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

\+ RFA(COMM) 253/2025, CM APPL. 26654/2025 & CM APPL. 26655/2025

RAKESH VERMA .....Appellant
Through: Mr. Samrat Nigam, Sr. Adv. with Mr. Kunal Mittal, Adv.

versus

MRS. JASVINDER KAUR WALIA .....Respondent
Through: Ms. Ritu Gupta and Mr. Hemant Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 02.05.2025

C. HARI SHANKAR, J.

1. The plaint

1.1 CS (Comm) 530/2023 was instituted by the respondent Jasvinder Kaur Walia, who claimed to be the owner of property situated at C-185, Vivek Vihar, Delhi-110095[1], having purchased the said property from its original owner *vide* Sale Deed dated 7 December 2010. She claimed that the appellant Rakesh Verma had been inducted by her as a tenant in the basement of the tenanted premises at a monthly rent of ₹ 50,000/- which was to increase @ 5% per annum *vide* registered Rent Agreement dated 4 May 2016.

[1] "the tenanted premises" hereinafter

1.2 Under Clause 3 of the rent agreement, the tenancy was for a period of three years from 1 May 2016 till 30 April 2019. She alleged that, w.e.f.[2] March 2018, the appellant had defaulted in payment of rent. She relied on Clause 18 of the rent agreement under which, on the appellant defaulting in payment of rent consecutively for two months, the respondent retained the right to terminate the tenancy and the appellant was bound to hand over vacant and peaceful possession of the tenanted premises to the respondent.

1.3 As the appellant had defaulted in paying rent w.e.f. March 2018, the respondent claimed to have issued a legal notice to the appellant on 17 August 2018 under Section 106[3] of the Transfer of Property Act 1882[4], terminating the tenancy with immediate effect and calling on the appellant to hand over, to the respondent, vacant and peaceful possession of the tenanted premises within 15 days, as also to disgorge the arrears of rent and occupation charges.

1.4 As the appellant did not liquidate the arrears of rent or hand over the vacant and peaceful possession of the tenanted premises

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[2] With effect from

[3] **106. Duration of certain leases in absence of written contract or local usage**.—
(1) In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.
(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.
(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.
(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

[4] "TPA" hereinafter

within the stipulated period of 15 days, the respondent instituted CS (Comm) 530/2023, against the appellant, praying for a decree of possession, in favour of the respondent and against the appellant, requiring the appellant to handover vacant, physical and peaceful possession of the tenanted premises to the respondent, as also for a decree for payment of the arrears of rent due from the appellant to the respondent. The plaint also sought interest and costs.

2. Written statement

2.1 The appellant, in his written statement filed by way of response to the suit, averred that the suit was wrongly field as commercial suit, as the tenanted premises had been let out for residential purposes. The appellant, however, acknowledged the fact that he was running a gym in the tenanted premises. It was further asserted, in the written statement, that, in January 2018, the Municipal Corporation of Delhi[5] conducted a sealing drive in respect of properties situated in residential areas in which commercial activities were being carried out. It was further asserted it was at this juncture that the appellant came to know that the tenanted premises were residential and not commercial. The appellant also alleged that the respondent had let out the tenanted premises at an exorbitant rate of ₹ 50,000/- per month, misrepresenting it to be commercial property, whereas residential property in the same area was available for rent @ ₹ 10,000/- per month.

2.2 The written statement further asserted that, on the assurance of

[5] "MCD" hereinafter

the respondent that she would apply for conversion of the tenanted premises from residential to commercial, the appellant shifted his gym equipment from the tenanted premises for a period of two months. When, however, the appellant came to realise that the respondent was not intending to apply for conversion of the tenanted premises, the appellant shifted his equipment back, and continued to run his gym in the tenanted premises.

2.3 On the basis of these, and other assertions, the appellant alleged, in the written statement, that the respondent was not entitled to the reliefs claimed in the suit.

3. Various applications were filed by the parties during the proceedings before the learned District Judge (Commercial)[6].

