

Civ DJ 846/2024
Raj Kumar Goyal Vs.
Anil Gupta

16.07.2025

Present: Plaintiff.

None for defendant.

1. By way of this order three applications, two of defendant u/s.151 CPC, for seeking recall of order dated 08.01.2025 and u/o VIII Rule 1 CPC, for seeking condonation of delay in filing written statement, and one of plaintiff u/o XV-A CPC, for seeking directions to the defendant to pay the rent, shall be disposed off. Arguments on the same were already heard.

2. Facts of case of the plaintiff, in brief, are as follows- Plaintiff is owner of property bearing no.CGG153, DLF Capital Greens, 15, Shivaji Marg, Delhi-110015 along with parking space no.PG1002 (hereinafter referred to as 'suit property'). The suit property was let out to the defendant vide lease agreement dated 29.03.2023, for a period of 11 months, commencing from 01.04.2023, at monthly rent of Rs.45,000/- per month, excluding charges of electricity, maintenance, etc. Monthly rent was payable in advance by 1st day of each English calendar month through online mode. At the time of taking possession of the suit property, the defendant had paid one month's rent of Rs.45,000/- in advance along with two months' security deposit of Rs.90,000/-, as per Clause 3 of the aforesaid lease agreement. The defendant was very irregular in paying the rent. The lease period came to an end on 29.02.2024 and the plaintiff, in view of

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the acts of the defendant in not making timely payments of the rent, decided to discontinue the lease agreement and had sent an eviction notice dated 12.02.2024 to the defendant on his Whatsapp which was duly received and seen by the defendant, however, the same was blatantly ignored and vacation of the suit property was delayed on one pretext or another. On 15.05.2024 the defendant had handed over the peaceful physical possession of the suit property and had duly issued a possession letter dated 15.05.2024 to the plaintiff. At the time of handing over of the physical possession of the suit property, the defendant had informed the plaintiff that some of his goods and articles such as few clothes, kitchen articles packed in plastic bags, few furniture items, etc., were kept in the suit property and that he would remove the same within one or two days. In good faith, the plaintiff and his family members allowed the defendant to do so. Defendant had deliberately ignored requests of the plaintiff to remove his belongings from the suit property. After the defendant had failed to remove his belongings despite repeated requests of the plaintiff, the plaintiff and his family members had decided to shift to the suit property. On 01.06.2024 when the plaintiff's wife along with her nephew Sh. Abhinav Bindal, had visited the suit property with some of her belongings including jewellery, clothes and cash amount of Rs.70,000/-, to her utter shock and dismay, the defendant along with his family members had barged into the suit property and had attacked her (plaintiff's wife) and her nephew. The plaintiff's wife made a call to the police. When the police had arrived at the spot, instead of taking action against the defendant and his family members, had taken away

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keys of the suit property from the plaintiff's wife and handed over the same to the defendant thereby putting him back into possession of the suit property illegally. The plaintiff's wife had given complaints to the police, however, no action has been taken. On the other hand, on the complainant of the defendant an FIR No.310/24 had been registered in police station Moti Nagar against the plaintiff, his wife and others. Thereafter, a legal notice dated 21.08.2024 was issued to the defendant, thereby calling upon him to vacate, handover peaceful, physical and vacant possession of the suit property and to make payment of balance of arrears of rent, electricity, etc., charges. The plaintiff has sought decree of possession, permanent injunction, arrears of rent, etc.

3. First the applications u/s.151 CPC and u/o VIII Rule 1 CPC, are taken up.

Vide order dated 03.12.2024 the defendant was deemed to be served with summons. On the same day the defendant has appeared along with his counsel and has sought two weeks time to file written statement. Fifteen days time was granted to him to do so subject to cost of Rs.2000/-, to be paid to the plaintiff. Thereafter, on 08.01.2025 right of the defendant to file the written statement was closed. Main contentions of the defendant are that several litigations and disputes were going on between the parties and the defendant was trying to get documents regarding the same and that as the defendant was not satisfied with service of his previous counsel, he has engaged the present counsel on 20.01.2025 and thereafter, the written statement was filed, which is within 90 days.

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4. Although the aforesaid plea has been opposed on behalf of the plaintiff, however, considering the aforementioned contentions of the defendant and considering the fact that the written statement was filed within 90 days from the date of deemed service of summons upon the defendant, the applications are being allowed subject to further cost of Rs.5000/-, to be paid to the plaintiff. Written statement and annexed documents are taken on record.

