



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

% Judgment reserved on: 30.07.2025
Judgment delivered on: 19.08.2025

+ CM(M) 1437/2022 & CM APPL. 55218/2022 & CM APPL.
58023-58024/2023

KARAN KAPOORPetitioner

versus

MADHURI KUMAR ...Respondent

+ CM(M) 1786/2023 & CM APPL. 56770/2023

KARAN KAPOORPetitioner

versus

MADHURI KUMAR ...Respondent

Memo of Appearance

For the Petitioner: Mr. Shree Prakash Sinha, Mr. Rakesh Mishra and Mr.
Rishabh Kumar, Advocates

For the Respondents: Mr. Ravinder Singh, Ms. Raveesha Gupta and Mr. Ritvik
Bhardwaj, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner Mr. Karan Kapoor has filed the aforesaid two petitions under Article 227 of the Constitution of India.
2. In CM(M) No. 1437/2022, he challenges order dated 29.11.2022 passed by the learned Trial Court in *Civil Suit No. 867/2018 titled as Mrs. Madhuri Kumar Vs. Mr. Karan Kapoor*. In the other petition i.e. CM(M)



No. 1786/2023, he challenges order dated 27.07.2023 and order dated 04.09.2023 passed by the learned Trial Court in the same suit.

3. Both the above petitions are being disposed of by this common judgment.

4. For the sake of convenience, Mr. Karan Kapoor would be referred herein as 'tenant' and Mrs. Madhuri Kapoor as 'landlady'.

5. It will be also worthwhile to mention, right here, that the aforesaid suit i.e. Civil Suit No. 867/2018 has since been transferred to this Court in terms of order dated 20.09.2023 passed in Transfer Petition (Civil) No. 103/2022.

6. To appreciate the contentions effectively, it is germane to refer to background facts, in some detail.

7. The suit in question has been filed by landlady whereby she seeks recovery of possession, arrears of rent and *mesne profits* from her tenant.

8. Her such tenant has also filed a suit whereby he seeks specific performance of contract. Such suit (CS(OS) No. 397/2019) is directed against the landlady as well as against her son Manu Kumar and one Mr. Vipul Arora. It is pending adjudication before this Court, on its original side. In the present judgment, wherever so required, there would be also reference to such other suit filed by tenant.

9. As per landlady, she is absolute and exclusive owner of property bearing no. B-228, Ground Floor, Greater Kailash Part-I, New Delhi-110048 which she let out to Mr. Karan Kapoor, for his personal residential purpose, by executing a lease agreement on 07.08.2011. The



rate of rent was agreed as Rs. 1,17,000/- per month and its duration was 24 months. It was extended by another period of 11 months by executing another lease agreement on 07.08.2013 which stipulated rent as Rs. 1,50,000/- p.m.

10. The tenancy, on 06.07.2014, came to end by efflux of time and since, there was no further extension, it became a tenancy on *month-to-month basis*.

11. The tenant was requested to hand over vacant and peaceful possession of the tenanted premises but it was put off by him on one pretext or the other and it was in the aforesaid backdrop that suit in question was filed on 18.05.2018 seeking possession and rent for the period from the month of August, 2014 onwards.

12. It will be important to mention that landlady also averred in her suit that her tenant had purchased the floor above i.e. first floor of the same building from the concerned owner and moved his residence from the *tenanted premises situated at ground floor* to first floor and started using the tenanted premises for office purposes. According to her, in and around April, 2017, the tenant coerced and forced her to sign *agreement to sell* qua the tenanted premises against consideration of Rs. 3,60,00,000/-. She, however, claimed no sale consideration was ever paid.

13. The aforesaid suit was resisted by tenant and though tenancy was not disputed, he contended that after the expiry of lease deed, landlady approached him and offered to sell the tenanted premises and upon her



repeated instances, he agreed to purchase the same. According to him, the rent accrued was to be adjusted and it was his landlady who kept on delaying the execution of sale deed. Later on, he, even, discovered that property papers of the tenanted premises were lying as collateral with a bank.

14. The tenant asserted that *agreement to sell* was executed on 22.04.2017 (referred to as *ATS-1*) whereby landlady had agreed to sell the property for Rs. 3,60,00,000/-. According to him, '*enormous amount of money as earnest money*' was paid to landlady before signing *ATS-1* and balance earnest money was also paid after signing *ATS-1*. The tenant averred that he owned a plot of land in Pind Govind Garh, Tehsil Amlok and agreed to sell the aforesaid plot of land to landlady, through her *Attorney Holder* towards part-sale consideration of tenanted premises and one more *agreement-to-sell* was executed on 25.05.2017 (*ATS-2*).

