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

% ***Judgment reserved on: 17.11.2025***
Judgment pronounced on: 27.11.2025

\+ RFA(COMM) 78/2025, CM APPL. 7315/2025, CM APPL.7316/2025

M/S FIRE IMMUNE SYSTEMS .....Appellant
Through: Mr. Vivek Malhotra, Adv.

versus

M/S ELESCO TRADERS PVT. LTD .....Respondent
Through: Mr. Rahul Malhotra and Ms. Sneha Agarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant (Tenant) [Defendant before the Trial Court] assails the correctness of the judgment and decree dated 22.11.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Trial Court in CS (COMM.) No.495/2022 captioned ***Elesco Traders Pvt. Ltd. vs Fire Immune Systems***, whereby the suit instituted by the Respondent [Plaintiff before the Trial Court] for possession, ejectment and recovery of *mesne* profits was decreed.

2. For the sake of convenience, the parties are referred to by their positions before the Trial Court. The Appellant/Defendant is a partnership firm carrying on business from premises at J-11, Udyog

Nagar, Rohtak Road, Delhi, represented by its partners, Shri Hari Om Gulati and Shri Sagar Gulati. The Respondent/Plaintiff is a company incorporated under the Companies Act, 2013, having its registered office at B-1/15, Paschim Vihar, New Delhi.

FACTUAL MATRIX

3. The succinct factual matrix is as follows. The Plaintiff/landlord had let out the rear portion of the ground floor of property bearing No. J-11, Udyog Nagar, Rohtak Road, Delhi [hereinafter referred to as 'suit property'] to the Defendant/tenant pursuant to a lease dated 22.04.2015. The tenancy was thereafter extended vide instrument dated 19.04.2017 for the period 01.04.2017 to 28.02.2018 at a monthly rent of Rs.15,000/-. It was the Plaintiff's case that the tenancy stood determined by efflux of time on 28.02.2018 and, in the alternative, by notices dated 21.02.2018 and 09.06.2018. Despite service of the notices and repeated demands, the Appellant failed to vacate the premises and continued in unauthorised occupation, leading to the institution of the suit for possession, ejectment and mesne profits.

4. The Respondent initially instituted a suit for possession before the Court of the learned ADJ-08. *Vide* order dated 11.01.2022, the plaint was returned under Order VII Rule 10 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] for presentation before the appropriate forum, observing that the dispute was commercial in nature. The Respondent thereafter instituted CS (COMM.) No.495/2022 before the Commercial Court. Summons were served on the Appellant on 09.07.2022; however, no written statement

was filed within the statutory/extended period. Consequently, the defence was struck off and the Appellant's subsequent application under Order VIII Rule 1 of the CPC seeking condonation and taking on record of the written statement was rejected *vide* order dated 15.01.2024.

5. Thereafter, the parties were called upon to lead evidence. On behalf of the Respondent, its Director, Mr. Vivek Luthra, appeared as PW-1 and proved the following documents:

> *"1. Resolution dated 10.7.2018 (Ex.PW1/1);*
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> *2. Copy of certificate of incorporation (Ex.PW1/2) (OSR);*
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> *3. The copy of Partnership Deed dated 06.07.2021 (Mark A);*
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> *4. Lease deed dated 22.4.2015 (Ex.PW1/3);*
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> *5. Notice dated 27.3.2017 (Ex.PW1/4);*
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> *6. Letter of defendant dated 29.3.2017 requesting plaintiff for extension of lease deed (Ex.PW1/5);*
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> *7. Letter dated 29.03.2017 authorising Mr. Sagar Gulati to execute fresh lease deed is exhibited (Ex.PW1/6);*
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> *8. Lease deed dated 19.4.2017 extending lease for period of 01.04.2017 to 28.02.2018 (Ex.PW1/7);*
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> *9. Notice dated 21.02.2018 issued by plaintiff to defendant to vacate suit property along with courier receipt and tracking report (Ex.PW1/8 to Ex.PW1/10 respectively);*
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> *10. Notice dated 09.06.2018 (Ex.PW1/11);*
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> *11. Postal receipt and tracking report (Ex.PW1/12 and Ex.PW1/13);*
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> *12. Lease deed dated 02.02.2017 (Ex.PW1/30);*
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> *13. Lease deed dated 05.05.2017 (Ex.PW1/31);*
>
> *14. Copy of Lease deed dated 22.03.2018 (Mark C)."*

