



2025:DHC:3190-DB



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

***Reserved on: 20.03.2025***  
***Pronounced on: 02.05.2025***

+ **RFA(COMM) 152/2025 AND CM APPL. 15798/2025**

**VIRENDER KUMAR** .....Appellant

Through: Mr.Shekhar Prit Jha and  
Ms.Preeti Kumari, Advs.

versus

**SMT. REKHA BHAYANA & ANR** ....Respondents

Through: Mr.Nitya Sharma and  
Mr.Ankur Gupta, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**HON'BLE MS. JUSTICE RENU BHATNAGAR**

### **J U D G M E N T**

#### **RENU BHATNAGAR, J.**

1. The present Regular First Appeal has been filed by the appellant under Section 13 of the Commercial Courts Act, 2015, against the Judgment and Orders dated 24.12.2024 and 20.02.2025 passed by the learned District Judge, Commercial Court-01, North District, Rohini Courts, Delhi (hereinafter referred to as 'learned Trial Court') in CS (COMM) NO. 197 of 2023 (hereinafter referred to as 'Suit') titled ***Smt. Rekha Bhayana v. Virender Kumar.***



2. The Impugned Order dated 24.12.2024 disposed of the following two applications:

- (i) An application filed under Order XIII A of the Civil Procedure Code, 1908 (hereinafter referred to as, 'CPC') read with Order XII Rule 6 of the CPC filed by the respondent.
- (ii) An application filed under Order I Rule 10 of the CPC by the intervener, Mr. Ajit Pal, seeking his impleadment as a defendant.

3. The appellant has challenged only a specific portion of the Order dated 24.12.2024, whereby the application of the respondent under Order XIII A of the CPC read with Order XII Rule 6 of the CPC, was disposed of by the learned Trial Court with the following directions:-

*“9. ....The application, therefore, is to be allowed as far as the recovery of possession is concerned.*

*10. Coming to the recovery of arrears of rent and damages, the plaintiff is required to prove the damages suffered by the plaintiff because of illegal occupation of the defendant in the premises. The defendant is however liable to pay the admitted arrears of rent. The defendant is in arrears since 01.03.2018. In fact, the defendant is directed to pay within four weeks the arrears of rent @ Rs.84,000/- per month from 01.03.2018 till 19.10.2023 when the possession of first floor was handed over to the plaintiff and 'a) Rs.60,000/ per month from 19.10.2023 till the possession is handed over by the defendant. This amount of Rs.60,000/- has been calculated for the rent of the ground floor and the second floor on an*



*average taking into consideration that 2 14 storeys were let out @ Rs.84,000/- per month. The plaintiff shall be required to prove damages as per law. The judgments relied upon by the defendant are not applicable to the facts of this case as on those cases, the tenant has raised the defence of making advance payments to the landlord pursuant to agreement for sale of the tenanted premises and the tenant had also filed suit for specific performance. In the present case, there are no such pleadings by the tenant against the plaintiff. The application stands disposed off.”*

4. The appellant has also challenged the subsequent Order dated 20.02.2025 passed by the learned Trial Court, which is reproduced herein below:-

*“The plaintiff has filed an application under Section 151 CPC informing that the defendant has not complied with the order dated 24.12.2024.*

*It is stated by the defendant that defendant intends to challenge that order and has also instructed his counsel in this regard.*

*Record shows that vide order dated 24.12.2024, on an application of the plaintiff, the prayer for recovery for possession was allowed along with recovery of arrears of rent. However, no decree was passed in respect of these reliefs.*

*In fact, let the decree be prepared in respect of possession of the suit property which is the ground floor and the second floor of the property no. 1548, Outrem Lines, Kingsway Camp, Delhi and also for recovery for arrears of rent @ 84,000/- per month from 01.03.2018 till 19.10.2023 and @ Rs. 60,000/- per month from 19.10.2023 till the possession is handed over by the defendant. Let the decree be prepared.*

*In respect of recovery of damages and penalty, the following issues are framed :-*



***1. Whether plaintiff is entitled to recovery of damages ? If Yes, for what rate for what period?OPP.***

***2. Whether plaintiff is entitled to any penalty? If yes, at what rate and for what period?***

***3. Whether plaintiff is entitled to any interest on the aforesaid amount, if issues no. 1 and 2 are decided inaffirmation?If yes, at what rate and for what period?***

***4 Relief***

xxxxxx”

