



2025:DHC:4273



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 21st May, 2025***
+ CM(M) 4045/2024 & CM APPL. 31363/2025 & CM APPL.
31364/2025
NATIONAL SEEDS CORPORATION LTD

.....Petitioner

Through: Mr. Yashvardhan, Ms. Smita Kant,
Ms. Kritika Nagpal, Mr. Gyanendra
Shukla and Mr. Pranav Das,
Advocates.

versus

COST TO COST COMPUTERS & ANR.

.....Respondent

Through: Mr. Avinash Kumar Tyagi, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

CM APPL. 31363/2025 (seeking early hearing)

1. The respondents seeks early hearing of the present petition.
2. The learned counsel for the petitioner has also appeared on advance notice and with consent of both the sides, the main petition has been taken up for disposal.
3. The application stands disposed of accordingly.
4. The date fixed i.e. 20.08.2025 stands cancelled.

CM(M) 4045/2024

1. The issue raised in the present petition is a very short one.
2. The petitioner herein had filed a suit for eviction, possession, injunction and recovery of arrears of rent/mesne profits.
3. According to the petitioner, it has leased out a covered area of 3500 sq.



ft.

4. Though, the execution of lease deed is not disputed by the respondents/lessee, according to their specific stand, instead of 3500 sq. ft., the lease area handed over to them was approximately 2900 sq. ft. only

5. The lease rental has to be assessed on the basis of per sq. ft. and, therefore, there was dispute as to what would be the lease rentals, with respect to the suit premises.

6. Interestingly, based on admission appearing in the written statement, there is already a *decree of possession* in favour of plaintiff.

7. Such decree has already been challenged by the defendant, by filing *Regular First Appeal*, which is now listed for 10.07.2025.

8. It is also important to mention that the respondents/defendants had also filed a counter-claim seeking recovery of Rs.1,36,27,846/- as according to them, there was excess payment of the lease rental to the lessor. Admittedly, such counter-claim has been rejected by the learned Trial Court under Order VII Rule 11 CPC.

9. The preliminary decree of possession was passed on 25.10.2024 and after passing of such decree, the lessee (respondent herein) filed an application seeking appointment of Local Commissioner, with obvious purpose.

10. It, merely, wanted the Local Commissioner to go to the suit premises and to measure the covered area, which is 3500 sq. ft, as per the plaintiff. As noted, as per defendants, the covered area is around 2900 sq. ft. only.

11. Since the issue of mesne profits and damages is still very much alive before the learned Trial Court, it allowed the abovesaid application *vide* order dated 03.12.2024.



12. Such order is under challenge.
13. Learned counsel for the plaintiff/petitioner submits that since the decree of possession has already been passed and since there is already an admission from the side of defendants and since even their counter-claim has been rejected, there is no purpose of appointing a Local Commissioner.
14. The issues, which are still alive before the learned Trial Court, are with respect to the entitlement of plaintiff to recover arrears of rent, interest, if any, past and future mesne profits and interest thereupon.
15. As per lease-deed executed between the parties, the lessee has to pay monthly lease rent @ Rs.125/- per sq. ft. per month and service tax @ 12.36% total amounting to Rs.4,91,575/- and, it also mentions that the covered area of 3500 sq. ft. together with right of entrance, passage, staircase, use of lift and other easements had been given on lease to the lessee.
16. Though, decree with respect to possession had already been passed, the question with respect to mesne profits and rental is yet to be adjudicated.
17. The request for appointment of Local Commissioner was allowed by the learned Trial Court *vide* order dated 03.12.2024, while, *inter alia*, observing as under:-

“29. In my considered opinion, getting the area of property measured in the presence of both the parties does not amount to collection of evidence or assisting any of the parties to collect evidence in its favour. Rather that would help this court to effectively adjudicate the pending claims/issues of the parties more so in view of categorical statement of learned counsel of the Defendants/ Applicants that the Defendants/ Applicants shall vacate and handover the possession of the leased property which is in their possession soon after the exact area which has not been handed over shall be measured by learned local commissioner. Further, the Defendants/ Applicants in their reply of the Defendants/ Applicants dated 06.05.2014 to the notice dated 24.04.2014 sent by the Plaintiff/Respondent to them clearly mention the area possession of which was not handed over to the



Defendants/Applicants. Therefore, the portion/area of which possession has allegedly not been handed over to the Defendants/Applicants is clearly identifiable i.e. its location was in the common area of the building i.e. in front of the lift and adjacent to the staircase of the building. Measurement of the same does not involve any scientific investigation and has to be conducted physically and mechanically of which there can be only one finding, more so since measurement will be taken in presence of authorized representatives of both sides.

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*33. Therefore, the present application of the Defendants/ Applicants filed under Order XXVI Rule 9 CPC for appointment of local commissioner is allowed and **Sh. Nakul Ahuja, Advocate, Enrolment no. D/1789/2009, Mob no. 9953992233, having office at 310, Competent House, Connaught Place, New Delhi-110001, mail ID nakul.ahuja@ymail.com** is appointed as local commissioner to visit the property bearing no. 14, 15, Farm Bhawan, Nehru place, New Delhi at first floor and measure accurately the area of the property bearing no. 14, 15, Farm Bhawan, Nehru place, New Delhi at first floor which is under the possession of the Defendants/ Applicants and also the area of the said property for which it has been alleged by the Defendants/Applicants that the possession has not been handed over to them. Learned local commissioner shall bring measuring tape for executing the commission. The Defendants/Applicants have undertaken to pay the fees/cost/charges of the learned local commissioner.”*

18. Learned counsel for respondents also submits that as per instructions, the moment such Commission is executed in terms of the abovesaid order dated 03.12.2024, the keys of the suit premises would be handed over to the authorised representative of the plaintiff, then and there. He also submits that perhaps in such scenario, the defendant may not, even, pursue with its *Regular First Appeal*.

19. Keeping in mind the overall facts of the case and the fact that the extent of covered area leased out in terms of the abovesaid lease has a direct bearing, with respect to the pending issues, this Court does not find any real requirement of interfering with the impugned order and, resultantly, the



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petition stands dismissed.

20. At the same time, as undertaken today, as and when Local Commissioner visits the abovesaid property for the abovesaid purpose, the defendants, after the Commission is duly executed, would hand over the keys of the suit premises, then and there, under appropriate acknowledgment.

21. As undertaken, the abovesaid appeal filed by the defendans may also be withdrawn by them.

22. Let the Commission be executed without any further delay and, preferably, within this week only.

23. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 21, 2025/ss/js