4. The impugned order dated 4 March 2025 disposes of applications filed by the respondent under Order VIII Rule 10[7], Order XXXIX Rule 10[8] of the CPC as well as Order XIIIA Rule 2[9] and Order XII Rule 6[10] of the CPC read with the Commercial Courts Act

[6] "the learned Commercial Court" hereinafter

[7] **10. Procedure when party fails to present written statement called for by Court**. – Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

[8] **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.

[9] **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.

[10] **6. Judgment on admissions**. –

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make

2015.

5. The impugned judgment

5.1 Re. application under Order XXXIX Rule 10 CPC

The learned Commercial Court has disposed of the application filed by the respondent under Order XXXIX Rule 10 of the CPC in the following terms:

> "17. As the relationship of landlord and tenant is not in dispute, the defendant cannot stop payment of rent/ user charges to the plaintiff by claiming that he has paid Rs. 20,49,843/- in cash. The defendant has specifically not denied this averment of the plaintiff that rent since March, 2018 has not been paid by him. Even otherwise, initially the rent was being paid in the account of the plaintiff and no further payment has been made in the account of the plaintiff and thus, the rent from March 2018 has not been paid by the defendant. The defendant is liable to pay the rent since March, 2018 for the use of tenanted premises of which he is enjoying the possession. However, the plaintiff in her application itself has stated that even if the plea of the defendant that he has paid an amount of Rs.20,49,843/- is taken as a triable issues then the said amount would also have been exhausted till February, 2021 and therefore, at least the defendant is liable to pay rent from March, 2021 and therefore, in view of the prayer made by the plaintiff in the application, it is directed that the defendant is liable to pay the arrears of rent/ user and occupational charges to the plaintiff as per clause 1 of the registered rent agreement dated 04.05.2016 i.e. from 01.03.2021 to 30.04.2021 @ Rs. 60,775/- per month, from 01.05.2021 till 30.04.2022 @ Rs. 63,814/- per month, from 01.05.2022 till 30.04.2023 @ Rs. 66,883/- per month, from 01.05.2023 till 30.04.2024 @ Rs. 70,227/- per month, from 01.05.2024 till 28.02.2025 @ Rs. 73,738/- and further to pay the future user and occupational charges w.e.f. 01.03.2025 till 30.04.2025 and further @73,738/- + 5% gtp, 01.05.2025, till disposal of the suit as per agreed terms i.e. clause 1 of the

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such order or give such judgment as it may think fit, having regard to such admissions.
(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

registered rent agreement, which shall be adjusted towards the amount of mesne profits on the conclusion of the inquiry under Order XX Rule 12 CPC. Accordingly, defendant is directed to pay the arrears of rent/ user and occupational charges of tenanted premises i.e. from 01.03.2021 to 30.04.2021 @ Rs. 60,775/- per month, from 01.0.2021 till 30.04.2022 @ Rs. 63,814/- per month and w.e.f. 01.05.2022 till 01.04.2023 @ Rs. 66,883/- per month, from 01.05.2023 till 01.04.2024 @ Rs. 70,227/- per month, from 01.05.2024 till 28.02.2025 @ Rs. 73,738/- within four weeks from date of the order and further to pay the future user and occupational charges w.e.f. 01.03.2025 on or before 7th day of each month till disposal of the suit as per clause 1 of the registered rent agreement dated 04.05.2016 to the plaintiff. Accordingly, application as filed on behalf of the plaintiff under Order XXXIX Rule 10 CPC stands disposed off."

5.2 Re. application under Order XII Rule 6 read with Order XIIIA CPC

Paras 18 to 37 of the impugned order deal with the application filed by the respondent under Order XII Rule 6 read with Order XIIIA of the CPC, as amended by the Commercial Courts Act. We deem it appropriate to reproduce Paras 26 to 36 of the impugned judgment, thus:

"26. Thus, in order to obtain a judgment based on admission, the following essentials are required to be proved:

i. The landlord- tenant relationship between the plaintiff and defendant

ii. The termination of the tenancy.
iii. Suit is not covered under Delhi Rent Control Act.

27. The plaintiff in para 2 of the plaint has stated that defendant was inducted as tenant in the suit premises vide registered rent agreement dated 04.05.2016. The said tenancy was for period of 3 years commencing from 01.05.2016 to 30.04.2019. The plaintiff has filed copy of the registered lease deed along with plaint.