6. On behalf of the Appellant, Mr. Sagar Gulati appeared as DW-1 and claimed to be a partner in the Defendant firm.

7. Upon consideration of the pleadings and evidence, the Trial Court, *vide* Impugned Judgment dated 22.11.2024, decreed the suit by granting: (i) possession in respect of the rear portion of ground floor

of premises No. J-11, Udyog Nagar in favour of the Respondent and against the Appellant as per the site plan; (ii) *mesne* profits/occupation charges in the sum of Rs.18,54,743/- as computed in the judgment with interest @12% per annum; (iii) continuing mesne profits at Rs.24,158/- per month till realisation; and (iv) costs of the suit. The decree sheet was directed to be drawn accordingly.

CONTENTIONS OF THE PARTIES

8. Learned counsel representing the Appellant/Defendant has made the following submissions:

i. That the Respondent/Plaintiff failed to prove the Resolution of Board of Directors dated 10.07.2018 authorising Shri Vivek Luthra to institute the suit. It was urged, while relying upon ***State Bank of Travancore vs. Kingston Computer Pvt. Ltd.***[1], that the Minutes Book was not produced, and therefore, the Plaintiff failed to prove its authorization.

ii. That the Plaintiff is not the landlord and the suit is incompetent as Shri Vivek Luthra, who filed the suit, is not a signatory to the lease deed.

iii. That the earlier suit having been returned under Order VII Rule 10 of the CPC, the Plaintiff has filed an "improved" or "embellished" plaint, which was impermissible; hence, the fresh suit was not maintainable.

9. *Per contra*, learned counsel representing the Respondent/Plaintiff contended that the defence of the Defendant

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[1] 2011 (11) SCC 524

having been struck off, it cannot be permitted to raise pleas contrary to the documents proved on record. It was further submitted that the plaint was instituted through Shri Arun Kumar Luthra, Director of the Plaintiff company, who was duly authorised *vide* Resolution of Board of Directors dated 10.07.2018, exhibited as Ex.PW-1/1.

10. It was further contended that the Plaintiff is the owner/landlord of the suit property and had duly leased the premises to the Appellant under the registered lease deed dated 22.04.2015, duly proved on record. It was submitted that the tenancy expired by efflux of time on 28.02.2018 and, in any event, stood terminated through notices duly exhibited in evidence.

ANALYSIS & FINDINGS

11. This Court has carefully considered the submissions advanced on behalf of the parties and examined the Trial Court record. The Appeal essentially raises three questions:

i. whether the suit was instituted by a duly authorised person;

ii. whether the Plaintiff proved the relationship of landlord and tenant, and;

iii. whether the fresh suit was maintainable after return of the plaint under Order VII Rule 10 of the CPC. These issues are dealt with hereunder.

A. Authorisation under Order XXIX Rule 1 of the CPC

12. Order XXIX Rule 1 of the CPC provides that in suits by or against a corporation, pleadings may be signed and verified on behalf

of the corporation by the secretary, any director, or other principal officer able to depose to the facts of the case. The statutory scheme, therefore, recognises that where a person holds such a position, the very office that he holds is *prima facie* sufficient to permit institution of proceedings.

13. In the present case, the suit was instituted through Mr. Vivek Luthra, who deposed as PW-1 and stated on oath that he was a Director of the Plaintiff company. He produced, in support; a Board Resolution dated 10.07.2018 (Ex.PW1/1), signed by two other Directors, Mr. Arun Kumar Luthra and Ms. Renu Luthra, authorising institution of the suit. Nothing was brought on record to impeach the genuineness of this document.

14. The Defendant has not produced any document to establish that Mr. Vivek Luthra was not a Director of the Plaintiff company. Even assuming that the Resolution was not proved in the manner desired by the Defendant, Order XXIX Rule 1 CPC independently authorises a Director or principal officer to sign and verify pleadings. Thus, the suit cannot fail for want of authorisation.