15. According to tenant, since process for concluding the transaction with respect to the aforesaid agreement had been initiated, there was no question of any rental being owed by him to his landlady and she had signed *ATS-2* (qua Amlok property) in partial satisfaction of his obligations under the original agreement. According to tenant, there was no demand of rent for over four years between 2014 to 2017, solely for the reason that rent was agreed to be adjusted in terms of *agreement to sell*.

16. Further stand of the tenant is to the effect that since landlady informed him that her right, title and interest in certain common portion



of the suit property could not be legally transferred, she agreed to reduce the consideration price which resulted in execution of yet another *agreement to sell (ATS-3)* on 30.12.2017. However, complete set of such ATS-3 was never provided to him and the landlady had provided only two pages of the same. According to tenant, the intention of the landlady and her son was fraudulent and in terms of conspiracy, they had cheated him and, thus, according to him, suit for possession was liable to be dismissed.

17. Besides taking the aforesaid stand in his written statement, tenant has also filed a suit seeking specific performance, reiterating about the aforesaid three agreements and has sought decree of specific performance in his favour.

18. Coming back to the suit filed by the landlady, an application was filed by her seeking decree on admission under Order XII Rule 6 CPC which was allowed by the learned Trial Court *vide* order dated 01.12.2020 and the suit was partly decreed with respect to the relief of possession. The aforesaid order dated 01.12.2020 also disposed of another application filed by the landlady under Order XXXIX Rule 10 CPC and tenant was directed to pay admitted rent @ Rs. 1,50,000/- w.e.f. July, 2015 till April 2018 and to pay damages at the said rate from May, 2018 till handing over of the possession.

19. Said order was challenged by tenant by filing a *Regular First Appeal* (RFA No. 218/2021) before this Court, which was dismissed on 08.04.2021.



20. The tenant approached Supreme Court and his appeal (Civil Appeal No. 4645/2022) was allowed by Hon'ble Supreme Court on 06.07.2022 whereby the order dated 01.12.2020, insofar as it related to passing of admission decree under Order XII Rule 6 CPC, was set aside and matter was remanded back to learned Trial Court to decide the suit expeditiously and to afford due opportunity to parties to record evidence. However, with respect to payment of rent, Hon'ble Supreme Court ordered as under: -

“23. In the present case, the tenant has not paid any amount of rent w.e.f. 07.07.2014. In a suit based on Landlord Tenant relationship, the amount of rent and arrears thereof ought to be paid in terms of the order of the Court. The said view is fortified by the judgment of S.M. Asif (supra). As the Lease Agreement dated 07.08.2011 and the extended Lease Agreement dated 07.08.2013, which are not in dispute and by the extended Lease Agreement, which was for one year, the rent was increased for the year 2013-2014 by 30%. The Defendant has not paid any rent till date though the period of more than 7 years has already passed. Therefore, we direct that in terms of the admitted fact by extended Lease Agreement and the increase in the percentage of rent, the Trial Court shall first decide the issue of payment of monthly rent applying the said increase on year to year basis and pass appropriate orders for payment of arrears as well as deposit of regular monthly rent. The said payment may be subject to outcome of the decision of the present suit as well as the suit for specific performance of the agreement filed by the Appellant.”

(emphasis supplied)

21. In terms thereof, learned Trial Court took up the matter afresh and has decided the aspect of payment of rent by the tenant.

22. Learned Trial Court, considering the stand taken in the pleadings and while giving due adherence to the observations of the Hon'ble Supreme Court in order 06.07.2022, held that the landlady was entitled to seek rent w.e.f. 03.06.2015 and also gave periodical increase @ 10%



after every 11 months. It also awarded interest @ 6% per annum on the accumulated arrears while relying upon *Central Bank of India v Ravindra, 2001 SCC OnLine SC 1266* and observing that landlady could have got such bare minimum interest if she had made deposit in any Nationalized Bank.