28. Before proceeding further into the merits, it would be pertinent to refer to some relevant terms of the above said lease deed.

Clause No.	Particulars of the Clause
1	That the monthly regular rent is fixed Rs. 50,000/- (Rupees Fifty Thousand only) which will be paid by the tenant to the landlady in advance on or before every 1st to 7th day of each English calendar month AND the tenant shall pay the electricity charges and water charges "Excluding" rent.
3	That the period of tenancy shall/ already commence from 01.05.2016 to 30.04.2019 for 3 (three) years
6	That the tenant shall not make any alteration or addition in the said portion in any manner
12	That in case after the expiry of the agreement, if it is not renewed, the tenant will handover the vacant physical possession of the said premises to the landlady.
18	That if the tenant shall fail to pay the rent for any two months consecutively or default in any terms and condition of this rent deed then the owner shall have full right to terminate the tenancy of the said tenant and evict him from the said portion.
20	That although the tenancy is initially for a period of three years the rent shall be increased at the end of every year @ 5%.

29. Keeping in mind the above said clauses of the said lease deed, it is important to decide whether the defendant has made clear and unambiguous admissions or not. For this, it would be fruitful for the discussion to compare the averments of the plaint as well as that of the WS filed by the defendant.

S. No.	Averment of the plaint	Averment of the written statement
1.	Para 2- "the defendant is tenant of the plaintiff at the basement of the property bearing no. c-185, Vivek Vihar, Delhi- 110095 (hereinafter referred to as "tenanted premises") at monthly rent of Rs. 50,000/- (Rupees Fifty Thousand Only) vide registered Rent agreement dated 04.05.2016. As pr	Para 2 of reply on merits- "That the contents of the para no.2 are admitted to the extent that the defendant was inducted as a tenant in the suit property at monthly rent of Rs. 50,000/- per month vide agreement dated 04.05.2016 and the tenancy was for period of three years commencing from 01.05.2016 to 30.04.2019."

	clause no. 3 of the said rent agreement, the tenancy was for a period of three years commencing from 01.05.2016 to 30.04.2019…..”	
2.	Para 3- “That after execution of the above said rent agreement, the defendant was put in possession of the tenanted premises and the defendant used to deposit the monthly rent directly in the bank account of the plaintiff with HDFC Bank, C-192, Vivek Vihar, Delhi……”	Para 3 of the reply on merits- “That the contents of the para no. 3 of the suit are admitted to the extent that the defendant used to deposit the monthly rent directly in the bank account of the plaintiff with HDFC Bank, C-192, Vivek Vihar, Delhi….”

30. From the above said pleadings it is clear that the defendant has made clear and unambiguous admission with respect to his tenancy and the amount of rent agreed. The plaintiff has also filed the statement of account in which the defendant used to deposit the rent @ 50,000/- per month.

31. As far as the termination of tenancy is considered, it is stated that the plaintiff sent a legal notice dated 17.08.2018 terminating the tenancy of the defendant. however, the defendant has denied the service of the legal notice upon him. The plaintiff has filed the Receipt of A/D of the legal notice sent to the defendant reflecting the receiving of legal notice by Ms. Renu. Even if the submission of the defendant that he had not received the legal notice, is taken to be true, even then Section 111 of the Transfer of Property Act provides for Determination of the lease. It provides as follows:

> “Section 111: Determination of lease:
>
> A lease of immoveable property determines--
> (a) by efflux of the time limited thereby:
>
> (b) where such time is limited conditionally on the happening of some event--by the happening of such event:
>
> (c) where the interest of the lessor in the property

terminates on, or his power to dispose of the same extends only to, the happening of any event--by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(f) by implied surrender:

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter 1***; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; 2[or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in 3[any of these cases] the lessor or his transferee 4[gives notice in writing to] the lessee of his intention to determine the lease:

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."

32. It provides that the lease is determined by efflux of time as well. As per the lease deed, the period of lease was till 30.04.2019. Therefore, even otherwise, the defendant had no right to possess the tenanted premises after 30.04.2019.

