

Raj Kumar Gupta Huf vs N Square Hospitality Llp & Ors. on 26 March, 2025

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of D

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FAO (COMM) 189/2024

RAJ KUMAR GUPTA HUF

.....Appellant

Through:Mr Shiv Chopra, Mr Sharvan Pandey

Ms Surbhi Arora and Mr Siddharth

Arora, Advocates.

Versus

N SQUARE HOSPITALITY LLP & ORS.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (Oral)

1. The appellant [plaintiff] has filed the present appeal, inter alia, impugning an order dated 12.07.2024 [impugned order] passed by the learned Commercial Court in CS (COMM.) No. 271/2023 captioned Raj Kumar Gupta HUF v. M/s. N-Squire Hospitality LLP & Ors., whereby the plaintiff's application seeking deposit of arrears of rent as well as mesne profits and future rent in respect of the property described as "Third Floor of building bearing No.F-19, Preet Vihar, Delhi-110092" [suit property] was declined on the ground that the respondents [defendants] have not filed their written statement.

2. The plaintiff (appellant), a Hindu Undivided Family [HUF], had filed the said commercial suit [CS (COMM.) No. 271/2023], inter alia, praying as under:

"a. Pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to hand over peaceful and vacant possession of property bearing number F-19, Third Floor, Preet Vihar admeasuring approximately 3,000 square feet to the Plaintiff;

b. Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendants directing the Defendants not to create any third-party rights in property number F-19, Third Floor, Preet Vihar admeasuring approximately 3,000 square feet;

c. Pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to pay the Plaintiff Rs.18,99,007/- (Rupees Eighteen Lakhs Ninety-Nine Thousand and Seven) being the total outstanding rent from 16th September 2022 to 21st April 2023 along with interest and GST;

d. Pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to pay the Plaintiff interest at the rate of 1.5% per month on Rs.14,34,000 (Rupees Fourteen Lakhs and Thirty Four Thousand) being the outstanding rent owed to the Plaintiff from 16th September 2022 to 21st April 2023 from 30.09.2023 till realization;

e. Pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to pay the Plaintiff damages of Rs.23,63,334/- (Rupees Twenty-Three Lakhs Sixty-Three Thousand, Three Hundred and Thirty-Four) for not handing over vacant possession of F-19, Third Floor, Preet Vihar from 21.04.2023 to 30.09.2023; f. Pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to pay the Plaintiff Rs.4,10,000/- (Rupees Four Lakhs and Ten Thousand) per month from 30.09.2023 till date of handing over of possession as damages for not handing over vacant possession of the suit property;

g. Pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to pay costs of the present proceedings to the Plaintiff;"

3. It is the plaintiff's case that he is the owner of the suit property and had leased the suit property to respondent no.1 [the defendant], a limited liability partnership, through its constituent partners respondent nos.2 and 3 in terms of a registered lease deed dated 08.07.2022 [the lease deed]. In terms of the lease deed, the suit property was leased to the defendant for a period of nine years commencing from 16.08.2022 for running a restaurant in the name and style of Bigg Boss Cafe & Restaurant. It was agreed between the parties that the initial term of the lease would be thirty-six [36] months, which would also be considered as the Lock-in period. It was agreed that the monthly lease rent would be 2,00,000/- plus GST for the first year and would be increased by 5% each year. The term of the lease would expire on 15.08.2031.

4. We consider it apposite to set out the relevant terms of the lease deed. The same are reproduced below:

"1. TERMS OF THE LEASE:

a) The Lessor has agreed to let out, and the lessee has agreed to take on lease the said area measuring 3000 Sq. Fts. Approx. of the said Third Floor upto ceiling level of Property No.F-19, situated at Preet Vihar, Delhi-110092, together with the Rights to use common entrance, passages, staircase and other common facilities provided therein the said building for a period of 9 (nine) years, which shall commence with effect from 01.07.2022 (rent free fit-

out period shall be given for 45 days i.e. 01.07.2022 to 15.08.2022) hereinafter referred to as fit-out period. However, it has been agreed that the liability of the Lessee to pay rent shall commence w.e.f. 16.08.2022.

b) The lease can be renewed for another term beyond 9 (nine) years, with the mutual consent of both the parties on the mutually agreed terms and conditions, provided the Lessee gives to the Lessor 3 (months) advance notice in writing, of its intention to renew the same.

c) It is also agreed between the Parties that the Demised Premises is leased by the Lessor to the Lessee on "as is where is" basis and upon the execution of this Lease Deed, the Lessee shall carry out the fit-outs of the Demised Premises, at its own cost and expenses, to the exclusion of the lessor. It is agreed that the Lessee shall not claim any amount, on any account, whatsoever. The premises shall be used by the Lessee exclusively for running a restaurant under their Limited Liability Partnership Firm in the name of "BIGG BOSS CAFÉ AND RESTAURANT".