23. Such order dated 29.11.2022 is under challenge in CM(M) 1437/2022.

24. The grievance, *inter alia*, is that said order is not in conformity with the directions given by the Hon'ble Supreme Court in judgment dated 06.07.2022. The tenant agitated that their rights and interests were not adequately protected as there was no balancing of equity in case he was, ultimately, successful in his suit of specific performance. It was contended that as per *agreement-to-sell*, the tenant was merely required to pay Rs. 3.60 crores and there was nothing to indicate in the impugned order as to how the excess payment, being made towards rental, was going to be protected and secured in case his own suit was decreed in his favour. He also disputed grant of interest.

25. When this petition was taken by up this Court on 19.12.2022, after hearing both the sides, this Court, as an interim measure and without prejudice to rights and contentions of the parties, directed the tenant to deposit a sum of Rs. 1 crore within four weeks in the account of landlady and the matter was fixed for further consideration on 26.05.2023.



26. Such order dated 19.12.2022 was challenged by the landlady and *vide* order dated 03.03.2023, the Hon'ble Supreme Court, while granting leave to her, directed as under: -

“

3. *In our considered view, the impugned Order dated 19.12.2022 passed by the High Court of Delhi, restricting payments of arrears of rent to the extent of Rs.1,00,000,00/- as against the arrears amounting to Rs.2,77,94,731/calculated by the Trial Court in compliance of Judgment dated 06.07.2022 passed by this Court in Civil Appeal No.4645/2022 (Karan Kapoor vs. Madhuri Kumar), runs contrary to the categorical directions contained in para 23 of the abovesited Judgment of this Court.*

4. *Consequently, the impugned order of the High Court dated 19.12.2022 is set aside to the extent indicated above. The respondent is directed to pay the arrears of rent as calculated by the Trial Court within a period of eight week from today. The respondent shall continue to pay the future rent. It is clarified that the payment of the arrears of rent or future rent shall be without prejudice to the legal rights of the parties.*

5. *This order, however, will not preclude the parties in approaching the learned Trial Court for issuing further appropriate interim directions.*

6. *The Appeal is disposed of in above terms.”*

27. Thus, the Hon'ble Supreme Court directed the tenant to pay arrears of rent as calculated by the learned Trial Court within a period of eight weeks and there was also a direction to tenant to continue to pay the future rent. Hon'ble Supreme Court also observed that said order would not preclude the parties in approaching the learned Trial Court for issuing further appropriate interim directions.

28. It will be worthwhile to mention that an application seeking clarification of the order dated 03.03.2023 was filed by the tenant before the Hon'ble Supreme Court and such application was disposed of by the Hon'ble Supreme Court on 03.07.20223 with the following directions: -



“2. Having heard learned counsel for the applicant (respondent) as well as learned Senior Counsel for non applicant (petitioner), we deem it appropriate to dispose of the instant application with a clarification/direction that the applicant (respondent) shall pay the amount of Rs.2,77,94,731-/minus the amount already paid, without prejudice to his rights and he shall be entitled to seek final adjudication with regard to his liability towards arrears of rent in the pending proceedings before the High Court. The balance amount shall be paid by the applicant (respondent) within four weeks from today.”

(emphasis supplied)

29. Armed with above liberty contained in order dated 03.03.2023, tenant moved an application before the learned Trial Court, praying for necessary directions. His contention was, again, the same and he prayed that any amount, paid by him beyond a sum of Rs. 3.60 crores, was required to be secured by way of a bank guarantee. He was of the view that in case he was, eventually, successful in his suit, it would be difficult for him to recover any excess amount from his landlady and, therefore, he wanted excess payment, beyond Rs. 3.60 crores, to be secured by way a bank guarantee. He also prayed before the learned Trial Court that rental for equivalent property had come down to Rs. 90,000/- per month and, therefore, sought requisite directions in this regard from the learned Trial Court.

30. Learned Trial Court, *vide* order dated 22.07.2023, declined to accede to any such request while also observing that defendant was enjoying the possession of the suit property and that even if his suit for specific performance was to be decreed, he was still required to make payment of Rs. 3.60 crores as per the *agreement to sell* and also



observed that order dated 29.11.2022, was already under challenge and, therefore, no further directions were warranted.

31. Such order dated 27.07.2023 is subject matter of challenge of the second petition i.e. CM(M) No. 1786/2023. The tenant has also challenged order dated 04.09.2023 whereby application moved under Order VX-A CPC has been disposed of, *albeit*, on the basis of his own statement.