5. In a nutshell, the facts necessary for the disposal of the appeal are that the respondent herein filed a suit being landlady of property no. 1548, Outram Lines, Kingsway Camp, Delhi-110009 builtup to two and a half storeys which were let out to the appellant for a period of two years from 01.06.2016 till 31.05.2018 *vide* a registered lease deed dated 18.06.2016, at a monthly rent of Rs. 84,000/- per month. The respondent has claimed in the suit that the appellant defaulted in payment of rent with effect from 01.03.2018, for which a legal notice dated 19.03.2018 was sent terminating the tenancy. Thereafter, the respondent filed suit being CS (COMM) No. 197/2023, seeking possession and recovery of arrears of rent and damages with effect from 01.03.2018.

6. In the written statement, the appellant has not disputed the fact that the suit property was let out to him by the respondent based on a registered lease deed. However, he has taken the defence that the brother-in-law of the respondent herein, Shri Ashok Bhayana, took an amount of Rs. 45 Lakh from him, and the son of the respondent namely, Shri Sahil Bhayana, assured him that this amount would be



returned when the appellant hands over the possession of the suit property. It is further alleged that the son of the respondent, Shri Sahil Bhayana, took possession of the first floor from the appellant on the pretext that the money would be returned only when the possession of the first floor is delivered. The appellant has also claimed that the other brother-in-law of the respondent, Shri Satish Bhayana, also took a loan of Rs. 3,80,000/- from him, and once again, the son of the respondent assured that this amount would also be returned. The appellant pleaded that the possession of the first floor of the property was accordingly given back by the appellant in the month of February, 2018. The appellant claims that thereafter, it was decided that either Shri Sahil Bayana will return back money to the appellant or Shri Ashok Bayana will execute the sale deed in respect of another property, that is, 1512, Outram Lines, Guru Teg Bahadur Nagar, Kingsway Camp, Mukherjee Nagar, Delhi- 110009, whereafter the appellant shall hand over possession of the remaining portion of the property. The appellant claimed that Shri Ashok Bayana entered into an agreement to sell with the appellant on 23.05.2017 and as he failed to comply with the same, the appellant has filed a suit against Shri Ashok Bayana seeking specific performance of the said agreement. He has also filed a Suit against Shri Satish Bayana seeking recovery of the loan of Rs. 3,80,000/-. The appellant claimed that it was agreed that the rent shall stand reduced to Rs. 15,000/-, which also was not paid as Shri Askok Bayana instructed him not to pay the same stating that there was some family dispute with the respondent.

7. Thereafter, on the ground of admission of the relationship of



landlord and tenant as evidenced *vide* the registered lease deed, and the admission of the rate of rent, the respondent filed the application under Order XIII A of the CPC read with Order XII Rule 6 of the CPC, which was disposed of *vide* the impugned Order dated 24.12.2024 under challenge before this Court.

8. We have heard both sides and perused the record.

9. The first ground of challenge raised by the appellant is that the respondent can only claim arrears for use and occupation charges preceding three years from the date of institution of the subsequent Commercial Suit, as per Article 52 of the Limitation Act, 1963 and as such the same can be from April, 2020 onwards. The appellant submits that the impugned order, directing payment with effect from 01.03.2018, is contrary to law, and that the subsequent suit under the Commercial Courts Act, 2015 has to be treated as a fresh suit.

10. We have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same.

11. Admittedly, the respondent had earlier filed a Civil Suit, being CS DJ No. 452/2018, titled ***Smt. Rekha Bhayana v. Virender Kumar***, in the year 2018 before the Court of the learned Additional District Judge, North District, Rohini Court, Delhi. In pursuance of the directions issued by the Delhi High Court *vide* Office Order No. 123/RG/DHC/2021, the learned Principal District & Sessions Judge, North, Rohini Courts, transferred the said civil suit to the Court of the learned District Judge (Commercial Court) and was listed for 19.03.2021. The appellant filed an application under Order VII Rule 11 of the CPC, which was dismissed *vide* Order dated 19.07.2022.



