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

+ RFA 782/2019

+ RFA 794/2019

M/S ETERNITY ENTERTAINMENT & HOSPITALITY PVT LTD

..... Appellant

Through: Mr.Shantwanu Singh, Advocate

versus

RAJ KUMAR DHINGRA

..... Respondent

Through: Mr.G.S.Arora, Advocate

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **11.10.2019**

CM APPL No.38927/2019 in RFA 782/2019

In view of the reasons explained in the application, the delay of 29 days in refiling the petition stands condoned.

The application stands disposed of.

CM APPL No.39590/2019 in RFA 794/2019

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RFA 782/2019 & CM APPL Nos.38924-25/2019, 42405/2019

RFA 794/2019 & CM APPL Nos.39588/2019, 39589/2019

1. RFA 794/2019 is against the judgment and decree dated 19.07.2019 passed by the learned Additional District Judge-01, South, Saket Courts, New Delhi in CS No.9447/2016 pertaining to the third floor of property bearing no.30, Hauz Khas Village, New Delhi,

admeasuring 3,000 sq.ft.

2. RFA 782/2019 is against the judgment and decree dated 16.05.2019 passed by the learned Additional District Judge-01, South, Saket Courts, New Delhi in CS No.9445/2016, pertaining to the Fourth floor and terrace floor of property bearing no.30, Hauz Khas Village, New Delhi, admeasuring 5,000 sq.ft. approx.

3. The third floor of the property was given on rent by the respondent herein vide unregistered lease deed dated 10.03.2015, for a monthly rental of Rs.2,50,000/- per month, excluding taxes. The lease was initially for nine years with lock-in period between 22.06.2015 till 21.06.2018. However since it was an unregistered lease, the tenancy has to be considered as month to month.

4. Similarly the Fourth floor and terrace floor was let out vide unregistered lease deed dated 06.04.2015 with similar conditions with a monthly rental of Rs.2,50,000/-, excluding taxes; with a lock-in period from 22.06.2015 till 21.06.2018.

5. In both the lease(s) clause 3.6 is read as under:

“3.6 In case the Lessee does not pay the rent, as agreed herein for a period of any two months, the Lessor without prejudice to any of its other rights shall have the right to terminate this lease after serving a 15 days written notice. The Lessor shall also be entitled to terminate the lease deed during the lock-in-period as well in case of default by Lessee in payment of rent for two months. The notice period will entitle the Lessee to rectify the defaults and in case the Lessee does not rectify the defaults within the said notice period, then the Lessor will be entitled to terminate the Lease Deed and initiate appropriate civil and/or criminal proceedings against the Lessee for recovery of possession of the Demised Premises as well as arrears of rent/ damages/mesne

profits/unpaid bills, taxes and/or any other dues, entirely upon the cost of the Lessee.”

6. Since the appellant was in arrears of rent from the very beginning, hence a legal notice 05.08.2018 was issued by the respondent to the appellant herein for payment of the arrears of rent and in case of its failure, for determination of the lease in terms of clause 1.4 and 3.6 of the lease deeds dated 10.03.2015 and 06.04.2015.

7. Since the appellant did not pay the rentals nor did he vacate the premises, hence two suits for possession, arrears of rent, furniture and fixtures charges, maintenance fee, mesne profits pendent lite and future interest were filed wherein on applications under Order XII Rule 6 CPC decrees qua possession were passed for the third floor vide judgment dated 19.07.2019 and for fourth floor and terrace floor vide judgment dated 16.05.2019. Both judgments are under challenge in these two appeals.

8. Since the issues pertain to both the appeals are similar hence both the appeals are taken together and disposed of by this common order.

9. The landlord and tenant relationship is since admitted so also the receipt of notice dated 05.08.2016, hence there is no reason as to why the judgment and decree on admissions could not be passed by the learned Trial Court.

10. The learned counsel for the appellant herein had though denied the receipt of the notice to quit but a bare perusal of its written statements filed by him would reveal he admitted the legal notice

dated 05.08.2016 but only challenged it on the ground it was for payment of arrears and not a *quit* notice as stipulated under Section 106, 111(g) and (h) of the Transfer of Property Act and that no notice under Section 106 was ever received by the appellant herein and neither lease deeds were ever terminated.