15. During cross-examination, the Defendant did question the authority of PW-1 but did not call upon him to produce the Minutes Book, nor did it confront him with any material suggesting that he was not, in fact, a Director. There is no adverse material on record which discredits PW-1's testimony or the corporate authority placed on record.

16. In civil proceedings, issues of authorisation are examined on the touchstone of preponderance of probabilities. Once the Plaintiff

produced a Board Resolution and PW-1 affirmed his directorship, the burden shifted to the Defendant to disprove such authority. The Defendant failed to discharge this onus. Accordingly, no infirmity can be found in the institution of the suit.

17. The reliance placed by the Appellant on ***State Bank of Travancore*** *(supra)* is wholly misplaced. In that case, the plaint had been instituted by one Mr. Ashok Kumar Shukla, who merely described himself as a Director and claimed to be authorised by the Chief Executive Officer vide an authority letter dated 02.01.2003. Crucially, neither a Board Resolution authorising him to institute the proceedings was produced, nor was his position as Director ever proved. The factual matrix in the present case stands on a distinct footing, as the Plaintiff has placed on record a duly signed Board Resolution dated 10.07.2018 authorising Mr. Vivek Luthra, whose directorship has not been rebutted by any evidence from the Defendant. In any event, the legal position is now settled by the Supreme Court in ***Union Bank of India vs. Naresh Kumar and Ors.***[2], wherein the Court, while interpreting Order XXIX Rule 1 of the CPC, categorically held that a plaint signed and verified by a Director or other principal officer of a corporation is valid and maintainable. Thus, the Appellant's reliance on ***State Bank of Travancore*** (supra) is inapposite and does not advance its case.

B. <u>Relationship of Landlord and Tenant</u>

18. The second contention of the Appellant, that the Plaintiff is not the landlord, is equally without merit. The Plaintiff produced

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[2] 1996 (6) SCC 660

overwhelming documentary evidence, including the registered lease deed dated 22.04.2015 (Ex.PW1/3) and the subsequent extension letter dated 19.04.2017 (Ex.PW1/7). These documents unequivocally record the tenancy. More importantly, vide letter dated 29.03.2017 (Ex.PW1/5), Defendant's partner, Mr. Sagar Gulati, expressly sought extension of the lease period. His signatures on Ex.PW1/5 were admitted in cross-examination.

19. In these circumstance, the Plaintiff clearly discharged its onus of proving the landlord-tenant relationship. It then fell upon the Defendant to produce cogent evidence rebutting this position. No such evidence was led. Mere bald denial is insufficient once the Plaintiff's documentary evidence remains unrebutted. Accordingly, the Trial Court's finding on this issue calls for no interference.

C. <u>Maintainability of Fresh Suit After Return of Plaint</u>

20. The next objection relates to maintainability of the fresh suit. The earlier plaint was returned under Order VII Rule 10 of the CPC. It is settled law that return of a plaint for presentation before the proper court does not bar filing of a fresh suit; nor does it attract the principle of *res judicata*. The Appellant has not demonstrated how the Plaintiff was precluded from presenting a fresh plaint before the competent forum.

21. A reading of the plaint in the present suit shows that it is founded not merely on past events but also on a subsequent and continuing cause of action. The Plaintiff has specifically pleaded that on 03.06.2022 the Defendant threatened to transfer possession to a third party to defeat the Plaintiff's rights, giving rise to a fresh cause

of action. The earlier plaint had been returned on 11.01.2022. Thus, the subsequent cause of action arose after return of the plaint.

22. It is therefore evident that the suit was not merely a reproduction of the earlier plaint but was based upon events that occurred subsequently. The filing of a fresh suit was legally permissible, and the Trial Court rightly rejected the Appellant's objection on maintainability.

CONCLUSION

23. In light of the foregoing discussion, this Court finds no infirmity in the findings of the learned Trial Court. The conclusions reached are based on appreciation of evidence and correct application of law. No ground for interference is made out in appellate jurisdiction.

24. Accordingly, the present Appeal, along with all pending applications, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 27, 2025
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