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

Date of decision: 29th April, 2025

+ **RFA(COMM) 238/2025 & CM APPLs. 25352/2025, 25353/2025 & 25354/2025**

MEENAKSHI ARYA

.....Appellant

Through: Mr. Daleep Dhyani, Adv. with
Appellant in person. (M: 9811070721)

versus

SHALINI RAJPAL & ANR.

.....Respondents

Through: Mr. Ajay Gupta, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.25353-54/2025 (for exemption)

2. Allowed, subject to all just exceptions. Applications are disposed of.

RFA(COMM) 238/2025 & CM APPL.25352/2025 (for stay)

3. The present first appeal has been filed by the Appellant- Meenakshi Arya, *inter alia*, challenging the impugned judgment and decree dated 22nd March, 2025 passed in *CS (Comm) No. 523/2024* titled '*Shalini Rajpal & Anr. vs. Meenakshi Arya*' by Ld. District Judge, Commercial Court-04, West District Tis Hazari Court, Delhi.

4. The appeal arises out of the rent agreement dated 30th September, 2019 entered into between the parties in respect of the property bearing LIG Flat No.164-A, Ground Floor, Housing Estate at Rajouri Garden, New Delhi



(hereinafter, 'property'). The tenant – Ms. Meenakshi Arya *i.e.* Appellant is running a jewellery shop in the said property. In terms of the rent agreement, the monthly rent was fixed at Rs.85,000/- and, thereafter, the same was to be increased. Some of the relevant terms and conditions contained in the Rent Agreement are set out below:

“1. That the above said premises has been let out by the landlord to the tenant on the above said fixed and agreed monthly rent of Rs.85,000/- per month and the tenant shall not challenge the same at any time in any circumstances in any court of law,

2. That the tenant will use the said premises for commercial purpose only and in case any liability raise regarding the said purpose, he will be responsible for the same.

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4. That the tenancy has been commenced from 20.10.2019, for the period of seven years and the rent will be increased @ 5% after expiry of every year. The Tenant shall deduct the TDS if applicable shall also be charged. If TDS is deducted by the tenant, then he shall provide TDS certificate to the Landlord.

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*13. That there is a lock-in-period- of two years w.e.f. 20.10.2019 for both the parties and the second party shall not vacate the premise before the period of two years. If second party will vacate the said premises before the expiry of lock-in-period *i.e.* Two years then the remaining rent will be paid by the tenant to the landlord.*

14. That if the tenant wants to vacate the said premises after the expiry of lock-in-period, then he will give two month prior notice to the landlord.

15. That in case the Landlord wants to get the said premises vacated after the expiry of Lock-in-period, then he will give two month prior notice to the tenant.

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18. *That if the premises are not vacated after the expiry of the tenancy period, the tenant shall be treated as unauthorised occupant of the premises and he/she shall pay Rs.5,000/- (Rupees Five Thousand Only) per day as compensation/damage charge for the unauthorised occupancy to the owner/s of the premises apart from monthly rent.*

5. The suit *i.e. CS (Comm) No. 523/2024* was filed as a commercial suit before the District Judge (Commercial), Tis Hazari Courts. In the said suit, the written statement was also filed and an application under Order XIII A of the Code of Civil Procedure, 1908 seeking summary judgment was also filed. In the said application, the Commercial Court has decreed the suit in the following terms:

“1. A decree of possession in respect of suit property i.e. LIG Flat No. 164-A, on Ground Floor, situated in the layout of plan of housing estate at Rajouri Garden, New Delhi.

2. A decree for payment of Rs. 5000/- per day, apart from monthly rent, as compensation/damages for illegal use/occupation/possession of the above suit property for the period from the date of filing of the suit till actual handing over of the possession.

3. A decree of permanent injunction thereby restraining the defendant, her agents, employees and associates etc. from creating third party interest in any manner, in respect of the suit property described above.”

6. The reasoning given by the Id. Commercial Court is as under:

“11. Coming to the facts of the present case, it is not disputed by the defendant that the suit property was leased out to her by the plaintiffs vide registered lease deed dated 30.09.2019. As per clause 4 of the lease deed, the tenancy was for a period of seven years



starting from 20.10.2019. As per clause 13 of the said lease deed, there was a lock in period of two years w.e.f. 20.10.2019. Further, as per clause 15, in case the landlord wanted to get the premises vacated after the expiry of lock in period, he would give a two months prior notice to the tenant/defendant. As per clause 18, if the premises is not vacated after the expiry of tenancy period, the tenant shall be treated as unauthorized occupant and shall pay Rs. 5000/- per day as compensation/damages for the unauthorized-occupation to the owners, apart from monthly rent.

12. There is no dispute about the existence of above terms and conditions in the lease agreement dated 30.09.2019. It is also not disputed that the lock in period of two years has already expired long ago. It can also not be denied that the landlord had a right to terminate the lease after expiry of lock in period and prior to completion of seven years. The contents of lease deed dated 30.09.2019 would make it clear that there was no pre-condition for invoking the clause 15 of the lease deed which empowers the landlord to get the property vacated by giving two months prior notice. It is nowhere mentioned in the lease deed that the landlord can terminate the tenancy only when there is any default on part of the tenant. The plaintiffs/landlords have already served notice dated 22.03.2024 whereby the defendant was called upon to handover the peaceful and vacant possession of the tenanted premises to the plaintiffs within two months of the receipt of notice. The said notice was admittedly served upon the defendant on 27.03.2024 as mentioned in the reply dated NIL given by the defendant to the said notice.

