the rent claimed, was within the threshold of premises covered by the DRC Act. Thus, the defence of a higher rate of rent as set out in the Revision Petition is also without any merit.

26. The Impugned Order was initially challenged by way of filing a review before the learned Trial Court. The learned Trial Court by its order dated 11.04.2018 dismissed, the Application for review of the Impugned Order filed by the Petitioner/tenant on 11.04.2018 and imposed costs of Rs. 20,000/- on the Petitioner/tenant to be deposited with the Army Welfare Fund Battle Casualties. The Court is informed that even this payment has not been made by the Petitioner/tenant.

27. The test as set out in the *Directorate of Education* case is a dual requirement fulfilment test. The Petitioner/tenant has failed to show that there were any reasons beyond its control for applying Leave to Defend within the prescribed time. The Petitioner/tenant was admittedly served and on basis such service, the enquiries were made and applications/memos of appearance were filed as is set out in the narration above. Thus, the Petitioners/tenants contention that he was not aware of the proceedings and was not served is belied from the record itself.

28. In addition, no case much less a substantial case for consideration has



been made out by the Petitioner/tenant. Neither the relationship of landlord-tenant nor the ownership of the Respondent/landlord has been disputed. The receipt evidencing payment of Rs. 12,000/- to the Respondent/landlord by the Petitioner/tenant has been explained as advance rent for the basement. So far as concerns the averment of the Petitioner/tenant with respect to the alternate accommodation available in Nehru Palace/Greater Kailash-I and Faridabad and Zamrudpur, the Eviction Petition contains a reference to a rented accommodation in Zamrudpur which is being used by the son of the Petitioner for running his real estate business. However, the Petitioner along with his Leave to Defend/Contest has not filed any document or even set out details *qua* any of the properties mentioned above. Except setting out the names of 2-3 colonies, no other details have been provided by the Petitioner/tenant.

28.1 A Coordinate Bench of this Court in ***Rajender Kumar Sharma & Ors. v. Leela Wati & Ors.***⁶ has held that only averments which have some substance in them and are supported by material are required to be considered while granting leave to defend. Merely mentioning ownership of other buildings and other residences without any details or supporting documents is not sufficient for grant of leave to defend⁷. It was further held that the Court cannot allow vague and unsubstantiated assertions in an Application for leave to defend, as this would defeat the whole purpose of Section 25(B) of the DRC Act. The relevant extract is reproduced below:

“ ...
11.....**Only those averments in the affidavit are to be considered by the Rent Controller which have same substance in it and are**

⁶ 2008 (106) DRJ 471

⁷ See ***Rajiv Kumar and Another v. Chaman Lal and Others***: 2024 SCC OnLine Del 833



supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed, the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false."

[Emphasis supplied]

28.2 In the present case, the Petitioner/tenant has in his Affidavit simply set out the names of two three colonies in an around Delhi NCR, and stated that the Respondent/landlord has additional accommodation in these places. No address or any any details about the accommodation has been stated therein.

29. The ***Directorate of Education*** case sets out that a substantial defence is required to be shown by the tenant to entitle him extension of time to file an Application for Leave to Defend. In addition, what has been stated in the Eviction Petition is that the Petitioner is a habitual defaulter and has even failed to make payment of electricity and other charges for the last several years. The Respondent/landlord has clearly stated that he has no other suitable alternate accommodation and no averment or document has been placed on record with respect to the availability of suitable alternate accommodation with the Respondent/landlord. Thus, the Petitioner/tenant has failed to raise any defence as would entitle the Petitioner/tenant Leave to Defend under the provisions of sub-Section (4) and (5) of Section 25(B) of the DRC Act.

30. As is evident from the discussions above, the test as set out in the



Directorate of Education case, is not satisfied in the present case.

31. In terms of the law as settled in the answer to the reference, we find that the Impugned Order does not suffer from any infirmity.

32. The Supreme Court in **Atma Ram** case and **Martin and Harris** case sets out that user and occupation charges are to be paid by the Petitioner/tenant during the pendency of a Revision Petition upon the Execution.

32.1 In the **Martin and Harris** case, the Supreme Court has held that if the appellate court grants a stay, delaying the execution of the decree of eviction, it has to compensate the decree holder for the loss occasioned by the delay by imposing reasonable terms and conditions including payment of mesne profits at market rent. The relevant extract of the **Martin and Harris** case is below:

“17. In *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, this Court held that the appellate court does have jurisdiction to put reasonable terms and conditions as would in its opinion be reasonable to compensate the decree-holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent court, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a later date.”

[Emphasis Supplied]

32.2 After the eviction order was passed, the Petitioner has remained in occupation of the subject premises since 04.01.2018 without making any



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payment for the loss occasioned by the delay in execution of the Impugned Order. Thus, the Respondent/landlord is at liberty to file appropriate proceedings for the recovery of use and occupation charges/mesne profits in accordance with law.

33. The Petition and all pending Applications are accordingly dismissed. Consequently, all interim orders stand vacated.

TARA VITASTA GANJU, J

OCTOBER 8, 2024/ha