32. Right here, it needs to be mentioned that consequent to the transfer of the aforesaid suit to this Court, said aspect of payment was considered by learned Coordinate Bench of this Court on 26.05.2025 and application moved by landlady seeking striking of defence was disposed of while directing the balance payment to be made within one week. *It was also, and rightly so, observed in order dated 26.05.2025 that such payment was, without prejudice to rights and plea available to the tenant in the present two petitions i.e. CM(M) No. 1437/2022 and CM(M) No. 1786/2023.*

33. Thus, all in all the composite prayer, coming from the side of Mr. Shree Prakash Sinha, learned counsel for tenant, in both the aforesaid petitions, can be summarized as under: -

(i) Order dated 29.11.2022 is in teeth of the judgment dated 06.07.2022 of Hon'ble Supreme Court as interest had been awarded despite the fact that there was no such direction by the Hon'ble Supreme Court regarding grant of interest.



(ii) *Increase in the rental to the extent of 10% could have been on yearly basis but the learned Trial Court has given the same after every eleven months.*

(iii) *Learned Trial Court has not given any direction balancing the equities and, therefore, once the payment towards rent/user charges goes beyond the sale consideration of Rs. 3.60 crores, there should not have been any further direction to the tenant to make payment with respect to rent/user charges, without corresponding bank guarantee/security. Therefore, the direction to make payment to landlady was unjustifiable.*

(iv) *The current monthly rent/user charges, in terms of calculation made by the learned Trial Court in terms of its order dated 29.11.2022 would exceed Rs. 5 lacs per month and since rental of the equivalent property is not beyond Rs. 90,000/-, not only any such payment needs to be secured, further direction regarding future payment should be in the nature of deposit in the Court with the condition that such amount be released to either of the parties, subject to the outcome of the suits.*

(v) *The present rental may be reduced to Rs. 1 lac per month as such direction would not only balance the equities but would also deny any unjust enrichment to landlady.*



34. All such contentions have been refuted by Mr. Ravinder Singh, learned Counsel for respondent/landlady. He submits that directions given by the Hon'ble Supreme Court are crystal-clear and learned Trial Court has merely adhered to those directions and, therefore, there is no reason to interfere with the matter.

35. His prime contentions are as under: -

(i) *When the rent was calculated by the learned Trial Court, it also calculated interest component and the Hon'ble Supreme Court never disallowed the interest as the aforesaid order was never interfered, and, thus, the request of tenant in seeking waiver of the interest is totally misplaced.*

(ii) *Grant of interest was never objected to or pleaded when the matter was pending before the Hon'ble Supreme Court and the belated endeavour is only with the object to mislead the Court.*

(iii) *Hon'ble Supreme Court clearly directed to decide the issue of increase on year-to-year basis, and, therefore, there is no illegality in the impugned orders.*

(iv) *The plea of tenant is merely speculative in nature and since tenant continues to enjoy the property, he is under obligation to make payment of rent/user charges.*

(v) *Quantum of rent/user charges cannot be decided by this Court while invoking supervisory powers and if user charges are to be modified or reduced, it has to be in consonance with the evidence led by the parties and not merely on the basis of verbal assertions.*



- (vi) *The manner of calculation has never been challenged by the tenant and, therefore, there is no question of giving benefit of alleged part sale consideration of Rs. 60 lacs which is nothing but an assertion in air.*
- (vii) *Suit for specific performance has no merit as neither the tenant (plaintiff in the aforesaid suit) had ever shown any willingness to perform his part of obligation nor any deposit was made before the learned Trial Court towards alleged sale consideration when the suit was instituted.*
- (viii) *The alleged agreement to sell did not contain any recital towards adjustment of rent or for that matter regarding stoppage of the rent and, therefore, since the premises continues to be used by the tenant, tenant is under obligation to make payment of the rent and that the user charges are most reasonable and are in synchronization with the earlier lease-agreement between the parties.*
- (ix) *The scope of judicial review under Article 227 of the Constitution of India must be restricted to the cases where there is flagrant abuse of fundamental principle of law and not otherwise and the findings given by the Civil Court cannot be interfered when there is no perversity or illegality in such findings.*

36. There cannot be any qualm that scope of interference under Article 227 of Constitution of India is limited and to said extent, reliance on *Garment Craft vs. Prakash Chand Goel: (2022) 4 SCC 181*, *Shalini Shyam Shetty vs. Rajendra Shankar Patil: (2010) 8 SCC 329* and *Moti CM(M) 1437/2022 & CM(M) 1786/2023*



Lal vs. Trust Sri Thakur Kishori Raman Ji 2013 SCC Online All 13558 is justified. Fact, however, remains that interference would be warranted where there is found to be some illegality and perversity or the inference drawn is found to be impermissible or there is some gross error apparent on face of record.

