



2025:DHC:8443



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

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Date of Decision: 22.09.2025

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CM(M) 1873/2025, CM APPL. 60173/2025 & CM APPL. 60172/2025**M/S DARUK HOSPITALITY PRIVATE LIMITED**PetitionerThrough: Counsel for petitioner (*appearance not given*).

versus

M/S HEXA ESTATE PVT LTD

.....Respondent

Through: Mr. Gaurav M. Liberhan, Ms. Amriti Gupta and Mr. Arun Singh Rawat, Advocates.

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)**

1. The petitioner/defendant has assailed order dated 20.05.2025 of the learned trial court, whereby application of petitioner/defendant under Order VII Rule 11 CPC for rejection of plaint in the suit for recovery of possession of tenanted premises, rent arrears and *mesne* profits was dismissed; and application of the respondent/plaintiff under Order XXXIX Rule 1 and 2 CPC was allowed, thereby restraining the petitioner/defendant from creating third party interest in the subject property.



2. Broadly speaking, the circumstances relevant for present purposes are as follows. Parties entered into a rent agreement, whereby Mezzanine Floor of the commercial premises bearing no.2, Community Centre, East of Kailash, New Delhi (*hereinafter referred to as “the subject property”*) were leased out to the petitioner/tenant. Since the petitioner/tenant defaulted in payment of rent, the respondent/landlord filed a suit for recovery of possession and other reliefs. The application under Order VII Rule 11 CPC was filed by the petitioner/defendant on the ground of non-compliance with the mandatory provisions of Section 12A of the Commercial Courts Act. The learned trial court by way of the impugned order took a view that since it was a case of urgency and the respondent/plaintiff had claimed urgent interim relief, there was no abrogation of Section 12A of the Act.

3. Learned counsel for petitioner/defendant contends that had the matter been taken through pre-institution mediation, the dispute would have got resolved. Learned counsel for petitioner/defendant also contends that the urgency, in order to be treated as a valid ground for exemption from Section 12A of the Act has to be a real urgency. It is argued that merely because the respondent/plaintiff seeks interim injunction in the suit, it cannot be treated as urgency of the kind that would justify the respondent/plaintiff not invoking pre-institution mediation.

4. Learned counsel for respondent/plaintiff appearing on advance intimation accepts notice and alleges that the petitioner has concealed vital circumstances. It is disclosed by learned counsel for respondent/plaintiff that



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along with the plaint he had also filed a formal application seeking exemption from initiating pre-institution mediation, which application was allowed vide order dated 07.09.2024 but that order has not been challenged till date. It is further disclosed by learned counsel for respondent that despite order passed under Order XV-A read with Order XXXIX Rule 10 CPC, the petitioner/defendant did not pay/deposit the arrears of rent, so execution proceedings commenced and bailiff has already been appointed pertaining to the lease related to the mezzanine floor, while for the lease pertaining to ground floor, the further execution proceedings are continuing.

5. As mentioned above, it is not in dispute that along with the plaint of the suit for recovery of possession of the tenanted premises and recovery of rent/*mesne* profits, the respondent/plaintiff also filed an application under Order XXXIX Rule 1 and 2 CPC expressing an apprehension that the petitioner/defendant intended to create third party interest in the suit property. In view of the circumstances described above, especially non-payment of rent leading to arrears of approximately Rs.60,00,000/- (*as disclosed by learned counsel for respondent pertaining to the ground floor and mezzanine floor*), the apprehension of the respondent/plaintiff that the petitioner/defendant surreptitiously would walk out of the subject property after creating third party interest cannot be a sham or illusory. As mentioned above, by way of impugned order the learned trial court also allowed the interim injunction application restraining the petitioner/defendant from creating third party interest in the subject property.



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6. Moreover, as mentioned above, by way of explicit order dated 07.09.2024, the learned trial court granted exemption to the respondent/plaintiff from initiating pre-institution mediation in view of Section 12A of the Act. That order, having admittedly not been challenged, has attained finality. That also would be a relevant factor to justify rejection of application under Order VII Rule 11 CPC in the present case.

7. Apart from the issue of Section 12A of the Act as discussed above, the impugned order also refers to a contention raised on behalf of the petitioner/defendant alleging the enhancement of fit out period and payment of rent till July, 2024. That contention has not been raised today and rightly so in view of the settled legal position that while considering the application for rejection of plaint, the trial court has to confine itself to the plaint only and not to traverse through the defence to the suit.

8. I am unable to find any infirmity in the impugned order, so the same is upheld. Consequently, the present petition and the accompanying applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 22, 2025/ry