d) It is agreed that the initial 36 (thirty-six) months i.e. 3 (three years) of the agreed term shall constitute as the 'Lock-in-Period'. In case, the Lessee decides to terminate the lease within the lock-in period, the Lessee shall be liable to pay the agreed rent for the balance period of the lock-in-period plus security of the Lessee will be forfeited by the Lessor and the Lessee shall not have any kind of objection for the same in any manner whatsoever. Further, the Lessee, even if it wants to terminate the lease after the expiry of the lock-in period, can do so only after giving the Lessee, e (three) months' notice in writing. And if the Lessor wants to terminate this lease deed after the completion of lock-in period then the Lessor will also be liable to serve 3 month's notice in advance to the Lessee.

2. RENT, SECURITY DEPOSIT & MAINTENANCE CHARGES:

(a) It is agreed that the monthly lease rent payable during the initial 1 (First) year starting w.e.f. 16.08.2022 shall be Rs.

2,00,000/- (Rupees Two Lakh only), for the Demised Premises, plus the GST and further any other taxes/ levies as may be applicable during the subsistence of the lease. And a sum of Rs.2,16,000/- has been paid as advance lease rent vide Chq. No. 001018, Dated 16.08.2022, drawn on ICICI Bank, Yamuna Vihar, Delhi.

(b) It is further agreed that the monthly rent shall, thereafter, stand increased by 5% (Five percent) of the last rent paid, after the completion of every year, plus GST / applicable taxes / levies. Accordingly, the monthly rent payable during the term of the lease shall be as under:

"Term of the Lease	Monthly Rent Paya
16.08.2022 to 15.08.2023	Rs.2,00,000/- + G
16.08.2023 to 15.08.2024	Rs.2,10,000/- + G
16.08.2024 to 15.08.2025	Rs.2,20,500/- + G

16.08.2025 to 15.08.2026	Rs.2,31,525/- + GS
16.08.2026 to 15.08.2027	Rs.2,43,101/- + GS
16.08.2027 to 15.08.2028	Rs.2,55,256/- + GS
16.08.2028 to 15.08.2029	Rs.2,68,019/- + GS
16.08.2029 to 15.08.2030	Rs.2,81,420/- + GS
16.08.2030 to 15.08.2031	Rs.2,95,491/- + GS

(c) That notwithstanding the fact that the term of lease is agreed to have been commenced with effect from 01.07.2022 (fit-out period of 45 days given i.e. upto 15.08.2022), the liability to pay rent shall commence from 16.08.2022 (the paid Rent Commencement date).

(d) That the lessee shall pay the agreed monthly rent, in advance, by 25th day of every month, regularly and punctually. In case of delay in payment of rent, the lessee shall be liable to pay interest @ 1.5% Per Month on the amount of unpaid rent for the delayed period, till payment in full of the rent due. Notwithstanding, the payment of agreed Interest on the unpaid amount of rent for the delayed period, the default in payment of rent regularly and in time, shall nevertheless constitute a breach of an essential term of the lease, and the lessee shall be liable to the consequences resulting from such default as provided in this Lease deed.

XXXX XXXX XXXX

(g) The lessee has paid the security deposit amount of Rs.6,00,000/- (Rupees Six Lakh Only) equivalent to 3 (three) months' rent to the Lessor through Two RTGS, first RTGS for Rs.5,00,000/- ICICR42022070600510326, Dated 06.07.2022, second NEFT for Rs.1,00,000/- vide NEFT UTR No. 000125156305, Dated 07.07.2022, both issued from ICICI Bank. Yamuna Vihar, Delhi.

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8. NOTICE:

(a) That any notice in terms of this Agreement by either Party will be in writing and will be given at their addresses stated herein.

9. TERMINATION:

(a) Without prejudice to the rights and obligations of the respective parties hereto as herein above provided, including the agreed term/earlier determination of lease, it is agreed that the Lessee, after the expiry of the lock-in period, may terminate the lease at any time during its subsistence, by serving upon the Lessor a 3 (three) months notice in writing, served either personally or through registered/ speed post a/d, at the address as provided herein above. It Is further reiterated that during the lock-in period, the lease cannot be terminated by the lessee.

It is expressly agreed between the Parties that in the case of nonpayment of Lease Rent for a period of 2 (two) consecutive months and/or such default is made on 2 (two) occasions in any financial year during the tenure of the lease, including the lock-in period, the Lessor shall give 15 days written notice to the Lessee requiring the Lessee to pay the outstanding rent within the notice period being the curing period. Even if during the curing period the Lessee does not pay the outstanding Lease Rent, Lessors would have the right to terminate the lease immediately on the expiry of the said curing period and the lessee shall hand over the physical vacant possession of the Demised Premises to the Lessor, without any delay or demur.

