

IN THE COURT OF SH. SHIV KUMAR  
DISTRICT JUDGE -02, WEST DISTRICT:  
TIS HAZARI COURTS, DELHI.

Civ DJ no. 213/2020

CNR No. DLWT01-005513-2019

DLWT010055132019



Indospirit Bars Pvt. Ltd.  
Through its Director,  
Sh. Sumit Sharma,  
Having its registered office at  
B-230, Okhla Phase-I,  
New Delhi-110020.

....Plaintiff

**Versus**

Shri Ravinder Kumar  
S/o Shri Ram Kumar  
R/o 18/1A, Tihar-II, Double Storey,  
Prem Nagar, New Delhi-110058  
Also at  
10/floor, Front side  
Ocean View Court,  
39-41, Mody Road, T.S.T. Kln.  
Hong Kong

. . . Defendant

**Date of institution of the case** : 17.07.2019  
**Date on which case reserved for judgment** : 04.02.2026  
**Date of pronouncement of Judgment** : 14.03.2026

**THE SUIT FOR RECOVERY OF RS. 7,55,000/-ALONG  
WITH PENDENTE LITE AND FUTURE INTEREST @ 18 %  
PER ANNUM.**

**JUDGMENT**

- (1) Vide this judgment, I shall decide, the present suit, filed by the plaintiff against the defendant for the recovery of Rs. 7,55,000/- along with pendente lite and future interest @ 18 % per annum.
- (2) As per plaint, the suit of the plaintiff, in nutshell, is that the plaintiff is a company incorporated under the companies Act, 1956 and the present suit has been filed by the plaintiff' company through its authorized representative/director, Mr. Sumit Sharma. Original Board Resolution dated 24.06.2019 has also been attached by the plaintiff.
- (3) It is averred by the plaintiff that the defendant approached the plaintiff and represented himself as owner in possession of property no. 18/1A, double storey, Prem Nagar, Jail Road, New Delhi, ad measuring 28 sq. feet (hereinafter to be referred as "the suit property"). It is further averred that the defendant agreed to give the suit property on lease for 9 years (nine years) for commercial retail purpose, inter alia for running a restaurant, pub, lounge and/or Bar under the name and style of "Barshala" and/or any other brand name, trade name etc. It is further averred that initially the rent of the suit property was Rs. 1,66,670/- excluding all taxes i.e. TDS, Service tax, GST, sale

tax, etc., to be paid by the plaintiff to all concerned departments.

(4) It is further averred that the defendant demanded three months interest-free refundable security deposit amounting to Rs. 5 lacs (5 lakh) and the same had to be paid by the plaintiff to the defendant before execution of the lease deed.

(5) It is further averred that the plaintiff paid an amount of Rs. 5 lacs of above said refundable security deposit to the defendant through cheque bearing no. 001338 on 30.08.2016. It is further averred that the abovesaid amount of Rs. 5 lacs had to be refunded by the defendant without any deduction by way of pay order in favour of the plaintiff, after handing over the vacant and peaceful possession on expiry or early termination of lease deed and no deduction had to be made by the defendant from the said security deposit amount.

(6) It is further averred that as per agreed terms, in the event of the defendant, fails to return the security deposit to the plaintiff, the defendant shall be liable to pay interest @ 24 % per annum and the said interest has to be calculated and computed on the daily basis.

(7) It is further averred that before execution of the lease deed, the defendant had to produce/serve the copy of the requisite documents i.e. copy of sanctioned plan issued by the Local Municipal Authority, copy of sale deed, copy of latest electricity and water bills etc., but the defendant was unable to

produce the same and due to which, the plaintiff could not take requisite permission from the MCD, Excise and other related departments. It is further averred that production of the above said documents was the primary condition before taking the suit property on lease, because in the absence of above said documents, the suit property would be useless for the plaintiff.