11. The plea taken by the appellant in its written statements rather show the receipt of legal notice(s) dated 05.08.2016 by the appellant though the appellant claims it to be a notice only for arrears of rent. However para 14 of such notice(s) clearly stipulate if the arrears are not paid within 15 days, the lease shall be terminated. Para 14 of the notice is as under :

14. In the event you the addressees do not comply with the requisitions contained in the said legal notice within 15 days of receipt of this notice and my Client, in terms of clause 1.4 and 3.6 of Lease deed dated 10.03.2015, shall be constrained to terminate the lease deed and you the addressees shall liable to deliver the premise, front portion of 3rd Floor of the building no. 30, Hauz Khas Village, New Delhi, failing which you will render yourself liable to pay mesne profits at the rate of twice of the last paid rent in terms of clause 2.15 as well as damages @Rs. 20,000 per day for each day of unauthorized occupation in terms of clause 4.5 of the Lease deed dated 10.03.2015 and further my client shall also be constrained to institute recovery and eviction proceedings in appropriate court of law and in such an event you the addressee shall be held liable for all the costs and expenses incurred by our client and consequences of such litigation.

12. On query to the learned counsel for the appellant as to if the rental for the period from 22.06.2015 till 16.08.2015 was ever cleared after the receipt of the notice dated 05.08.2016 the appellant replied since further renovation was required and since it was delayed on

account of non-availability of water and electricity connection so there was an oral understanding that the rent would be cleared only after the entire renovation is completed. This plea of the appellant is against the terms of lease deeds wherein the rent free period is only upto 22.06.2015. Moreso an alleged oral understanding against a written document (Lease Deed) would be hit by Section 91 and 92 of the Indian Evidence Act and hence cannot be relied upon.

13. Lastly it was argued by the learned counsel for the respondent a security deposit of Rs.15,00,000/- was lying with the respondent, hence the arrears, if any, ought to have been adjusted against such security. This argument is highly misconceived since the security is returnable only after the termination of the lease deed and that too only when there is no claim left against the tenant.

14. The learned counsel for the appellant relied upon *Payal Vision Limited vs. Radhika Choudhary* (2012) 11 SCC 405 wherein it was held:

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the Plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord Under Section 106 of the Transfer of Property Act. xxx”

15. It was argued the notice to quit since was *never* admitted hence the decree should not have been passed under Order XII Rule 6 CPC. I have already observed the receipt of the notice(s) dated 05.08.2016 was duly admitted by the appellant herein but the appellant only

interpreted it in a different way saying it was only a notice for payment of arrears, thus ignoring the spirit of para 14 of the said notice.

16. Even otherwise in *United India Periodicals Pvt. Ltd. vs. CMYK Printech Ltd.* 2018 SCC Online Delhi 6991 it was held:

“26. Consequently, this Court is of the view that the rights whether in the nature of tenancy, licensee or possessory so claimed by the defendant-applicant could be terminated any time by the plaintiff company by giving notice to the defendant company. In fact, the filing of the suit in itself amounted to the termination of the rights of the defendant-applicant in view of the judgment of the Supreme Court in Nopany Investments (P) Ltd. vs. Santokh Singh (HUF), 2008 2 SCC 728, in which it has been held as under:-

“22.....In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this court in V. Dhanapal Chettiar V. Yesodai Ammal (1929) 4 SCC 214.”

17. Thus there is no merit in these appeals and both are accordingly dismissed. The appellant is granted two weeks time, per his request to remove its furniture and fixtures from the subject premises, lest would be liable to pay damages @ Rs.50,000/- per day for all the three floors, w.e.f. the date of this judgment till removal of such furniture and fixtures and handing over vacant and peaceful possession of the premises to the respondent herein. Of course, the suit for recovery of mesne profit, charges for furniture and fixture etc., pending before the learned Trial Court, may continue.

18. Both the appeals stands disposed of.
19. No order as to costs.
20. Order *dasti*.

YOGESH KHANNA, J.

OCTOBER 11, 2019

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