XXXX XXXX XXXX

(b) The Lease can also be terminated by the Lessor on Lessee committing material breach of any of the terms/provisions/clause of this Lease Deed."

5. The defendant also deposited an amount of 6,00,000/- as a security deposit. In terms of the lease deed, it was agreed that if the defendant failed to deposit the monthly rent consecutively for a period of two months, the plaintiff would be entitled to get the suit property vacated and the defendant would be obliged to handover the vacant physical possession of the suit property.

6. The plaintiff states that he has received rent for the period from 16.08.2022 to 16.09.2022. However, the defendants had failed to pay the rent for the period thereafter, that is, for the period from 17.09.2022 till the date of institution of the suit on 04.07.2023.

7. The plaintiff issued a notice dated 30.03.2023 calling upon the defendants to pay the arrears of rent from 16.09.2022 to 16.03.2023 along with GST. The plaintiff also demanded interest at the rate of 18% per annum which was quantified at 74,340/-.

8. This was followed by another notice dated 21.04.2023, which the plaintiff claims is a notice terminating the lease deed. The plaintiff also called upon the defendants to pay the arrears of rent along with interest at the rate of 24% per annum.

9. The plaintiff claims that he did not receive any response to the said notices and was constrained to institute the commercial suit seeking the reliefs as set out above. The plaintiff also filed an application styled as an application under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 [CPC].

10. It is relevant to refer to the relief as prayed for by the plaintiff in the aforementioned application. The same is set out below:

"a. Direct the defendants to stop creating third party right or interest in respect of the Rented property and subletting the Rented Property; and b. Direct the defendant to stop illegal activities on the Rented Property; and c. Direct the defendant vacate the Rented Property immediately; and d. Pass any other proper and further order (s) which this Hon'ble Court deems fit in the peculiar circumstances of the present case."

11. The learned Commercial Court found that the prayers made by the plaintiff were in the nature of reliefs under Order XXXIX Rule 10 of the CPC, however, by the impugned order, declined to grant the relief on the ground that the defendants have not filed the written statement.

12. None appears on behalf of the defendants despite service of notice. This court is also informed that the defendants have not filed their written statement as yet and the time for filing the same has expired. Thus, the averments made by the plaintiff in the suit remain uncontroverted.

13. Order XXXIX Rule 10 of the CPC is reproduced below:

"ORDER XXXIX TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

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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."

14. In the present case, the defendants have not disputed the execution of the lease deed. The plaintiff's claim that the defendant has failed and neglected to pay the lease rental as agreed also remains uncontroverted as the defendants have not filed their written statement and the time for filing the same has since expired. In the aforesaid circumstances, the decision of the learned Commercial Court to reject the plaintiff's request for relief as prayed for in his application, is unsustainable. We also consider it relevant to refer to the provisions of Order XVA of the CPC. The same is set out below:

"Delhi.-After Order XV, insert the following order, namely:-

ORDER XV-A STRIKING OFF DEFENCE IN A SUIT BY A LESSOR (A) "In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall

consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination."

15. It is clear from the above that the court is also empowered to not only direct deposit of arrears of rent but may also grant mesne profits. In the present case, it is alleged that the defendants are continuing to occupy the suit property without payment of rent. The said averment is not controverted as the defendants have not joined the present proceedings as well.

16. In view of the above, we are of the opinion that this is a fit case for granting the relief under Order XXXIX Rule 10 of the CPC as well as Order XVA of the CPC. There is no ambiguity in the lease deed as to the liability of the defendants to pay rent. We, accordingly, allow the present appeal and direct the defendants to deposit of arrears of rent for the period from 16.09.2022 till date in terms of the following schedule as set out in the lease deed:

"Term of the Lease Monthly Rent Payable 16.08.2022 to 15.08.2023 Rs.2,00,000/- + GST
16.08.2023 to 15.08.2024 Rs.2,10,000/- + GST 16.08.2024 to 15.08.2025 Rs.2,20,500/- + GST
16.08.2025 to 15.08.2026 Rs.2,31,525/- + GST 16.08.2026 to 15.08.2027 Rs.2,43,101/- + GST
16.08.2027 to 15.08.2028 Rs.2,55,256/- + GST 16.08.2028 to 15.08.2029 Rs.2,68,019/- + GST
16.08.2029 to 15.08.2030 Rs.2,81,420/- + GST 16.08.2030 to 15.08.2031 Rs.2,95,491/- + GST"

17. The defendants shall continue to deposit the amount equivalent to the rent for the future period as well till the suit property is vacated by the defendants.

18. The appeal is allowed in the aforesaid terms.

VIBHU BAKHRU, J TEJAS KARIA, J MARCH 26, 2025 'gsr' Click here to check corrigendum, if any