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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th December, 2025

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+ RFA(COMM) 702/2025, CM APPL. 78523/2025, CM APPL. 78524/2025 & CM APPL. 78525/2025

MOHD. GUDDU

.....APPELLANT

Through: Mr. Sudhanshu Khandelwal, Mr. Shubham Agarwal, Ms. Vaishali Sharma & Mr. Himanshu Rajpurohit, Advs. along with Appellant present in person.

versus

GANGA DEVI AND ANR

.....RESPONDENTS

Through: Appearance not given.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 78524/2025 & CM APPL. 78525/2025 (for exemption)

2. Allowed, subject to all just exceptions. Applications are disposed of.

RFA(COMM) 702/2025, CM APPL. 78523/2025 (for stay)

3. The present appeal has been filed by the Appellant/Defendant (*hereinafter 'Defendant'*) under Section 96 of the Code of Civil Procedure, 1908 read with Section 13(1A) of the Commercial Courts Act, 2015, *inter alia*, assailing the impugned order and decree dated 10th November, 2025 passed by the Id. District Judge (Commercial-06), South East, Saket Court, Delhi in *CS (COMM) 576/2025* titled '*Ganga Devi and Anr. v. Mohd. Guddu*' (*hereinafter, 'impugned order and decree'*).

4. *Vide* the impugned order and decree, a decree of possession has been



passed against the Appellant-Defendant (*hereinafter*, 'Defendant').

5. A brief background of the Defendant's case is that, the suit premises being Shop No. 264 along with *Fad/thiya* (vacant space behind shop to display the fruits for sale) at New Sabzi Mandi, Okhla, New Delhi-110020 (*hereinafter*, 'suit premises') was given on rent to the Defendant in 2004 by the Respondents/Plaintiffs (*hereinafter*, 'Plaintiffs').

6. A suit for perpetual injunction was filed by the Defendant titled '**Mohd. Guddu v. Vasdev Wadhwa**' being **CS SCJ 157/2025** (*hereinafter*, 'suit for perpetual injunction').

7. At the time of filing of the suit for perpetual injunction, the Defendant claims have been paying rent of Rs.8,000/- for the shop and Rs.15,000/- for the *Fad/thiya*, exclusive of electricity charges.

8. The Defendant is stated to have been irregular in his payment of the occupation charges and when the Plaintiff asked for payment of the same, the Defendant filed a suit for perpetual injunction.

9. Upon receiving the summons of the suit for perpetual injunction, filed by the Defendant, notice under Section 106 of the Transfer of Property Act, 1882 was issued by Plaintiff No.1. Thereafter, **CS (COMM) 576/2025** titled **Hero Investcorp Pvt. Ltd. and Anr. v. Arora Scooter House** was filed seeking possession as also use and occupation charges etc., The present appeal arises from this suit.

10. According to the plaint, the Plaintiff No.1 – Smt. Ganga Devi is the absolute owner of the suit premises. The suit premises consists of a basement, ground floor and mezzanine floor and backside area known as *Fad/thiya*. The Plaintiff No.2 – Sh. Vasudev Vadhwa is stated to be holding a license for the suit premises given by the Agricultural Produce Market Committee.



11. As per the plaint, the Defendant had taken the suit premises on rent and was paying use and occupation charges of the suit premises at Rs.40,000/- till 31st December, 2023. From January, 2024, the use and occupation charges were enhanced to Rs.50,000/- per month till the end of June, 2024.

12. The prayers in the suit are as under:

“A. To pass a decree of eviction in favour of the plaintiffs and against the defendant directing the defendant to vacate the suit property i.e. basement and back side open area i.e “Fad/Thiya of the shop no 264, Okhla Subzi Mandi, New Delhi, in the interest of justice.

B. To pass a decree of recovery of arrears of use and occupation of charges of Rs.4,40,000/-in favour of the plaintiffs and against the defendant along with pendent-lite and future interest @24% p.a w.e.f 01-07-2024 till its realisation, in the interest of justice.

C. To pass a decree of recovery of unauthorised use and occupation charges @ Rs.2500/- per day w.e.f 25-03-2025 in favour of the plaintiffs and against the defendant till the suit property is handed over to the plaintiffs along with pendent-lite and future interest @24% p.a w.e.f. 25-03-2025 till its realisation, in the interest of justice.

D. To award cost and litigation expenses to the plaintiffs.

E. Any other order/s which court may deems fir and proper in the facts and circumstances of the case and in the interest of justice may also kindly be passed in favour of plaintiffs and against the defendant.”