33. Furthermore, it is also pertinent to note here that it is settled law that the filing of the suit also amounts to notice. In case titled ***Jeevan Diesel and Electricals Ltd Vs Jasbir Singh Chaddha***[11] RFA 179/ 2011, Hon'ble Delhi High Court, while relying on judgment of Hon'ble Apex Court in case titled ***Nopany Investments (P) Ltd Vs Santokh Singh (HUF)***[12]**,** held that even assuming that notice terminating the tenancy was not served upon the appellant, the tenancy stands terminated on filing the subject suit against the appellant / defendant. Thus, mere filing of suit of eviction amounts to the notice u/s 106 of Transfer of Property Act.

34. It is also clear from the averments of both the plaintiff and

[11] **182 (2011) DLT 402**
[12] **(2008) 2 SCC 728**

> the defendant that the present suit is not covered under Delhi Rent Control Act, as the rent is more than Rs. 3500/- per month. The plea of the defendant that the rent deed was mutually cancelled seems vague as the defendant has not filed any documentary proof in support of the same.
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> 35. In ***Surender J Sood Vs R.R. Bhandari***[13], RSA no. 106/2006, it was held that once the landlord and tenant relationship is established and tenancy has expired and the matter is not covered under DRC Act, 1995, decree of possession is the natural consequence.
>
> 36. Thus, on the basis of the unequivocal and clear admission of the defendant, the plaintiff is entitled to possession of the suit/tenanted property and the defendant is directed to remove forthwith all his belongings from the Basement of the suit premises/tenanted premises bearing No. C-185, Vivek Vihar, Delhi-110095 and to hand over vacant peaceful physical possession by handing over the keys of aforesaid premises to the plaintiff within four weeks. Decree sheet be prepared accordingly. Application is accordingly disposed off."

6. In para 38 of the impugned order, the learned Commercial Court has adjourned the application under Order XXXVIII Rule 5 of the CPC for adjudication, to a later date.

7. By the present appeal, the defendant before the learned Commercial Court assails the order of the learned Commercial Court.

8. We have heard Mr. Samrat Nigam, learned Senior Counsel for the appellant and Ms. Ritu Gupta, learned Counsel for the respondent.

9. Mr. Nigam restricted his submission to an offer to vacate the tenanted premises within 3 months. He also offered to pay user and occupation charges in respect of the tenanted premises for the said period. Learned Counsel for the respondent, however, submitted that

[13] **MANU/DE/2438/2008**

they were agreeable to Mr. Nigam's proposal provided his client would liquidate the user and occupation charges for the past, as confirmed by the learned Commercial Court in the impugned judgement.

10. Learned Counsel could not, ultimately, arrive at any mutually workable solution. Mr. Nigam, thereafter, left it to the Court to pass appropriate orders.

11. Though no submissions were advanced before us on the merits of the matter, we have, as a Court hearing the present appeal, examined the impugned judgment on merits.

Analysis

12. We proceed, therefore, to decide the present appeal on the basis of the averments contained in the appeal, and arguments advanced therein.

13. Submissions of appellant in the present appeal

13.1 We may divide the present appeal into three parts. The opening paragraphs 1 and 2 are merely formal paras. Paras 3 to 25 set out the facts, without referring to any arguments. The grounds on which the appeal seeks to assail the impugned judgment of the learned Commercial Court are contained in para 26 and in the Grounds which follow.

13.2 Para 26 of the appeal asserts that the learned Commercial Court, in directing compliance, with the impugned judgment within four weeks, breached the provisions of the Commercial Courts Act, 2015, which envisages 60 days for compliance.

13.3 Grounds A to D are general in nature, alleging that the impugned judgment has been passed in a "very hurried manner without application of judicial mind", misinterprets Order XIII A and Order XII Rule 6 of the CPC, is passed "in a mechanical and stereotyped manner against the mandate of the statute", "proceeds on conjectures and is clearly based on incorrect appreciation of the law and facts", reaches at conclusions which have "no nexus with the legal position" and fails to note that "there were triable issues in the said commercial suit which could only be decided after adducing evidence by both parties". These paragraphs do not, needless to say, invite any finding.

