

Mrs. Rani Kapoor & Ors. vs M/S. Computer Systems & Mngt. Cons. ... on 27 March, 2025

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 24th February 2025
Pronounced on: 27th March 2025

+ CS(OS) 238/2024

MRS. RANI KAPOOR & ORS.

Through: Mr. Rajesh Yadav Sr. Adv

Ms. Ruchira adv for Plain

versus

M/S. COMPUTER SYSTEMS & MNGT. CONS. PRIVATE
LIMITED

Through: Mr. Sanjeev Sindhvani Sr.

Advocate with Mr. Siddhar

Gupta, Advocate in Court

Mr. Amood Khanna, Directo

Defendant (through VC)

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

CS(OS) 238/2024

1. By this judgment, the suit itself is being disposed of, in exercise of powers under Order VIII Rule 10 of the Code of Civil Procedure, 1908 ('CPC'), to the extent of the issue of recovery of possession/ejectment of the respondents, as regards the suit property.

2. It is clarified that the suit shall continue with respect to the aspects of recovery of arrears of rent, damages and mesne profits.

3. Written statement was refused to be taken on record by order dated 29th October 2024, the application (IA No.41089/2024 under Order VIII Rule 1 of CPC) for condonation of delay, being dismissed.

4. Chamber Appeal (O.A. No. 3/2025) assailing the order of 29th October 2024, was also dismissed by this Court, by order dated 24th February 2025.

5. It was noted in order dated 24th February 2025, that aside from a delay of beyond 120 days in filing written statement, which was not permitted, inter alia, per the decision in Ram Sarup Lugani v. Nirmal Lugani 2020 SCC OnLine Del 1353, no documents had been served by defendant to plaintiffs, as also, there had been consistent attempts to overreach the orders of this Court, despite

undertakings being given.

6. Mr. Rajesh Yadav, Senior Counsel for plaintiffs has therefore sought to press for disposal of the suit and pronouncement of judgment and for a decree, under Order VIII Rule 10 of CPC, in so far as the prayer of recovery of possession/ ejection is concerned.

7. Reference may also be made to previous order of this Court dated 5th November 2024, which noted the conduct of the defendant, in the context of consistent lack of compliance of Court orders.

Proceedings before the Court

8. Property bearing No. W-78A, Greater Kailash-II, New Delhi- 110048 ('suit property'), was leased out to defendant, vide Lease Agreement dated 16th December 2013, for a period of 36 months. The lease expired on 31st December 2016.

9. An addendum to the Lease Agreement was executed between the parties, on 1st January 2016, extending the lease for another six years; the extended lease period expired on 31st December 2022.

10. The last admitted rent paid by defendant was Rs. 4,84,000/- (Rupees Four Lakhs Eighty-Four Thousand only) for the month of July 2022. Defendant failed to pay the rent thereafter, from August 2022.

11. As on 5th November 2024, the rental for a total period of 27 months, was outstanding.

12. Since the lease had not been renewed, the defendant was a tenant by sufferance, and thus, was on a month-to-month tenancy, which was also terminated vide notice dated 19th December 2023.

13. On 5th November 2024, Mr. Amod Khanna, Director of the defendant company, which was occupying the suit property, was present in Court. He undertook to pay the arrears of rent, for the period between August 2022 and November 2024, in two equal instalments, on 10th December 2024 and 10th January 2025, after adjusting the security amount, paid towards the tenancy (amounting to Rs. 20 lakhs).

14. Without prejudice to the rights of plaintiffs to dispute such adjustment of the said security amount, the Court bound the defendant by its undertaking and aside from the deposit of arrears, directed that defendant will continue to make payments of Rs. 4.84 lakhs per month (towards mesne profits) from December 2024 onwards.

15. On 8th January 2025, on a plea of extension of time being made, in order to allow the defendant to comply with the undertaking, the schedule of payments of instalments was modified, as per which, payments were now to be made on 15th January 2025 and 15th February 2025.

16. A statement had been made by defendant, in the application seeking extension of time for compliance with the undertaking, that they would additionally compensate the plaintiffs with

interest for the extended period, as regards the initial schedule of instalments (ref: order dated 5th November 2024).