37. Apparently, the entire thrust of the tenant is with respect to the manner in which the learned Trial Court has made calculations without adhering to the directions of Hon'ble Apex Court and has burdened him not only with the annual increase @ 10% in the rent/user charges but also with interest. And yes, there is no balancing of equities, either.

38. Right here, it needs to be stressed that any order, having shades and trappings of one passed under Order 39 Rule 10 CPC, would be amenable to appeal but since the challenge has already been entertained and travelled much beyond and, therefore, as per order dated 03.07.2023 of Hon'ble Supreme Court, this Court is under obligation to consider the matter in its totality. Additionally, the grievance of tenant is couched little differently. According to him, the impugned order dated 29.11.2022 is not in terms of the specific directions of Hon'ble Supreme Court. His contention is that the impugned order would result into lot of complications inasmuch as there is nothing to protect the interest of the petitioner if he ends up paying more than the consideration amount.

39. Mr. Sinha submits that the directions of the Hon'ble Supreme Court have been misconstrued and at such an interim stage of the case,



when the Court was merely required to pass order based on the pleadings, such stringent and punitive directions were not warranted.

40. Order XXXIX Rule 10 CPC reads as under: -

Order XXXIX- Temporary Injunctions and Interlocutory Orders -

10. Deposit of money, etc., in Court.—Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

41. Quite evidently, the aforesaid order comes into play when, invariably, there is admission. Admission can be specific or even implied. It can also be culled out by taking holistic view of the pleadings.

42. Any court, after perusal of pleadings, is required to exercise its discretion in a judicious manner and then to issue any direction to deposit the amount which it may find to be reasonable one.

43. This is, primarily, to safeguard the rights of a property owner/ landlord.

44. Needless to emphasize, discretion is required to be exercised with due caution, while taking *prima facie* view of the matter.

45. Naturally, if execution of lease deed and rate of rent are not disputed and any tenant is overstaying in the premises, the Court can direct payment/deposit, aiming at protecting the interest of landlord so that he does not suffer financially on account of mere pendency of the suit. However, if there is serious dispute regarding the existence of relationship of landlord and tenant between the parties, the Courts are, *CM(M) 1437/2022 & CM(M) 1786/2023*



generally, reluctant to pass any order, until the issues are resolved by way of trial.

46. As noted, the Hon'ble Supreme Court, in its order date 06.07.2022, directed that in terms of "*admitted fact by extended lease agreement and the increase in the percentage of rent, the Trial Court shall first decide the issue of payment of monthly rent applying the said increase on year to year basis and to pass appropriate orders for payment of arrears as well as deposit of regular monthly rent.*" It also observed that such payment shall be subject to outcome of aforesaid two suits.

47. Based on the aforesaid specific directions, learned Trial Court took up the matter again, which resulted in passing of order dated 29.11.2022.

48. Aforesaid order dated 29.11.2022 also reached Hon'ble Supreme Court and the specific directions given by Hon'ble Supreme Court in its order dated 03.07.2023 have already been extracted which specifies that the payment already made would be without prejudice to the rights of the tenant and he would be entitled to seek "*final adjudication with regard to liability towards arrears of rent in the pending proceedings before the High Court*".

49. Thus, in the present context, besides the relevant provisions of law and pleadings, the specific directions of the Hon'ble Supreme Court are to be kept in mind.

50. Let us first see as to whether, at interim stage of the case, increase in user charges, on year-to-year basis, is appropriate or not.



51. Quite clearly, there was specific direction to learned Trial Court to decide the issue of payment of rent, *while applying such increase on year-to-year basis*. The Hon'ble Supreme Court also referred to extended lease agreement and such lease dated 07.08.2013 clearly incorporates that the monthly rent was Rs. 1.50 lacs exclusive of maintenance, utility charges and taxes and that the same would be enhanced @ 10% after 11 months. The learned Trial Court, keeping in mind the aforesaid specific directions, has thus considered the periodical increase @ 10%, *albeit*, after expiry of 11 months. There would, hardly, be any substantial difference if the increase is calculated after 11 months, instead of after 12 months.