13. The only explanation/defense given by the defendant is that there was no default on part of the defendant, so, the tenancy could not have been terminated in the given manner. In this regard, it has to be kept in mind that there is no stipulation in the lease deed dated 30.09.2019 that any reason was to be given by the



plaintiffs/landlord before terminating the tenancy. The only requirement to terminate the tenancy was to give two months prior notice as per clause 15, which has been duly complied by the plaintiffs.

14. Further, so far as the quantum of damages is concerned, there is a clear term under clause 18 of the lease deed dated 30.09.2019 that if the premises is not vacated after the expiry of tenancy period, the tenant shall be treated as an unauthorized occupant and she shall be liable to pay Rs.5000/- per day besides the monthly rent. Once the tenancy was terminated by the plaintiffs by way of notice dated 22.03.2024, the clause 18 of the lease agreement has come into force. It is submitted on behalf of the defendant that clause 18 talks about the period after expiry of tenancy period which was actually seven years which has not yet expired, so, the said clause is not applicable. Such a submission on behalf of defendant is found to be totally misplaced as the tenancy period is taken to be expired on completion of two months from the date of receiving the notice dated 22.03.2024 by the defendant. The clause 4, 13, 15 & 18 of the lease agreement dated 30.09.2019 are to be considered simultaneously and not in isolation.

15. In view of the facts admitted by the defendant in written statement, it is clear that all the basic averment made in the plaint have been admitted effectively. The explanation given in the reply to legal notice and in the written statement is of no force. There is actually no real prospect of the defendant defending the suit successfully.

16. The objection pertaining to non-compliance of Section 12-A of the Commercial Courts Act is also not of much force as the plaintiff has sought the relief of permanent injunction against third party interest and an application u/o 39 R 1 & 2 CPC has also been filed. Vide order dated 02.07.2024, summons of the suit and notice of the interim application were issued to the defendant. So, this objection is not sustainable.



17. Considering the overall facts and circumstances of the case in light of law laid down by the Hon'ble superior courts, I am of the view that it is a fit case where a summary judgment in terms of Order XIII-A CPC as applicable to commercial disputes, deserves to be passed in favour of plaintiffs and against the defendant."

7. As can be seen from the above order, the Id. Commercial Court has come to the conclusion that in terms of clauses 4 and 13 of the rent agreement, there was a lock-in period. As per clause 15 of the rent agreement, if the landlord wanted to get the premises vacated, after the lock-in period, he could give two months' prior notice to the tenant. Therefore, the Id. Commercial Court came to the conclusion that though the full term of lease was 7 years, with two months' notice after the lock-in period, either party could terminate the tenancy. In view thereof, the decree of possession has been passed in favour of the Respondent.

8. However, thereafter the Id. Commercial Court had perused clause 18 of the rent agreement and held that after termination, if the tenant continues to be in possession of the property, the tenant would be liable to pay a sum of Rs.5,000/- per day besides the monthly rent. In view thereof, the decree has been passed by the Id. Commercial Court by which Rs.5,000/- per day from the filing of the suit till handing over of the possession of the property shall also be paid by the tenant *i.e.* Appellant to the landlord *i.e.* Respondent.

9. Submissions have been addressed by Mr. Daleep Dhyani, Id. Counsel for the Appellant and Mr. Ajay Gupta, Id. Counsel for the Respondent.

10. The Court has considered the matter. After hearing Counsels for the parties, it appears that the matter can be amicably resolved. Some proposals



were put forth. The Appellant is also present in Court. She submits that if the damages' part is waived, she is willing to hand over the physical, vacant and peaceful possession of the property by on or before 31st July, 2025, subject to paying the normal rent in terms of rent agreement.

11. Ld. Counsel for the Respondent, however, submits that despite the termination, the tenant did not vacate and damages of Rs.5,000/- per day is valid.

12. The Court has perused clause 18 of the rent agreement. In the opinion of this Court, the damages would come into effect only after the expiry of tenancy period, which in this case would be 7 years in terms of the Rent Agreement.

13. Thus, the damages per day from the date of filing of the suit may not be sustainable.

14. In view of this observation of the Court, the Respondent is agreeable that the tenant may pay a sum of Rs.1,25,000/- as monthly rent for the remaining period after the decree and clear all the past dues, if any as well, then the tenant may vacate the premises by 31st July, 2025.

15. In view of the above submissions made, the Appeal is disposed of as settled in the following terms:

- (i) The Tenant/Appellant undertakes to hand over the physical vacant and peaceful possession of the property by 31st July, 2025.
- (ii) For the said period from the date of the decree, i.e., for the months of April, May, June and July, 2025, the tenant shall pay a sum of Rs.1,25,000/- (*minus Tax Deducted at Source*) as monthly rent. Remaining charges of electricity, water and other authorities shall also be cleared by the tenant/Appellant up to date.



(iii) No damage shall be caused to the suit property and the property shall be handed over on *as is where is* basis on or before 31st July, 2025.

16. Subject to the above, the decree for damages of Rs.5,000/- per day, as directed by the Id. Commercial Court, shall stand set aside.

17. An undertaking shall be filed by the Appellant within a period of two weeks with advance copy to the Id. Counsel for the Respondent.

18. Since the dispute has been amicably resolved, the Respondent is permitted to obtain refund of the court fee.

19. The appeal, along with all pending applications, is disposed of as settled in the above terms.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 29, 2025/dk/ck