13.4 Ground F urges that the tenanted premises were residential property, let out by the Respondent as commercial, to be used as a gym and that, therefore, the dispute could not be treated as a commercial dispute within the meaning of the Commercial Courts Act. Ground G asserts that the application of the Respondent under Order XXXIX Rule 10 of the CPC, seeking arrears of rent, ought not to have been decided when issues were yet to be framed by the learned Commercial Court. It is further urged, in Ground H, that as there was no unequivocal, unqualified, clear and unambiguous admission on the part of the Appellant, the learned Commercial Court erred in allowing the respondent's application under Order XIII A and Order XII Rule 6

of the CPC. In doing so, it is submitted that the learned Commercial Court failed to notice that, in his written submission, the Appellant had categorically denied the claims of the Respondent.

13.5 No other substantial ground has been urged in the appeal.

14. On a dispassionate consideration of the Grounds urged in the appeal, *vis-a-vis* the observations and findings in the impugned judgment of the learned Commercial Court, we find no cause to interfere.

15. Re. decision with respect to application under Order XXXIX Rule 10 of the CPC

15.1 Order XXXIX Rule 10 applies where the subject matter of the suit is money or some other thing capable of delivery. In such a case, if a party to the suit admits that the money belongs to another party, or is due to another party, the Court may order deposit of the money in Court or delivery to the party to whom it is due, with or without security.

15.2 The learned commercial Court has, deciding the application of the Respondent under Order XXXIX Rule 10 of the CPC, placed reliance on the following paragraphs from the judgment of this Court in ***Kiran Kapoor v Ashok Kumar Sharma***[14] :

> 8. The first question which may, therefore, arise in a suit

[14] **65 (1997) DLT 662**

between a landlord and a tenant, as in the present case, whose tenancy, according to the landlord, stands terminated, is what is the subject matter of a suit of this kind. It is true that where the landlord also sues for possession, the subject matter of the suit is not only rent money and/or compensation for use and occupation but also possession of immoveable property. In such a suit where there is a dispute as to the termination of the tenancy the finding of the Court may result either in holding that the tenancy is not terminated or that the tenancy is terminated, depending upon the finding of the question of termination of tenancy, rent will be due from the tenant to the landlord or mesne profits subsequent to the termination of tenancy. Mesne profits may not be synonymous or equal to the rent which is payable but it is difficult to presume that the same would be in any way less than the rent which was agreed to be paid. Where the same premises are continued in the occupation of the tenant, in the same situation, as in the present case, then it is almost impossible that the mesne profits could be less than the agreed rent. It will thus be seen that the determination of the contractual status or the rights of the parties would merely have the effect of the change of the label relating to the amount recoverable by a landlord from his tenant or ex- tenant, as the case may be. The character and the nature of that right remains the same. Facts giving rise to that right and the circumstances also remain the same. During the contractual status of such occupier, the law prescribes it as rent and subsequent to the termination of the contractual relationship it is compensation for use and occupation. The fundamental character of the claim and the circumstances giving rise to such a claim do not however undergo any change and continue to be the same. In a suit, therefore, by a landlord against his tenant, the subject matter of the suit, where he sues for delivery of possession and the claim relating to the use and occupation of that property, may be as a tenant in his contractual capacity or on account of his being in fact in his possession and occupation, is the very property itself and also the money, recoverable for use and occupation thereof, be it labelled as rent, compensation, or mesne profits, as the case may be.

9. In view of the above discussion, in my opinion, it cannot be disputed that both these things, namely, right to recover money for use and occupation as well as rent, where it is due or claimed, is capable of delivery. It also cannot be disputed and denied that where a tenant admits that he was a tenant, he admits his liability to pay for his use and occupation of that property. He may dispute his liability to deliver the property where he claims that his tenancy has not been validly and legally terminated. But it cannot be said that such an amount, call it either rent or call it compensation for use and occupation, is not due to the landlord. In other words, therefore, in terms of the provisions of Rule 10, in a suit between a