17. On 19th February 2025, Mr. Sanjeev Sindhwani, Senior Counsel for defendant, stated that they were unable to make payments and sought yet another extension, by offering two post-dated cheques, dated 15th March 2025 and 15th April 2025, totalling up to Rs.1.13 crores.

18. This offer was outrightly rejected by the Senior Counsel for plaintiffs, who insisted on being given vacant possession of the suit property, and the suit being decreed. The Court noted as under:

"10. Indeed, in the opinion of the Court, defendant has stretched the benevolence of this Court beyond measure and has also, seriously defaulted in payments of rent to the plaintiff. This offer of another post-dated cheques being given one-two months hence, cannot be permitted. The same seems to be an attempt to somehow abuse the process of this Court, to extend illegal possession of the tenanted property. The Court therefore, rejects the offer.

11. The matter will be taken up on the pleadings which have already been filed. Mr. Rajesh Yadav, Senior Counsel for plaintiff states that the matter can be taken up under provisions of Order VIII Rule 10 of CPC r/w Order XII Rule 6 of CPC considering that the tenancy is admitted and the expiry of the tenancy is admitted as well.

12. Senior Counsel appearing for the parties agree that Lease Agreement dated 16th December 2013 registered on 5th February 2014 and addendum to lease agreement executed on 1st January 2016 is admitted. As per addendum, the lease agreement was extended for a period of six years from 1st January 2017 to 31st December 2022. There is no document on record or even alleged by defendant for extension of the said lease.

13. Notice of termination of lease dated 19th December 2023 issued by plaintiff through counsel was also, allegedly received by defendant."

19. Mr. Rajesh Yadav, Senior Counsel for plaintiffs' therefore, stated as under:

"6. Senior Counsel for plaintiffs' states that on this basis, he merely seeks a decree for recovery of possession by ejectment, in respect of the suit property. As regards the further recovery of arrears of rent, damages and mesne profits, he states that the suit shall continue with respect to the same."

20. It is in these facts and circumstances, the Court is inclined to hear the parties and pronounce judgment under Order VIII Rule 10 of CPC.

Factual Matrix:

21. Plaintiffs are the owners of property bearing No. W-78, Greater Kailash-II, New Delhi, measuring 836 square meters (1000 square yards), vide registered Sale Deed dated 05th April 1991, registered as Document No.2242, in Additional Book No. I, Volume 6996, pages 108 to 308, registered on 05th April 1991 with Sub-Registrar, New Delhi.
22. The suit property is part of the property bearing No. W-78, Greater Kailash-II, New Delhi.
23. Plaintiff no.1 instituted the suit through Special Power of Attorney ('SPA'), dated 5th March 2024, executed in the favour of Dr. Sudhir Fredric Kapoor.
24. SPAs in favour of Dr. Sudhir Fredric Kapoor were also executed by plaintiff nos. 2 to 4, dated 5th March 2024, 28th February 2024 and 1st March 2024, respectively (considering that the four plaintiffs were living abroad).
25. Lease Agreement dated 16th December 2013, registered as Document No.600, in Book No.1, Volume No.556, pages 47 to 54, registered on 05th February 2014, with SR-VA, Hauz Khas, New Delhi, was executed with regard to the suit property.
26. Lease Agreement was in respect of 950 square yards and the remaining 50 square yards were stated to have not been leased to the defendant; thus, the defendant had no rights in respect of the second driveway, which was reserved for the exclusive use of plaintiffs.
27. The initial lease was for a term of 36 months, commencing from 31st December 2013 to 31st December 2016, with rent fixed at Rs. 4,00,000/- (Rupees Four Lakhs only) per month. The lease was for residential purposes.
28. A refundable interest free security deposit of Rs. 20,00,000/- (Rs. Twenty Lakhs only) had been paid to the plaintiffs.
29. The defendant was to regularly pay the electricity and water charges, as per the actual bills raised by relevant authorities, in that regard.
30. As per clause 18 of the Lease Deed, on defendant's failure to vacate the premises on the termination of the lease period, the defendant was liable to pay Rs. 20,000/- (Rupees Twenty Thousand only), per day, as penalty charges, to the plaintiffs, for the unauthorised occupation of the premises; the penalty was to increase by 50% of the previous amount, every six months of such continued unauthorised occupation.
31. Plaintiffs had a right under the Lease Agreement, to terminate the same, in case of any breach of terms, after a lock-in period of 24 months, which ended on 31st December 2015.
32. With efflux of time, the Lease Agreement expired on 31st December 2016, and an Addendum was executed, extending the lease period for another six years, with effect from 01st January 2017, at a rent of Rs. 4,40,000/- (Rupees Four Lakh Forty Thousand only) per month, till 31st December