13. In **CS (COMM) 576/2025**, an application under Order VII Rule 10 CPC was also filed by the Defendant which came to be heard on 10th November,



2025 by the Id. Commercial Court, and by impugned order Id. Commercial Court dismissed the application and decreed the suit *vide* the impugned order and decree. The order reads as under:

“Vide separate order, it has been held that the present suit is commercial in nature as well as involves a commercial dispute. The application under Order VII Rule 10 CPC filed by defendant has been dismissed.

In his written statement as well as in the plaint of suit titled Mohd Guddu Vs. Vasdev Wadhwa. CS SCJ 157/2025, (the suit filed by the defendant against the plaintiffs herein), the defendant had stated the monthly rent of the suit premises to be Rs. 8,000/- per month for shop and Rs. 15,000/- for the fad/thiya and that the defendant has paid the rent of suit premises till January, 2025. Similar submissions have been made by the defendant in the written statement to the present suit. In view of these admissions, the application of the plaintiff filed under Order XXXIX Rule 10 CPC is allowed and defendant is directed to clear the arrears within 30 days from today. The observations made in respect of this application do not tantamount to holding that monthly rent of suit premises is/was Rs. 23,000/- per month.

*Further, in view of admission by defendant to have been inducted in the suit premises as a tenant and that he continues to be in possession of suit premises in the capacity of tenant, the relationship of landlord and tenant between the plaintiff and defendant is admitted. Monthly rent is admitted by defendant to be above Rs. 3,500/-. The receipt of legal notice of termination dated 07.03.2025 is also not disputed by defendant in view of the fact that the defendant had given reply dated 16.04.2025 to the same. **Therefore, in view of these admissions, decree of possession on basis of admissions under Order XII Rule 6 CPC is passed in respect of suit property i.e. Shop No. 264 along with***



Fad/thiya (vacant space behind shop to display the fruits for sale) at New Sabzi Mandi, Okhla, New Delhi-110020 with direction to defendant to vacate the suit property within 30 days from today and handover vacant and peaceful possession of suit property to the plaintiff accordingly. Decree of possession be drawn accordingly.

Besides claiming relief of possession/eviction, the plaintiff has claimed recovery of sum of Rs. 4,40,000/- along with pendente lite and future interest @ 24% per annum and award of unauthorized use and charges @ 2500/- per day w.e.f. 25.03.2025. In view of relief of possession/eviction having been granted, the following issues remain to be decided:

- 1. Whether the plaintiff is entitled to recovery of sum of Rs. 4,40,000/- as prayed? OPP.*
- 2. Whether the plaintiff is entitled to interest on the said amount of Rs. 4,40,000/- as prayed? If yes, at what rate and for which period? OPP.*
- 3. Whether the plaintiff is entitled to recovery of amount towards unauthorized use and charges as prayed? OPP.*
- 4. Whether the plaintiff is entitled to interest on the said amount towards unauthorized use and charges as prayed? If yes, at what rate and for which period? OPP.*
- 5. Cost*
- 6. Relief.*

List of witnesses be filed by both sides within 15 days from today. Affidavit of evidence be filed by the plaintiff within 3 weeks from today with advance copy to the opposite side at least 3 days prior to the next date of hearing.

List for PE on 12.12.2025, 20.12.2025 and 22.12.2025.



Affidavit of evidence be filed by the defendant within 4 weeks from conclusion of PE with advance copy to the opposite side at least 3 days prior to the next date of hearing.

*List for DE on 27.01.2026, 28.01.2026, 29.01.2026.
List for final arguments on 06.02.2026. At request, copy of the order be given dasti to parties."*

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30. Therefore, the objection of the Defendant by relying upon Deepak Polymers Private Limited vs Anchor Investments Private Limited (Supra) is also not sustainable and this court has got jurisdiction to try and decide the present suit even as regards the subject matter of the present suit.

31. In view of these observations, it is held that the application filed by the Defendant under Order VII Rule 10 CPC is devoid of merits and is therefore dismissed.

14. The challenge in the present appeal is to the decree of possession which has been passed by the Commercial Court.

15. Ld. Counsel for the Defendant submits that the Defendant has been in possession of the suit premises since 2004 and it is his basic source of livelihood as he runs a fruit shop. Thus, it is the submission of Ld. Counsel for the Defendant that the Defendant is in dire need of the suit premises.

16. Further, the occupation charges are also disputed by the Ld. Counsel for the Defendant. It is submitted that there were several disputed facts and therefore a decree under Order XII Rule 6 of the Code of Civil Procedure, 1908 could not have been passed by the Commercial Court.