(8) It is further averred that the plaintiff contacted the defendant personally as well as telephonically, several times but the defendant did not produce the above said requisite documents. It is further averred that it is crystal clear from the act of defendant that the suit property is built up without any sanctioned plan and it is not possible for the plaintiff to execute the lease deed for the property, which does not have the sanctioned plan.

(9) It is further averred that the defendant tried to execute the lease deed with the plaintiff without having sanctioned site plan and having the knowledge that without sanctioned plan and other requisite documents, the suit property is useless for the plaintiff.

(10) It is further averred that the plaintiff had asked the defendant to return the money through calls and thereafter, through legal demand notice dated 23.01.2018. It is further averred that the defendant replied the said legal demand notice by sending reply dated 04.02.2018 wherein the counsel for the defendant denied all the facts of the legal notice of the plaintiff

but did not reply to the fact that sanctioned letter of the property is still awaited.

(11) It is further averred that in the reply, the defendant has mentioned that the amount of Rs. 5 lacs of the plaintiff is forfeited without going into the fact that the said amount was paid towards interest-free refundable security deposit and the said amount cannot be forfeited in any condition whatsoever.

(12) In the present case, the plaintiff is claiming Rs. 5 lacs as principal amount and Rs. 2,55,000/- as interest on the said principal amount.

**CASE OF THE DEFENDANT AS PER HIS WRITTEN  
STATEMENT**

(13) The defendant has filed written statement by taking preliminary objections that the present suit is without any cause of action and the same is liable to be dismissed.

(14) It is further contended that there is Arbitration agreement between the parties, therefore the present suit is liable to be rejected under order 7 rule 11 CPC.

(15) It is further contended that plaintiff has not approached this court with clean hands and has suppressed the material facts from the court.

(16) It is further contended that defendant has never approached the plaintiff rather it was the plaintiff who approached the defendant through a property agent/broker namely Sh. P.S. Chadha, in the month of August, 2016 for taking the suit property, on rent, for opening Bar Shalla. It is further submitted by the defendant that after verifying the tenanted premises and ownership documents, the plaintiff agreed to take the suit property on rent. It is further averred by the defendant that it was agreed between the parties that a registered lease deed will be executed and the terms of the said lease deed were also settled between the parties.

(17) The defendant has admitted that he agreed to let out the suit property to the plaintiff at an initial monthly rent of Rs. 1,66,670/-. The defendant has contended that one Mr. Nikhilesh Singh on behalf of the plaintiff, had sent a draft of lease deed, which was finalized between the parties and thereafter he took print out of the said lease deed on e-stamp paper of Rs. 100/-, on the pretext that the same was required as the plaintiff had to take the possession of the suit property for renovation work.

(18) It is further contended by the defendant that the lease deed was duly signed by the defendant in the office of the broker, in the presence of Mr. Nikhilesh Singh. It is further contended that on signing the said lease deed by the defendant, the contract of tenancy commenced and both the parties were bound by the terms of the said lease deed.

(19) The defendant has admitted that he has received Rs. 5 lakh from the plaintiff towards interest free refundable security deposit. The defendant has denied the fact that the said security amount was to be paid before execution of the lease deed. The defendant has further contended that the security amount was paid only after the execution of the lease deed.

(20) The defendant has further averred that para no. 5 of the plaint is admitted to the extent that as per clause 3.2 of lease deed, no deduction shall be made by the defendant from the security amount. It is further contended by the defendant that as per terms settled between the parties under clause 4.4 of the lease deed, it was agreed between the parties that there shall be lock in period of three years and neither party shall have the right to terminate the lease deed.

(21) Defendant has further contended that it was also agreed as per the terms of the lease deed that if the lessee wants to terminate lease during the lock in period, in the said eventuality, the lessee shall pay rent for the entire lock in period and the security deposit shall be forfeited.

(22) It is further contended by the defendant that the plaintiff has deliberately concealed the entire terms of the lease deed and has not filed copy of lease deed on record, in order to mislead the court.

(23) It is further contended by the defendant that the defendant had requested the plaintiff a number of times, after

execution of lease deed to pay the rent and to comply with the terms of the lease deed but the plaintiff made excuses.