52. Here, increase is in terms of the lease agreement executed between the parties and the parties had consciously reduced the terms in writing and since execution of aforesaid lease agreement and increase in rent mentioned therein is not in dispute, it cannot be said that the learned Trial Court had erred in law in granting such periodical increase, particularly when there is a specific observation in this regard by the Hon'ble Supreme Court.

53. However, at the same time, lease is of the year 2013 and the suit in question was filed in the year 2018.

54. As per ATS-I, the monthly rent was Rs. 1.17 lacs which was re-fixed as Rs. 1.50 lacs as per ATS-II.

55. The user charges have now got increased upto Rs. 4,70,764/- per month which is already more than four times of the original rent.



56. Mr. Sinha, learned counsel for tenant submits that premises in question would not, presently, fetch rent more than Rs. 90,000/- per month and, therefore, it cannot be kept on increasing in such arbitrary and indiscriminate manner.

57. The aforesaid contention has been vehemently refuted by learned counsel for landlady.

58. Fact remains that this Court, while exercising supervisory powers, would not go into the aforesaid factual aspect as to what would be the present rent of a similarly situated property in the area in question. It is entirely upto the parties to lead evidence in order to demonstrate its respective stance with respect to prevalent rent but since the user charges have already reached Rs. 4,70,764/-, this Court feels that increase cannot be permitted to be there in perpetuity and for an indefinite period and, therefore, till the suit is finally adjudicated, let there be no further increase in the user charges, beyond Rs. 4,70,764/-.

59. The next important aspect in the context of user charges is the levy of interest.

60. The learned Trial Court has relied on the statutory provision containing in Interest Act, 1978 and also upon *Central Bank of India v Ravindra (supra)* and has accordingly granted interest on such rental @ 6%. It also observed that landlady, who was a senior citizen, could have easily got such bare interest by making term deposits in any nationalized bank.



61. However, reliance upon *Central Bank of India v Ravindra (supra)* was not appropriate as the adjudication in hand is not a final one. Moreover, in said matter, while answering reference about what meaning was to be assigned to phrases ‘Principal sum’ and ‘Principal Sum adjudged’ in context of section 34 of the Code of Civil Procedure, 1908, Constitution Bench of Hon’ble Supreme Court of India, *inter alia*, observed that subject to a binding stipulation contained in a voluntary contract between the parties and/or an established practice or usage, interest on loans and advances may be charged on periodical rests and also capitalised on remaining unpaid. It also held that principal sum was “such principal sum” within the meaning of Section 34 of the Code of Civil Procedure, 1908, on which interest pendente lite and future interest i.e. post-decree interest, at such rate and for such period which the court may deem fit, may be awarded. Though such legal position is not debatable at all, fact remains that such levy of interest belongs to the stage of final determination only.

62. Stand of the tenant is very clear and categoric.

63. Even if it is considered to be a fallacious one from the prospective of landlady, there is an agreement to sell between the parties. If tenant is to be believed, the landlady had agreed to sell the tenanted premises to him and as per understanding, further rent was not payable and was to be adjusted towards the sale consideration. Of course, agreement to sell does not contain any recital to the effect that rent was no longer payable or that it was liable to be adjusted from sale consideration, fact remains that



interest is, generally, awarded at the time of final adjudication of the matter and, therefore, grant of interest, at such interim stage, was not justifiable.

64. Any direction passed under Order XXXIX Rule 10 CPC should not come as a 'windfall' to any landlord.

65. Importantly, the landlady herself was slow in approaching the Court and, therefore, grant of interest should have been left open, to be adjudicated at the final stage of the case.

66. Therefore, the condition with respect to payment of interest was manifestly unreasonable. However, since the interest component has already been paid to the landlady, such amount is directed to be adjusted from the future rent/user charges.

67. Mr. Sinha, learned counsel for petitioner lays emphasis on order dated 03.07.2023 passed by Hon'ble Supreme Court whereby the tenant has been held entitled to seek *final adjudication with regard to his liability towards arrears of rent in the pending proceedings before the High Court*. According to him, the aforesaid order is dated 03.07.2023 and the suit filed by the landlady got transferred subsequently i.e. on 20.09.2023 and, therefore, the direction of the Hon'ble Supreme Court is in context of the present proceedings only and, therefore, this Court is required to decide his liability towards arrears of rent and while taking any such decision, equities are to be balanced.



68. Of course, the direction of the Hon'ble Supreme Court is very specific and categoric but fact remains that "*final adjudication*" has to be understood as the one based on evidence led by the respective parties.

