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

% *Date of Decision: 21.04.2025*

+ **FAO (COMM) 209/2024, CM APPL. 61580/2024 & CM APPL. 61582/2024**

VINOD GARG

.....Appellant

Through: Mr. Chandan Mishra, Mr. Rajesh Kr. Pandit, Mr. Satinder Tiwari, Advocates.

versus

KAMLESH MEHTA (SINCE DECEASED) THROUGH
HER LRS.

.....Respondents

Through: Mr. Kunal Srivastava, Advocate for
LRs of Respondent.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J.

1. The appellant [**plaintiff**] has filed the present appeal under Section 13 of the Commercial Courts Act, 2015, *inter alia*, impugning an order dated 23.04.2024 [**impugned order**] passed by the learned Commercial Court whereby the plaintiff's application under Order IX Rule 9 of the Code of Civil Procedure, 1908 [**CPC**] for restoration of the suit preferred by the plaintiff [being CS(COMM) 66/2020] captioned *Vinod Garg v. Kamlesh Mehta*, was dismissed.

2. The plaintiff had filed the afore-mentioned suit seeking a decree for recovery of ₹14,30,000/- along with interest as well as a decree for damages quantified at ₹36,54,398/-. The respondent [**defendant**] had leased a property described as entire ground floor of built up property bearing



address E-127, Amar Colony, Lajpat Nagar-IV, New Delhi [**suit property**], admeasuring approximately 900 sq.ft. to the plaintiff. The plaintiff claims that the term of the lease was nine years commencing from 01.07.2017 to 30.06.2026 and the suit property was intended to be used for commercial purpose for running a café. The plaintiff paid an amount of ₹4,40,000/- as security deposit and agreed to pay the rent of ₹1,10,000/- per month with periodic escalation. The plaintiff claimed that he had paid rent for the period from 01.01.2017 to 01.03.2018 (nine months) aggregating to ₹9,90,000/- at a monthly rent of ₹1,10,000/-. Additionally, the plaintiff claims that he had spent a sum of ₹36,54,398/- for erecting temporary partition, installing counters, fixtures, screens, shelves, racks, air-conditioners, light, sanitary installations etc. for the purpose of running a café from the suit property. The plaintiff claimed that in August, 2017, certain officials of the Municipal Corporation of Delhi [**MCD**] visited him and informed him that it was not permissible to use the suit property for commercial purpose. The plaintiff claimed that he had called upon the defendant to furnish the necessary permissions, however, the defendant failed to do so. The plaintiff also claimed that he had stopped paying rent for the suit property and called upon the defendant to return the amounts paid, but the defendant did not repay the same. The plaintiff claimed that since the defendant had no permission to lease the suit property for commercial purpose, he was entitled to refund of the security deposit and rental paid as well as for damages being the amounts spent for renovation and for installing the fittings and fixtures.

3. The order sheets, placed on record, indicate that the proceedings of the suit had been adjourned on multiple occasions at the instance of the plaintiff.



4. The plaintiff had instituted the aforementioned suit on 28.01.2020 and summons were issued by the learned Commercial Court on 24.02.2020. Thereafter, none had appeared on behalf of the plaintiff on the date fixed, that is, 21.03.2020 and the proceedings were adjourned on account of the advisory issued by this court in view of the outbreak of COVID-19.

5. The summons issued were not served and therefore, on 07.12.2020, fresh service was directed by the learned Commercial Court. The defendant (Shri Kamlesh Mehta) was served on 12.03.2021. Thereafter, on 31.08.2021, the Court was informed that the defendant had expired on 21.07.2021. In view of the same, the plaintiff sought and was granted an adjournment for taking appropriate steps.

6. The suit was listed before the learned Commercial Court on 29.03.2022. On this occasion, once again the plaintiff sought an adjournment for filing an appropriate application under Order XXII Rule 4 of the CPC to bring the legal heirs of the deceased defendant on record.

7. The suit was again listed before the learned Commercial Court on 21.07.2022 and yet again, a request was made on behalf of the plaintiff for further time to file an application under Order XXII Rule 4 of CPC. However, thereafter the plaintiff neither filed any such application nor appeared before the learned Commercial Court on the next date of hearing, which was fixed on 15.12.2022.

8. In the absence of any representation on behalf of the plaintiff, the learned Commercial Court adjourned the proceedings to 15.02.2023. However, since there was no representation on behalf of the plaintiff on the said date of hearing as well, the suit was dismissed for non-prosecution.

9. It is material to note that till date, no steps have been taken by the



plaintiff to bring the legal heirs of the original defendant on record. Thus, in any event, the suit stood abated.

10. The plaintiff did not immediately file an appeal against the impugned order but instead filed an application under Order IX Rule 9 of CPC on 06.03.2024, that is, more than a year after the suit was dismissed and almost two and a half years after the plaintiff was informed that the defendant had expired. The only ground, urged for non-appearance in the suit and for delay in filing the application for restoration of the suit was that the plaintiff's counsel had not kept him informed about the progress of the suit. The learned Commercial Court dismissed the said application by the impugned order.

11. Thereafter, the plaintiff filed the present appeal.

12. There is also a delay of 109 days in re-filing the present appeal and the only explanation furnished by the plaintiff for the delay in re-filing is that "the counsel for the appellant is busy in his some personal work."

13. It is clear from the above that there has been inordinate delay at every step and, indisputably, the plaintiff has been less than diligent in pursuing his remedy.

14. We are unable to accept that any credible reason has been furnished by the plaintiff for not pursuing the suit instituted by him belatedly. We also concur with the learned Commercial Court that the plaintiff has failed to explain that he was prevented from filing an application under Order IX Rule 9 of the CPC on account of any sufficient cause within a reasonable time. The Parliament had enacted the Commercial Courts Act, 2015 with the object of expeditious adjudication of commercial disputes and it would not be apposite that in matters relating to commercial disputes to



countenance inordinate delays caused on account of casual and negligent approach in pursuing the proceedings in availing of statutory remedies. In the given facts and circumstances of the case, we are unable to find any fault in the decision of the learned Commercial Court in rejecting the plaintiff's application for restoration of the suit.

15. The appeal is accordingly dismissed. All the pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 21, 2025

sms/gsr