(24) It is further contended by the defendant that on various dates, the defendant requested the plaintiff to get the lease deed registered as the defendant had also purchased the stamp papers of Rs. 70,000/- in the month of September, 2016, towards stamp duty for registration of lease deed and also took appointment for registration of lease deed with Sub-Registrar, Janak Puri for 27.09.2016 with appointment ID 892316026645 and also sent a mail to the plaintiff regarding the same but plaintiff did not come on the said date for registration of the lease deed and the appointment got wasted.

(25) It is further contended by the defendant that the plaintiff through one Mr. Vijay Sharma, claiming himself to be looking after legal and corporative affairs of the plaintiff, wrote an e-mail to the defendant wherein it was stated that the delay in getting the lease deed registered was on the part of the plaintiff due to non-issuance of liquor license including license for restaurant by the government of NCT of Delhi. It is further contended that in the said e-mail, it was also stated that the plaintiff was in process to start operation of 40 restaurants including the one in the suit property but due to arbitrary decision of government of NCT of Delhi, they are involved in number of litigations and one of them is pending before the Hon'ble High Court of Delhi for 7<sup>th</sup> December and the issue is expected to be resolved by March, 2017.

(26) It is further contended by the defendant that due to breach of terms of lease by the plaintiff, the defendant suffered huge loss and by virtue of the said lease deed, the security amount given by the plaintiff stood forfeited. It is further contended that the defendant was entitled for three years rent amounting to Rs. 60,00,120/- as per the terms of lease deed for breach of lock in period.

(27) It is further contended by the defendant that the entire documents which were required by the plaintiff at the time of signing of the lease deed were provided to the plaintiff through Mr. Nikhilesh Singh in the presence of the broker. It is further contended that after satisfying, the plaintiff paid the security cheque to the defendant. It is further contended that the story of the plaintiff is false, frivolous and concocted. It is further contended that the authorized representative of the plaintiff/Sh. Sumit Sharma, has made false statement on oath and is liable to be prosecuted u/s 340 Cr.P.C.

(28) It is further contended by the defendant that this court has no jurisdiction to try and entertain the present suit as the dispute between the parties is to be settled by way of Arbitration as per clause 11 of the lease deed.

#### **REPLICATION FILED ON BEHALF OF THE PLAINTIFF**

(29) The plaintiff has filed replication in which he has denied all the allegations of the defendant and has reiterated the contents of his plaint. It is averred in the replication that the the

defendant has admitted receiving of an amount of Rs. 5 lakh as an interest free refundable security deposit from the plaintiff and the fact that the same has not been returned gives a clear cause of action in favour of the plaintiff to file the present suit. It is further averred that the plaintiff is entitled to a judgment on admission in view of the aforesaid admission of the defendant.

(30) It is further averred in the replication that there is no arbitration agreement between the parties. It is further submitted that no arbitration agreement has been filed by the defendant to substantiate this allegation. The defendant is raising baseless, vague and concocted objections as it does not have any cogent ground to defend the present suit.

(31) It is further averred that the fact remains that the defendant has failed to refund the IFRSD amount received by it, even though the lease between the parties was never executed. It is further averred that from the beginning, the defendant was reluctant in showing the relevant documents relating to the property and was adamant in receiving the IFRSD to bind the plaintiff in executing the lease deed without due diligence of the property in question. The defendant did not have the approved sanction plan and other relevant documents relating to the property and wanted to get the lease deed executed on the basis of false representations.

(32) On merit, most of the contents of the written statement have been denied by the plaintiff. It is further averred that the defendant had represented itself as owner of the property in

question and had shown willingness to lease out the premises to plaintiff. It is further averred that only the broad terms like tenure and commercials were agreed between the parties during the initial discussions and a draft lease was circulated, however, no agreement was ever finalized or executed.