5. Now the application u/o XV-A CPC, is taken up.

Mainly it is contended that before filing of the suit the defendant has not paid rent for several months and that as per clause no.22 of the lease agreement, after expiry of the tenancy the defendant was liable to pay mesne profits three times the rent i.e. Rs.1,35,000/- per month. An amount of Rs.8,55,000/- on account of arrears of rent and mesne profits, up to filing of the suit and an amount of Rs.1,35,000/- per month thereafter, till vacation of the suit property, have been asked from the defendant.

6. In the plaint and the application it is mentioned that the defendant had not paid the rent for September 2023, November 2023 and thereafter, for May 2024 and onwards. During the course of proceedings a calculation sheet was filed on behalf of the plaintiff wherein after adjusting the paid rent towards the earlier defaulted months, it is mentioned that the defendant is liable to pay arrears of rent for March 2024 and onwards. The plaintiff is willing to adjust amount of security of Rs.90,000/- from the amount recoverable from the defendant.

7. In reply to the application filed on behalf of the defendant inter

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alia it is contended that the plaintiff has already received rent up to May 2024, that a sum of Rs.90,000/- is lying with the plaintiff as security and that the plaintiff is not entitled to claim damages @ Rs.45,000/- per month as the prevailing market rent is about Rs.5,000/- per month. These contentions are controverted by the plaintiff in his rejoinder.

8. It is observed that in the written statement of the defendant almost all the averments of the plaint have been denied and the defendant has gone to the extent of denying the fact that the plaintiff is owner of the suit property and terming the lease deed dated 29.03.2023 as forged and fabricated document. It is observed that copy of FIR No.310, dated 03.06.2024, PS Moti Nagar, which got registered on complaint of the defendant, is filed along with the plaint and therein the defendant/ complainant has clearly admitted that he was a tenant in the suit property under the plaintiff. Moreover, the plaintiff is relying upon the aforesaid lease agreement in support of his case and has also contended that the defendant has paid rent for certain duration through online mode. Hence, the defendant is bound by principle of estoppel and he cannot be permitted to deny the factums of ownership of the plaintiff over the suit property and of his tenancy under him. Although the defendant has claimed that he has already paid rent up to May 2024, however, this contention cannot be accepted as the rent was to be paid through online mode and the defendant has not placed anything on record to support his claim. Also there is no basis to accept contention of the defendant that prevailing market rent is about Rs.5,000/- per month, as the agreed

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rate of rent was Rs.45,000/- per month and it is matter of common practice that generally rent is increase every year and leaving extra ordinary circumstances the rent of premises cannot reduce drastically from Rs.45,000/- to Rs.5,000/-. The plaintiff has claimed mesne profits three times the amount of the rent quoting terms of the lease agreement, however, by way of interim relief the same cannot be granted at that rate.

9. From the material available on record claim of the plaintiff regarding possession of the defendant over the suit property appears to be that the defendant had handed over vacant and peaceful possession of the suit property to him on 15.05.2024 and that later on 01.06.2024 he had taken back the possession unlawfully and on the other hand the claim of the defendant in this regard appears to be that he always remained in possession of the suit property and that at the relevant time the plaintiff and others had trespassed into the suit property. In any case, the defendant is liable to pay mesne profits/ occupation charges to the plaintiff since he is continuing in possession of the suit property.

10. In view of above discussion, the plaintiff is found entitled to receive arrears of rent for period from March 2024 to September 2024 @ Rs.45,000/- per month, to mesne profits/ occupation charges for period from October 2024 and onwards at the same rate. Hence, it is hereby directed that the defendant shall pay a total amount of Rs.6,30,000/-, towards arrears of rent from March 2024 to September 2024 and mesne profits/ occupation charges from October 2024 to June 2025 i.e. up to month preceding passing of this order (for a total

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period of 16 months @ Rs.45,000/- per month minus Rs.90,000/-, security deposited by the defendant with the plaintiff), to the plaintiff within 30 days from today and to continue to pay the mesne profits/ occupation charges to him in future @ Rs.45,000/- per month by 1st day of every succeeding month e.g. mesne profits/ occupation charges of July 2025 is payable by 1st August 2025, till handing over possession of the suit property to the plaintiff. The application stands disposed off in above terms.

11. In the facts and circumstances of the present matter the Court may consider if judgment can be passed as per provision u/o XII Rule 6 CPC in respect of the relief of possession.

Put up for consideration on **30.08.2025**.

(GOPAL SINGH CHAUHAN)
DJ-03, WEST/DELHI
16.07.2025