69. The issue- *whether the user charges/rentals are exorbitant or continue to be in the same range or have gone down*- is better left to the decision of learned Trial Court (now the learned Coordinate Bench). This Court, merely on the basis of some documents placed on record, cannot give any finding, either way and such decision can be appropriately arrived at after appreciating the evidence led by the respective parties.

70. The prime most stress of Mr. Sinha is with respect to the fact that there is no balancing of equities.

71. According to him, in terms of *agreement to sell* between the parties, the landlady had agreed to sell the tenanted premises for a sale consideration of Rs. 3,60,00,000/- and in such a situation, when the tenant has already paid more than Rs. 4,00,00,000/- towards rentals, there should be immediate direction for stoppage of the future user charges and landlady should be asked to furnish bank guarantee not only for surplus amount but also for future rent and the amount be not released unless such security is furnished.

72. However, the aforesaid contention is totally fallacious and misdirected. The tenant is, quite clearly, attempting to sail in two boats and wants to have cake and eat it too.

73. The user charges being levied upon the tenant are, manifestly, towards *continuous user of the tenanted premises*.



74. If the user charges are bruising him, he can, any time, vacate the tenanted premises.

75. There is no compulsion for him to continue to occupy the same and he can, at will, shift to some other place which would automatically absolve him of making any payment towards further user charges. Of course, once his suit for specific performance is decreed in his favour, he can always reclaim the tenanted premises, as its rightful owner.

76. However, till the time his such suit is not decided, the user charges cannot be permitted to be circumvented and evaded, merely on the premise of there being an *agreement to sell* in his favour. It needs to be reiterated that in such agreement to sell, there is no clause which may indicate that the parties had agreed that tenant was no longer under any obligation to pay any further rent or for that matter that the pending arrears had been adjusted or would be adjusted in sale consideration.

77. If the rental has increased during last more than a decade, so would be the case with market value of the property.

78. There is every possibility that even the current market price of the tenanted premises would have also proportionately increased, particularly when the agreement was entered into way back in the year 2017.

79. Evidently, the landlady did not initiate any immediate step for recovery of arrears of rent and if she approaches the Court belatedly, she would be entitled to seek only those arrears which are legally recoverable i.e. for the period of last three years to be reckoned backwards from the date of institution of suit. Quite possibly, in the interregnum, she did not



take any action, anticipating that agreement to sell might reach its logical conclusion and the entire agreed sale consideration is paid, more so when time was the essence of the contract, which fact was specifically mentioned in the agreement to sell dated 22.04.2017.

80. It will not be appropriate for this Court to comment as to why the terms were not fulfilled and who is responsible for the default. This court would also make no observation as to what sale consideration or earnest money was paid and when and in what manner. This Court would also refrain from commenting upon validity of any of the agreements or for that matter the alleged lack of willingness on the part of tenant to perform his obligations thereunder. As already noticed, both the aforesaid suits are pending adjudication and, therefore, this Court does not want to make any observation which may cause any prejudice to either of the sides.

81. Fact remains that merely because tenant has filed a suit for specific performance, he cannot be permitted to wriggle out of his obligation to pay rentals/user charges. The tenant has, merely, come up with hypothetical propositions and cannot earn any compassion, merely on the basis of some fanciful speculation. Moreover, he can always make appropriate submissions in this regard in said two suits at the stage of final arguments and suitable directions can always be passed, in synchronization with the eventual final outcome.

82. Therefore, his demand to stall and suspend further payment, unless landlady furnishes bank guarantee, is completely specious. As noted



already, if future rentals are hurting him, he being, a mere *tenant at sufferance*, can always leave the premises.

83. This, to me, is the only plausible solution which would balance the equities.

84. There is none other.

85. I am also reminded of one quote of Lord Charles Bowen, an English Judge who said – “*When I hear of an 'equity' in a case like this, I am reminded of a blind man in a dark room - looking for a black hat - which isn't there*”.

86. Resultantly, both the abovesaid petitions are disposed of in aforesaid terms and the impugned orders stand modified to the extent that there would not be any further increase in the user charges beyond Rs. 4,70,764/- per month and it would remain static at said rate, till the final adjudication of the suits and further that the interest component, already paid, would be liable to be set off or adjusted from the future payments.

87. Needless to say, the observations made hereinabove are tentative in nature and would not be treated as reflection on final merits of the case.

**(MANOJ JAIN)
JUDGE**

AUGUST 19, 2025/dr/shs