(33) It is further averred in the replication that it is admitted that no deductions were to be made from IFRSD. It is further agreed that clause regarding refund of IFRSD and remedies for non-refund were agreed during initial discussions before handing over IFRSD to defendant.

(34) It is further averred that the purchase of stamp paper and registration appointment allegedly taken by defendant further substantiates the intention of the defendant as usually the lessee i.e. the plaintiff herein, purchased the stamp paper for the lease and later on adjust share of landlord from the rent payable. It is further averred that defendant was in a hurry to get the lease executed and bind the plaintiff as the defendant was aware that the due diligence will fail and plaintiff will not execute the lease with respect to the suit property.

(35) It is further averred that the contents of the email sent by Mr. Vijay Sharma are a matter of record. However, it is denied that the same resulted in any breach or forfeiture of security. The said mail simply informed the defendant regarding the license issue and the defendant had no problem as it was not losing on any rent and the agreement was yet to be executed.

## ISSUES

(36) From the pleadings of the parties, following issues were framed on 09.12.2021 for adjudication:

*1. Whether the plaintiff is entitled to decree of recovery of Rs. 7,55,000/- from the defendant? OPP*

*2. Relief.*

## EVIDENCE OF PLAINTIFF.

(37) On 20.01.2023, the Director of the plaintiff company, Mr. Sumit Sharma examined himself as PW-1 and tendered his evidence by way of affidavit Ex PW-1/A, wherein he reiterated the contents of his plaint and relied upon the following documents:

1. Ex PW-1/1 (OSR): The Board resolution dated 24.06.2019.

2. Mark A: The true copy of the bank statement of HDFC Bank, East of Kailash Branch for Account no. 50200003938147 from 01.09/16 to 30.09.16.

3. Mark B (Colly): The true copy of the email dated 17.07.17 with draft lease dated of the year September 2016.

4. Ex PW-1/4: The true copy of the legal notice dated 23.01.18 sent to the defendant in Ex. PW-1/4.

5. Ex PW-1/5: The copy of the reply dated 04.03.18 of the defendant.

6. Ex PW-1/5: Original photographs showing the demolished structure of the suit property.

(38) In further examination in chief, the PW-1 has filed certificate under section 65 B of Indian Evidence Act in regard to the bank statement of HDFC Bank, East of Kailash Branch for account no. 50200003938147 i.e. Mark A and copy of email dated 17.7.17 i.e. Mark B. Both these mark document are exhibited as Ex. PW-1/2 and Ex. PW-1/3( Colly).

(39) PW-1 has been cross examined by Ld counsel for the defendant and on 08.04.2024, evidence on behalf of the plaintiff was closed by recording the statement of Ld counsel for plaintiff.

#### EVIDENCE OF DEFENDANT

(40) On 28.08.2024, Sh. Ravindra Kumar/defendant has examined himself as DW-1 and tendered his evidence by way of affidavit Ex. DW1/A and he reiterated the objections taken by him in his written statement.

(41) The DW-1 has been duly cross-examined on behalf of the plaintiff.

(42) On 24.10.2024, Sh. Sandeep, Senior Assistant, from the office of Sub-Registrar-II B, Janak Puri, Delhi has examined as DW-2 and he brought the written reply on behalf of Sub-Registrar II B, Janak Puri, New Delhi with regard to the query

regarding the documents lease vide ID No. 892316026645 as Ex. DW-2/1.

(43) Sh. Gurpreet Singh @ Bunty Chadha appeared in the witness box as DW-3 and tendered his evidence by way of affidavit Ex. DW-3/A. This witness has also been cross-examined at length on behalf of the plaintiff.

(44) Vide separate statement of ld. counsel for the defendant, the evidence on behalf of defendant stands closed on 28.05.2025.

#### **FINAL ARGUMENTS**

(45) I have heard final arguments from Ld counsels for the parties as well as I have perused the entire case file and written submissions filed by Ld counsels for the parties.