2019 and at Rs. 4,84,000/- (Rupees Four Lakh Eighty- Four Thousand only), per month, from 01st January 2020 to 31st December 2022.

33. Since the Addendum was an unregistered document, it resulted in a month-to-month tenancy, terminable through a 15 days' notice.

34. In any event, the period under the Addendum expired by efflux of time, on 31st December 2022.

35. The defendant had deposited rent only till the month of July 2022 and had failed to pay rents thereafter. As per the Lease Agreement, the rent became due on the 7th day of each calendar month.

36. Plaintiffs issued 15 days' notice under the provisions of Section 106 of the Transfer of Property Act, 1882, which was duly served on 19th December 2023.

37. It was stated in the notice that if the defendant failed to handover vacant and peaceful possession of the suit property, they shall be liable to pay damages/mesne profits at the rate of Rs. 20,000/- per month, on the basis of rent of similarly situated properties/ premises in the area of Greater Kailash-II, New Delhi.

38. Vide the aforesaid notice, it was also conveyed to the defendant that it had been defaulting on paying the rental amounts since 1 st August 2022, till the date of termination of lease, i.e., 19th December 2023. In consonance with the same, the plaintiff claimed Rs. 82,28,000/- (Rupees Eighty-Two Lacs Twenty-Eight Thousand only), as arrears for unpaid rent.

39. Defendant was also called upon to clear electricity and water dues and furnish proof of up-to-date payment of the same.

40. Defendant avoided service of the said legal notice, even at its address at Flat No.304, 3 Floor, International Trade Tower, Nehru Place, New Delhi- 110019 and at Ground Floor, Roots Tower, Laxmi Nagar District Centre, New Delhi - 110092, with the remarks "refused".

41. As per the plaint, defendant is therefore, an illegal and authorized occupant and is liable to be ejected, as also, liable to pay arrears of rent, mesne profits and damages.

Analysis

42. The written statement has been taken off record. The averments contained in the plaint, would therefore, be deemed to have been admitted.

43. However, basis the factual narrative stated above and borne out by the documents, which the Court has perused, the defendant has admitted, to having taken the suit property on rent from the plaintiffs and that they were liable to pay the arrears of rent. Categorical admissions with regards to the same, have been noted in paragraph no. 13, above.

44. There has been a consistent, deliberate, mala fide and unacceptable attempt to somehow continue taking extensions for the payment of the arrears of rent, despite continuing to be in possession.

45. As noted above, the undertakings given by Mr. Amod Khanna, for the defendant company, have been breached on numerous occasions. There is no doubt in the mind of the Court that the defendant is abusing the process of the Court, in order to continue to overstay the lease period.

46. The frustration of plaintiffs' counsel was palpable and evident when senior counsel for plaintiffs, on instructions, rejected the second attempt by defendant, to seek extension of payment of arrears of rent, despite a previous undertaking. The same is evident from order dated 19th January 2025, wherein it is stated as under:

"8. Today, Mr. Sanjeev Sindhvani, Senior Counsel for defendant states on instructions states that they have been unable to comply with this undertaking as well. He states that Company or the Director could not manage to comply with the said undertaking and seeks yet another extension by offering two post-dated cheques of 15th March 2025 and 15th April 2025 totalling up to Rs.1.13 Crores.

9. This offer is outrightly rejected by Mr. Rajesh Yadav, Senior Counsel for plaintiff. He seeks immediate possession of said property and rights of the plaintiff to be adjudicated in the matter."

47. On 24th February 2025, Mr. Amod Khanna, appeared through VC after Court's directions to this effect. He stated that an agreement to sell was executed in his favor, by the plaintiffs, basis which he is continuing his possession of the suit property.