landlord and a tenant, the subject matter of the suit is money claim for use and occupation of property before the termination of the contract and after the termination of the contract which the tenant does not dispute belongs to the landlord. It is quite clear that such a situation may not be available where a suit is brought against a trespasser. However, in the present case this Court is not concerned with such cases in as much as the question before this Court is whether there is no provision in the CPC at an interim stage to direct delivery of money or payment or deposit of any sum in the Court which is admittedly due to another party and is the subject matter of that suit. Properly speaking and upon a natural and a liberal construction of the words occurring in Rule 10, the "subject matter of a suit" between a landlord and a tenant is money and immoveable property. Though immoveable property may not be a 'thing' 'capable of delivery' the money on account of the use and occupation of the property, admittedly, belonging to another is undoubtedly one such and, therefore, in my opinion, the Court decidedly has a power in a given case to direct such party to deposit it in the Court or to deliver it to the landlord. It would be, therefore, wrong to say that there is no provision in CPC by which such an order could be passed. Where a defendant admits that he is a tenant, he impliedly admits that the property belongs to the landlord (plaintiff) and money for use and occupation thereof is due to him. He may dispute the nomenclature of that due which he is liable to pay. He may dispute the quantum. But the principle of liability cannot be denied. If the principle of liability is not denied then it is obvious that the Court has the power to decide and direct the extent of the quantum which may be ordered to be deposited. Thus, in my opinion, in exercise of powers under Rule 10 Order XXXIX CPC, a tenant can, therefore, always be directed, subject to the other circumstances and conditions, to deposit rent due or becoming due from him to his landlord during the pendency of a suit call it either compensation for use and occupation or rent, depending upon whether the tenancy is or is not terminated. Order XXXIX Rule 10 CPC by itself does not impose any conditions or limitations upon the exercise of that power. It follows, therefore, that to prevent the abuse of the process of the Court and in order to subserve the ends of justice, the powers conferred upon a Court under Order XXXIX Rule 10 CPC can be invoked by any party. The question whether the Court will exercise that power in his favour is entirely a different question. But it cannot be denied that such a power exists and if the power exists then there is jurisdiction to pass an order of the kind indicated above. This Court in earlier decisions in case ***Brig. S.S. Puri (AVSM) (Retd.) v R. Chandershekar***[15] , ***Smt. Adarsh Chugh v Smt. Jaya Dixit Paralata***[16] and ***Surjit Singh v H.N.***

[15] **(53) 1994 DLT 186**
[16] **1996 II AD (Delhi) 560**

Pahilaj(Decd.)[17] has consistently taken the above view with regard to the scope of Order XXXIX Rule 10 CPC and I see no reason to deviate from the same in the present proceedings.

10. After having discussed the ambit and scope of Order XXXIX Rule 10 CPC I may also advert to the provisions of Order XII CPC, permitting judgments on admission. The principle underlying the provisions of Order XII CPC, empowering the Courts to make orders on the basis of admitted parts of the claim, can be extended even to a case where a suit is brought against a tenant, who is in occupation of the premises, for possession and a claim for past and future mesne profit. In my opinion, it is implicit in the circumstances that the liability on the part of the person, in occupation, for payment on account of use and occupation of the premises, is admitted. If it is admitted, then the form which the order will take directing him to make that payment will vary and may depend upon the circumstances and the situation. It may be an amount of 'rent' claimed as due and admitted. It may be an amount equivalent to rent where the claim is for 'mesne profits' before the institution of the suit and also subsequent to the institution of a suit until the decision of the suit and delivery of property. The nature of the claim and the label with which it would be described would not change the character or the principle, governing the orders in that behalf. On the basis of the principle as contained in Order XII CPC, empowering the Courts to pass orders and decrees on admission, it is a mere extension of that principle to make an order relating to delivery of an amount claimed as due prior to the institution of the suit, pending trial and decision of the suit

15.3 We are entirely in agreement with the exposition of the law in ***Kiran Kapoor***. It is correctly held, in the said decision, that

(i) in a suit by a landlord against the tenant, in which the landlord claims delivery of possession as well as charges towards use and occupation of the suit property, the "subject matter of the suit" would be the property, *as well as* the money claimed to be recoverable from the tenant for use and occupation thereof,

(ii) where a tenant admits the fact of tenancy, he *ipso facto* admits his liability to pay for continued use and occupation of

[17] **(40) 1997 DRJ 93**

the tenanted premises,

(iii) even if the tenant disputes his liability to deliver the property, for example on the ground that there was no legal and valid termination of tenancy, he cannot dispute the fact that use and occupation charges are due to the landlord,

(iv) in terms of Order XXXIX Rule 10 of the CPC, therefore, in a suit between a landlord and tenant, the subject matter of the suit includes the money claimed for use and occupation of the tenanted premises prior to termination of tenancy, as well as thereafter, and

(v) the Court was well within its power, under Order XXXIX Rule 10, therefore, to direct the tenant to deposit the user and occupation charges in Court, once the fact of tenancy stands admitted.