#### **SUBMISSIONS ON BEHALF OF THE PLAINTIFF.**

(46) Ld counsel for the plaintiff has filed the written submissions on behalf of the plaintiff and mentioned the facts of the case and further averred that the plaintiff transferred an amount of Rs. 5 lakh to the defendant on 30.08.2016 as an interest -Free Refundable Security Deposit, pursuant to the request of the defendant. It is further averred that the said fact has been unequivocally admitted by the defendant in its evidence affidavit.

(47) It is further averred in the written arguments that no registered lease deed was ever executed and defendant in his cross-examination admits the following facts:

i. Admission as to the fact that he does not remember whether the plaintiff ever signed the draft lease deed ( Ex. DW-1/1).

ii. No denial as to the existence of any document been executed providing for forfeiture of security deposit in the even of non-execution of lease.

iii. Admission as to the fact that the sale deed, site plan, house-tax receipts have not been placed on record alongwith the Written statement.

(48) It is submitted that as a result, the lease deed could not be executed and therefore, the plaintiff requested refund of the IFRSD.

(49) Thereafter, ld. counsel for the plaintiff mentioned about the testimony of DW-2 & DW-3. It is further submitted that registration entry is actually the appointment ID, pertaining to the alleged appointment that the defendant made with the Sub-Registrar's office. It is further mentioned that DW-3 admits in his cross-examination dated 28.05.2025 that he is deposing under the influence of non-payment of commission by the plaintiff, rendering his testimony unreliable.

(50) Ld counsel for the plaintiff has further averred in the written arguments that the defendant failed to provide the documents necessary for the plaintiff to obtain the license and permits required for operating its restor-bar. It is further submitted that defendant has falsely claimed that he has

provided the said documents to the plaintiff. However, neither any of those documents have been brought on record and the same has been admitted by the defendant. As a result, the lease deed could not be executed and therefore, the plaintiff requested refund of the IFRSD.

(51) It is further averred that defendant has admitted that he is unaware whether the draft lease deed was ever signed by the plaintiff. It is submitted that monthly tenancy could not commence unless the lease deed is duly signed and executed by both parties and possession is taken.

(52) It is further averred that as per the averment of the defendant, Mr. Nikhilesh took a print out of the lease on Rs. 100 e-stamp is entirely false and misconceived. This is evident from the alleged lease deed placed on record by the defendant itself, which clearly shows that the said e-stamp paper was purchased by Ravinder Kumar i.e. the defendant.

(53) It is further averred in the written submissions that if it were to be believed that the said document dated 13.08.2016 was duly executed, defendant's counsel circulating a fresh draft lease agreement dated 17.07.2017 nearly a year later, indicates that no conclusion was arrived upon with respect to the draft dated 13.08.2016. Further the defendant neither issued any legal demand notice nor any legal proceedings were initiated by the defendant against the plaintiff.

## SUBMISSIONS ON BEHALF OF THE DEFENDANT.

- (54) Ld. counsel for the defendant has also filed written synopsis on behalf of the defendant and mentioned the averments mentioned in his written statement.
- (55) It is further averred in the written synopsis, that both the parties orally agreed the terms of the lease deed and acted upon the oral terms of the lease deed with the understanding that the terms will be reduced to writing later on. It is further averred that in compliance with the terms of the oral lease, the defendant after receiving security amount made necessary changes in the tenanted premises as required by the plaintiff.
- (56) It is further averred that the oral terms of the settlement were reduced into writing and the lease deed was finalized between the parties and was signed by the defendant, however, the officers of the plaintiff company kept on delaying the signing of the lease deed on one pretext or the other, which is admitted by the plaintiff in para 5 of his replication.
- (57) It is further averred that although Sh. Nikhilesh Singh representative of the plaintiff took print out of the lease deed on Rs. 100/- e-stamp paper on the pretext that the same was required as the plaintiff had to take possession of the tenanted premises for renovation work. The said lease deed was duly signed by the defendant in the office of the broker in presence of Sh. Nikhilesh Singh.