17. It is also submitted that the Commercial Court did not have jurisdiction, and the same ought to have been decided by leading evidence, as it was a mixed question of fact and law.

18. On the other hand, Id. Counsel for the Plaintiffs submits that in the suit for perpetual injunction which was filed by the Defendant, there is a clear admission to the effect that the suit premises is a shop and hence the Commercial Court had proper jurisdiction. Hence the challenge to the jurisdiction is baseless. The said averment is set out below:

“1. That the Plaintiff is running the wholesale business of the fruits along with his other family members, as a tenant in Shop No. 264 along with "Fad" (Vacant Space Behind shop to display the fruits for sale) at New Subzi Mandi, Okhla, New Delhi-110020, hereinafter referred as, 'Tenanted premises', under the defendants for the last about twenty-one years and he is paying the rent on a regular basis at the rate of Rs.8000/- per month for Shop and Rs. 15000/-for the "Fad" to the Defendants exclusive of electricity charges. The Plaintiff is running the above said business with the name titles as "Amar Fruit Co. "The Defendant No. 1 is the landlord of the plaintiff for the 'tenanted premises', whereas the Defendant No. 2 is the owner of the 'tenanted premises'.”

19. Further, it is also submitted by Id. Counsel for the Plaintiffs that the Defendant has defaulted in the payment of rent and even the admitted rent is not being paid by the Defendant.

20. The Court has considered the matter and perused the records. Both the Plaintiff No.2 and Defendant are present in Court. After hearing the Id. Counsels for both the parties, the Court has put to the Defendant, if he is willing to vacate the suit premises within a reasonable time.



21. At this stage, the Defendant submitted that he would be willing to vacate the suit premises by 30th June, 2026 and would clear the arrears of the admitted rent by 30th April, 2026.

22. The Plaintiff no.2 had initially expressed reluctance. However, upon the Defendant agreeing to pay the arrears by 30th April, 2026, the Plaintiff is willing to permit the Defendant to be in occupation of the suit premises till 30th June, 2026.

23. Under these circumstances, the parties have agreed and settled the issue of possession. Thus, the following directions are passed:

i) **Defendant to hand over possession of suit premises:** The Defendant shall hand over the vacant and peaceful possession of the basement and *Fad/thiya* of the suit premises by 30th June, 2026. No damage shall be caused to the suit premises during the continued occupation of the Defendant.

ii) **Charges to be paid by the Defendant:** The electricity and other charges shall also be paid by the Defendant for the entire period of occupation.

iii) **Arrears and rent to be paid by the Defendant:**

- a) Insofar as arrears are concerned, as per the Defendant, the arrears are to be paid from February, 2025. The same is disputed by the Plaintiffs, as per whom, the arrears are due from June, 2024.
- b) The admitted arrears at the rate of Rs.23,000/- per month, which is now due for almost one year, shall be cleared by 30th April, 2026. However, going forward, for the months of December, 2025, January, 2026, February, 2026, March, 2026 and April, 2026, the admitted rent shall be paid by 10th of every month to the Plaintiff at the rate of Rs.23,000/- per month.



24. Since the Id. Commercial Court has already framed issues in the matter, regarding the payment of occupation charges, same will be decided by the Id. Commercial Court after giving opportunities to both parties for leading evidence. On the issue of occupation charges, the case is listed before the Id. Commercial Court on 12 December, 2025 and on further dates.

25. Insofar as the arrears between June, 2024 to February, 2025 which are claimed by the Plaintiff are concerned, the Plaintiff is at liberty to lead evidence in the suit and the same shall be adjudicated in the final judgment.

26. Additionally, the issue of jurisdiction now stands closed as the Defendant had filed **CM(M) 2411/2025** titled **Mohd. Guddu v. Ganga Devi and Anr.** which was listed today before Hon'ble Mr. Justice Girish Kathpalia which is stated to have been dismissed as withdrawn. Thus, the issue of jurisdiction cannot be agitated by the Defendant any further.

27. An affidavit of undertaking shall be filed by the Defendant within a period of one week from today accepting all the terms set out above, with an advance copy to be served upon the other side.

28. The parties shall appear before the Commercial Court *i.e.*, today and the matter shall proceed on an expeditious basis.

29. The appeal is accordingly disposed of in these terms, as settled. The decree of possession shall stand modified in the above terms. Decree sheet be drawn. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 12, 2025/Rahul/sm