The learned District Judge (Commercial Court), instead, directed that the respondent must comply with the mandatory procedures under the Commercial Courts, Act, 2015, on or before the next date of hearing. The said order was challenged by the appellant before this Court, and *vide* Order dated 25.08.2022 passed in C.M. (Main) No. 842/2022, this Court directed that the plaint should not be rejected, but should be returned to the respondent herein so that it could be instituted before the competent Commercial Court. This Court further directed that once the plaint was returned to the respondent, she would be entitled to institute the same plaint, albeit in accordance with the procedure prescribed under the Commercial Courts Act, 2015, before the competent Commercial Court. We quote the order as under: -

*“ 21. In view of the aforesaid, the impugned order dated 19th July 2022, passed by the learned Commercial Court in CS DJ 452/2018 (**Rekha Bhayana v. Virender Kumar**) is quashed and set aside.*

*22. However, I deem it appropriate not to reject the plaint filed by the respondent under Order VII Rule 11 of the CPC, but to direct that the plaint be returned to the respondent so that it could be instituted before the appropriate forum.*

*23. The present petition stands allowed in the aforesaid terms, with no order as to costs.*

*24. In order to avoid any confusion, it is clarified that once the plaint is returned to the respondent, he would be entitled to institute the same plaint albeit in the form and following the procedure prescribed by the Commercial Courts Act before the competent commercial court.”*



12. In pursuance of the order passed by the High Court, the same plaint was re-filed by the respondent before the Commercial Court, on 13.04.2023, in form of the present Suit.

13. It is the settled law that the law of limitation does not create any right in favour of any person but simply provides a timeline during which a legal remedy can be exercised and not beyond. The Limitation Act does not confer any substantive right, nor does it define any right or cause of action. After the expiry of the period of limitation, the possibility of obtaining relief through judicial process is taken away, however, the underlying right is not extinguished; it is only the remedy to enforce the right that is taken away.

14. The law of limitation prescribes a time limit for filing suits, appeals and applications. Section 3 of the Limitation Act, 1963, provides that a suit, appeal or application instituted after the prescribed period of limitation must, subject to the provisions of Sections 4 to 24, be dismissed, even if the issue of limitation has not been set up as a defence. Section 2(j) of the Limitation Act, 1963, defines the “prescribed period” to mean the period of limitation computed in accordance with the provisions of the Limitation Act, and the Schedule to the Limitation Act simply sets out the specific periods applicable to various types of cases.

15. Section 14 of the Limitation Act, 1963, provides protection against the bar of limitation to a litigant who is *bona fide* litigating his case in a particular Court, and whose case fails as the Court lacks inherent jurisdiction to try the same. In that case, the period during which the litigant was *bona fide* prosecuting the case in a wrong



Court, is excluded from the computation of the period of limitation. Section 14 of the Limitation Act, 1963, is necessary to be reproduced hereunder: -

*“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.*

*Explanation.—For the purposes of this section,—*

*(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*



*(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*

*(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”*

16. As in the present case, the respondent was *bona fide* pursuing her claim in a Civil Court in form of a Suit, which Suit was finally returned to be filed before the appropriate Commercial Court in terms of the order passed by this Court, and in pursuance of the said order, the respondent re-filed the same in the Commercial Court in the year 2023, in our considered opinion, the respondent is entitled to the benefit of Section 14 of the Limitation Act, and the said period during which she was pursuing the case *bona fide* in a wrong Court having no jurisdiction, is liable to be excluded from the period of the Limitation. Accordingly, the suit re-filed by the respondent is within limitation, and the respondent is entitled to claim the rent from 1<sup>st</sup> March, 2018.

17. The other ground of challenge raised by the appellant is that the direction to pay the occupation charges with effect from March, 2018 is incorrect, in view of the plea of the appellant that with effect from March, 2018, he retained only the ground floor and the possession of the remaining floors was handed over to the family members of the respondent namely, Ashok Bhayana and Sahil Bhayana. The appellant further contends that the alleged reduction of the rent to Rs.15,000/- per month and his plea of surrendering a part portion of the suit property, could not have been determined in a summary manner and without a trial or giving an opportunity to the appellant to prove the same by way of evidence. The appellant further states that he had also



raised a defence of adjustment of Rs. 90,000/- given as a security deposit, which would have satisfied his liability up to the month of August, 2018, however, the same was not considered in the impugned order.