15.4 Viewed thus, the findings of the learned Commercial Court, while allowing the respondent's application under Order XXXIX Rule 10 of the CPC, are unexceptionable. In the written statement filed by way of response to the plaint of the respondent, the appellant admitted the execution of the registered lease deed dated 4 May 2016, whereunder the tenanted premises were let out by the respondent to the appellant for commercial purposes for three years at a monthly rent of ₹ 50,000/–, liable to increase @ 5% per annum.

15.5 The appellant had, before the learned Commercial Court, sought to submit that he had paid ₹ 20,49,843/–, to the Respondent, in cash, towards rent/user charges in respect of the tenanted premises. The respondent pointed out that, even if this fact were treated to be correct,

the amount of ₹ 20,49,843/- would liquidate the rent/user and occupation charges only till February 2021 and that, therefore, the appellant remained liable to pay user and occupation charges with effect from 1 March 2021.

15.6 The learned Commercial Court has, in para 17 of the impugned judgment, merely directed the appellant to pay the user and occupation charges, worked out on the basis of the admitted rent and admitted rate of yearly escalation, for the period after 1 March 2021.

15.7 There is no challenge, in the present appeal, to the correctness of the findings in para 17 of the impugned judgment. No submissions in that regard were advanced before us, during oral arguments either, by learned Senior Counsel.

15.8 We, therefore, endorse and uphold the decision of the learned Commercial Court on the application of the Respondent under Order XXXIX Rule 10 of the CPC.

16. Re. impugned decision on application of respondent under Order XIII A read with Order XII Rule 6 CPC

16.1 Adverting, now, to the observation, findings and decision of the learned Commercial Court on the respondent's application under Order XIII A read with Order XII Rule 6 of the CPC, no submissions were advanced in that regard, either, before us. We have noted the Grounds urged in the appeal filed by the appellant, and there is no substantial ground on the basis of which the findings of the learned

Commercial Court, with respect to the respondent's application, can be said to have been successfully dislodged.

16.2 In law, the issue stands concluded, on merits, by the judgment of the Supreme Court in ***Payal Vision Ltd. v Radhika Choudhary***[18]. It has been unequivocally held, in the said decision, that, in a suit by a landlord against a tenant, for recovery of the tenanted premises, unprotected by the provisions of the Delhi Rent Control Act 1958[19], all that is required to be established, for judgment on admissions under Order XII Rule 6, is the existence of relationship of landlord and tenant and termination of tenancy either by lapse of time or under Section 106 of the Transfer of Property Act. The learned Commercial Court has correctly held that, therefore, to decree the suit under Order XII Rule 6, insofar as the claim for recovery of possession of the tenanted premises is concerned, the Court is only required to satisfy itself that there is admission of the existence of relationship of landlord and tenant between the parties, and that the tenancy has been terminated, where the tenancy is not protected by the DRC Act.

16.3 The Appellant admitted, without equivocation, the existence of the relationship of landlord and tenant between the respondent and the appellant and the execution of a registered lease deed between them.

16.4 Though the appellant had disputed the factum of service of the notice terminating tenancy, the learned Commercial Court has noted the fact that proof of service of notice by registered AD was on record

[18] **(2012) 11 SCC 405**
[19] "the DRC Act" hereinafter

and also invoked the law laid down by the Supreme Court in ***Nopany Investments Pvt Ltd,*** as followed by this Court in ***Jeevan Diesels & Electricals***.

Conclusion

17. The requisite ingredients having been thus satisfied, no exception can be taken to the impugned decision of the learned Commercial Court.

18. The Appellant has not, therefore, made out a case justifying issuance of notice in the present appeal.

19. The appeal is, accordingly, dismissed *in limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 2, 2025
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Click here to check corrigendum, if any