48. No further argument or any document in this regard was shown by his counsel, or had been shown to the Court, on any of the numerous dates when the matter was listed, since the defendant first entered its appearance on 3rd April 2024.

49. The matter had been listed thereafter on, 5th July 2024, 17th September 2024, 1st October 2024, 7th October 2024, 29th October 2024, 5th November 2024, 8th January 2025, 19th February 2025.

50. Clearly, the assertion about an agreement to sell was a sham and a smoke-screen, sought to be raised by defendant, in order to somehow delay the passing of a decree for ejection.

51. Even though plaintiffs would still have to undergo the process proving the quantum of arrears of rent, mesne profit, damages and interest, if any, it would be in interest of justice that the defendant is not allowed to continue to stay in the premises, having exhausted initial lease period, the extended lease period and in light of the termination of month-to-month tenancy.

52. In the present suit, it has to be borne in mind that not only has the defendant's defence been struck off, but there is a clear admission before the Court, of unauthorized occupation of the suit property, as also, the non-payment of rents accruing under the tenancy. There has been a repeated non-compliance of the undertakings given to this Court.

53. A conditional order was passed by this Court to pay arrears for past occupation of the property, as also, a monthly amount for continued occupation of the property. The same were not complied with. The plaintiff does not dispute the plaintiffs' ownership of the property, rather admits to tenancy, initially under the lease agreement and a subsequently by sufferance, as also, a continued failure to clear rental dues. Considering this, the clear position that emerges is that the plaintiffs have the right to enjoy possession of the suit property.

54. Not passing an order for ejectment would do great injustice to legitimate landlords who had decided to rent out the suit property for good consideration.

55. Accordingly, in view of the above, there is an imminent need to direct corrective measures for the unauthorised occupation and non-

compliance of Court orders, to uphold the rights of the Plaintiffs to enjoy their property. Further, considering that the Defendant has been in unauthorized occupation of the suit property since January 2024, there is an urgency in remedying the continued impairment of the plaintiff's rights to their property.

56. Therefore, in view of the fact that written statement has been struck off the record and considering that the plaintiff is only pressing the prayer of ejectment basis undisputed facts and admissions made by the defendant, all the requirements for passing a judgment on the basis of Order VIII Rule 10, CPC have been satisfied.

57. In *Gautam Chopra v. Rahisuddin* 2024 SCC OnLine Del 3198, in similar circumstances, where there had been non-compliance of Court orders to pay arrears of rent, as also, an admitted unauthorized occupation, of the property involved therein, a Co-ordinate bench of this Court, in light of the admitted ownership of property and admitted unauthorized occupation of the same, passed a decree for ejectment, under Order VIII Rule 10 of CPC. The Court traversed judicial pronouncements pertaining to the said provision, as under:

"19. The scope of Order VIII Rule 10 has been considered by the Supreme Court in *Balraj Taneja v. Sunil Madan*, 1999 INSC 385. In the said decision the Supreme Court has held that under Order VIII Rule 10 of the CPC, Courts must not mechanically pass judgment against the Defendant merely on account of non-filing of written statement. The Supreme Court clarified that Courts need to exercise judicial discretion and make an independent assessment of the facts and determine whether the allegations made therein justify a decree, without requiring the Plaintiff to prove its case. Thus, the judgment emphasises that it is essential for the Court to ensure that passing of a decree is not merely a procedural formality. The relevant extracts of

the said decision are set out below:

15. This Rule, namely Rule 10, was also amended by the CPC (Amendment) Act, 1976 (Act No. 104 of 1976). Prior to its amendment, it was held in a number of decisions that the rule can be invoked only in those situations where the Court has required the defendant to file the Written Statement in terms of Rule 9 of Order 8. A few other High Courts had taken the view that this Rule would be applicable even to those cases where a Written Statement was required to be filed under Order 8 Rule 1 CPC. The conflict of decisions has been set at rest by providing specifically under this rule that where a party from whom a Written Statement is required either under Rule 1 or Rule 9 of Order 8 fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit. Rule 10 thus governs both the situations where a Written Statement is required under Rule 1 of Order 8 as also where it has been demanded under Rule 9. In both the situations, if the Written Statement has not been filed by the defendant, it will be open to the Court to pronounce judgment against him or make such order in relation to the suit as it thinks fit. It is to be noticed that if the Written Statement is not filed, the Court is required to pronounce judgment against the defendant. The words "against him" are to be found in Rule 10 of Order 9 which obviously means that the judgment will be pronounced against the defendant. This rule also gives a discretion either to pronounce judgment against the defendant or "make such order in relation to the suit as it thinks fit." These words are of immense significance, inasmuch as they give a discretion to the Court not to pronounce judgment against the defendant and instead pass such order as it may think fit in relation to the suit.

16. There are thus two separate and distinct provisions under which the Court can pronounce judgment on the failure of the defendant to file Written Statement. The failure may be either under Order 8 Rule 5(2) under which the Court may either pronounce judgment on the basis of the facts set out in the plaint or require the plaintiff to prove any such fact; or the failure may be under Order 8 Rule 10 CPC under which the Court is required to pronounce judgment against the defendant or to pass such order in relation to the suit as it thinks fit.

xxx xxx xxx

30. As pointed out earlier, the Court has not to act blindly upon the admission of a fact made by the defendant in his Written Statement nor the Court should proceed to pass judgment blindly merely because a Written Statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a Written Statement has not been filed by the defendant, the Court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's

satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the Written Statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the Court may, in its discretion, require any such fact to be proved" used in Sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order

20. The said position has been reiterated in a recent decision of the Supreme Court in *Asma Lateef v. Shabbir Ahmad*, 2024 INSC 36 wherein it has been highlighted that Rule 10 of Order VIII, CPC is not mandatory and that it is not to say that a Court has no alternative but to pass a judgment in favour of the Plaintiff, in the absence of a written statement. The Supreme Court cautioned that if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts. The relevant extracts of the said judgments are set out below:

13. Prior to answering the above question, we consider it appropriate to examine the scope and extent of power exercisable under Rule 10 of Order VIII, CPC.

15. We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb 'shall' in Rule 10 [although substituted for the verb 'may' by the Amendment Act of 1976] does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him.

If that were the purport, the second alternative to which 'shall' equally applies would be rendered otiose.

16. At this stage, we consider it apposite to take a quick look at *Balraj Taneja* (supra) to examine the scope of Rule 10 of Order VIII. Therein, this Court ruled that a court is not supposed to pass a mechanical judgment invoking Rule 10 of Order VIII, CPC merely on the basis of the plaint, upon the failure of a defendant to file a written statement...

17. What emerges from a reading of *Balraj Taneja* (supra), with which we wholeheartedly concur, is that only on being satisfied that there is no fact which need to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. *Balraj Taneja*

(supra) also lays down the law that provision of Rule 10 of Order VIII, CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement.

18. If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Rule 5 of Order VIII and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with section 58 of the Indian Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim."

(emphasis supplied)

58. It is pertinent to note that in Gautam Chopra (supra), the plaintiff therein, let go of all other prayers in the suit, except the prayer of possession, facts pertaining to which, were ascertainable from the record itself and admissions made thereupon. Senior Counsel for the plaintiff, also has not pressed for determination of the rights of the plaintiffs, as regards the damages/ mesne profits/ arrears of rent, are concerned, but rather, sought adjudication of the suit under Order VIII Rule 10 of CPC, only in so far as his plea for ejectment and recovery of possession are concerned.

59. In light of the aforesaid position of law and facts, the suit is decreed to the extent of granting possession of the suit property bearing No. W-78A, Greater Kailash-II, New Delhi-110048 (part of the property bearing No. W-78, Greater Kailash-II, New Delhi-110048) having been leased out to the defendant and delineated in the site plan annexed to the plaint, as under:

60. Decree sheet be drawn up, accordingly.

61. For the remaining proceedings, as far as other reliefs under the suit are concerned, list before the Joint Registrar (Judicial) on 24th April 2025.

62. Judgment be uploaded on the website of this Court.

(ANISH DAYAL) JUDGE MARCH 27, 2025/SM/kp