18. We do not find any merit in the above submission of the learned counsel for the appellant.

19. Order XIII A has been introduced into the CPC, as far as Commercial Disputes of a specified value is concerned, to empower the Court to pass a 'summary judgement' where *inter alia* the defendant has no real prospect of successfully defending the claim or part thereof made in the Commercial Suit and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. We quote Sub-Rule (1), (2), (3), and (6) of Order XIII A CPC as under:

*“1. Scope of and classes of suits to which this Order applies.—(1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.*

*(2) For the purposes of this Order, the word “claim” shall include—*

*(a) part of a claim;*

*(b) any particular question on which the claim (whether in whole or in part) depends; or*

*(c) a counterclaim, as the case may be.*

*(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.*



**2. Stage for application for summary judgment.**—An applicant may apply for summary judgment at any time after summons has been served on the defendant: Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

**3. Grounds for summary judgment.**—The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that—

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

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**6. Orders that may be made by Court.**—(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—

(a) judgment on the claim;

(b) conditional order in accordance with Rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court



*shall record its reasons for making such order.”*

20. The above provision is wider than Order XIIA of the CPC inasmuch as it is not confined to be exercised only in case of an admission of the defendant to the claim of the plaintiff, but can also be exercised where the Court finds that “*the defendant has no real prospect of successfully defending the claim*” or part thereof of the plaintiff.

21. Admittedly, the appellant in his written statement filed before the learned Trial Court, has admitted the factum of entering into the lease deed and the existence of a relationship of landlord and tenant between himself and the respondent. He has also admitted to be a tenant for the whole property for the last 15 years. The registered lease deed was for a period from 01.06.2016 to 31.03.2018, after which the tenancy was alleged to have been terminated. The appellant was admittedly in arrears of rent since 01.03.2018. Accordingly, the learned Trial Court had rightly passed an order directing the payment of arrears of rent at the rate of Rs. 84,000/- per month from 01.03.2018 till 19.10.2023, during which period the appellant retained the possession. On 19.10.2023, during the proceeding, the possession of the first floor was handed over to the respondent in the presence of the Local Commissioner appointed by the Court, in the presence of the appellant, and the officials from the concerned police station. Therefore, the learned Trial Court, from 20.10.2023 onwards, reduced the rent at the rate of Rs. 60,000/- per month for the rent of the ground floor and the second floor, on taking into consideration that the entire



two and a half storeys property had originally been let out at the rate of Rs. 84,000/- per month. We do not find any infirmity in the order passed by the learned Trial Court on that score.

22. As regards as the plea of the appellant that he had handed over the possession of the first floor of the property to the son of the respondent on some oral understanding with respect to transactions with the brother-in-laws of the respondent, or that there was a reduction in the amount of rent, which also the appellant claimed was not paid due to the instructions of the brother-in-law of the respondent, the learned Trial Court, in our opinion, rightly found that it cannot provide a valid defence to the appellant against the claim of the respondent. As noted, the appellant had taken the premises on rent under a registered lease deed from the respondent. It was not the case of the appellant that the respondent took the possession of the first floor from him or gave him any assurance. The defence raised by the appellant was completely moonshine and requires no further evidence to be led to be rejected. The learned Trial Court, therefore, rightly exercised its powers under Order XIII A of the CPC in passing the impugned order.

23. We, however, make it clear here that since the factum of damages is yet to be decided by the learned Trial Court, the learned Trial Court shall consider any adjustment of amounts, if paid in excess in terms of Impugned Order, and/or the payment of Rs.90,000/- alleged to be paid as a security deposit, at the time of final adjudication, after allowing the parties to lead evidence in the matter as per the Order dated 20.02.2025.



24. It is stated that the respondent has herself quantified the lump sum damages of Rs. 2 Lakhs and Rs. 3.5 Lakhs from 01.03.2018 to 31.05.2018 and beyond that, there is no requirement of proving the damages or arrears of rent. It is further contended that the respondent, after terminating the tenancy with effect from 01.04.2018, is not entitled to continue to receive the rent in respect of the expired lease deed from 01.03.2018 to 19.10.2023.

25. As observed above, the issues on the point of damages, in terms of Order XX Rule 12 of the CPC, are yet to be determined after the parties lead their evidence in terms of the Order dated 20.02.2025. Suffice it to say, in prayer (iii) of the Suit, the respondent has claimed a decree for payment of rent and damages against the appellant for his unauthorised extended usage of the suit property.

26. Accordingly, and in view of the above discussion, no ground is made out for interfering with the Impugned Orders. We find no merit in the present appeal. The same is, accordingly, dismissed.

**RENU BHATNAGAR, J.**

**NAVIN CHAWLA, J.**

**MAY 2, 2025/ab/kz**

*[Click here to check corrigendum, if any](#)*