(58) It is further averred that plaintiff has examined PW-1 and in his cross-examination, PW-1 admitted that he has never met the defendant nor ever spoken to the defendant. PW-1 also admitted that he is not aware about the talks which took place between the plaintiff company and defendant. It is further averred that PW-1 also admitted that he was not aware of the terms which were settled between the plaintiff's company and defendant at the time of taking the property on rent. Thereafter Ld. counsel for the defendant has mentioned the cross-examination of PW-1.

(59) It is further averred that the defendant has examined himself as DW-1 corroborating the facts narrated by him in affidavit DW-1/A and his testimony has remained unrebutted and unchallenged on material points. The case of the defendant has been supported by DW-3 the property agent, i.e. Gurpreet Singh @ Bunty Chadha and his testimony on material aspects has remained unrebutted and unchallenged.

(60) It is further submitted that the defendant has rightly forfeited the security amount as the plaintiff failed to pay the rent of the tenanted premises after taking the same on rent from the defendant in the month of August 2016 and he has also failed to pay 50 percent of the stamp duty for execution of lease deed.

(61) Ld. counsel for the defendant has relied upon the following judgments:

1) Judgment titled TCNS Clothing Company Limited Vs Sunil Kumar & Anr. FAO ( Comm) 2/2025, Hon'ble High Court of Delhi, decided on 17.11.2025.

ii) Judgment titled Jagmohan Behl Vs State of Bank of Indore, FAO (OS) No. 166/2016, Hon'ble High Court of Delhi, decided on 22.09.2017.

### **ISSUE-WISE FINDINGS.**

#### **Findings on Issue no. 1**

***Issue no. 1. Whether the plaintiff is entitled to decree of recovery of Rs. 7,55,000/- from the defendant OPP.***

(62) The onus to prove issue no. 1 is upon the plaintiff. In order to prove the said issue, the plaintiff has examined only one witness i.e. plaintiff himself.

(63) It is admitted case of both parties that they agreed to let out the suit property for a period of 9 years (nine years), on monthly rent of Rs. 1,66,670/- for running a restaurant, pub, lounge by plaintiff under the name and style of "Barshala" or any other trade name.

(64) The defendant has admitted that he had received an amount of Rs. 5 lakh from the plaintiff towards interest free refundable security.

(65) The defendant has also admitted that no deduction from the interest free security amount had to be made by defendant.

(66) The defendant has contended that as per clause 4.4. of Lease Deed, it was agreed between the parties that there shall be lock in period of three years and neither party shall have the right to terminate the lease agreement. The defendant has further contended that it was also agreed that as per the terms of the Lease Deed, if the lessee wants to terminate the lease deed during the lock in period, in the said eventuality, the lessee shall pay rent for the entire lock in period and the security deposit shall be forfeited.

(67) In the present case, the defendant has claimed that the plaintiff has breached the terms of lease agreement and not got the lease deed registered and due to which, the defendant, suffered huge loss and by virtue of breach of terms by the plaintiff, the security amount of plaintiff has been forfeited. It is further contended by the defendant that the defendant was also entitled to three years of rent amounting to Rs. 60,00,120/-.

(68) During final arguments, ld. counsel for the defendant has argued that the suit is of commercial in nature and this court has no jurisdiction to try the present suit. He further argued that in para no. 13 of plaint, the plaintiff has also mentioned that the suit is of commercial dispute.

(69) I have gone through the para no. 13 of plaint, wherein it is mentioned that the subject matter of the suit is commercial dispute as defined in section 2(1)(c) of Commercial Courts, Comm. Division & Comm. Appellate Division of High Court ordinance 2015.

(70) In order sheet dated 23.01.2020, it is mentioned that “counsel for plaintiff submits that since this a commercial suit, hence it be sent to ld. District Judge ( West) Delhi for appropriate directions”. On the submissions of ld. counsel for plaintiff, the then ld. ADJ, ordered to put up the case file before ld. District Judge ( West) Delhi for further directions.

(71) Vide order sheet 4.02.2020, the ld. District & Sessions Judge, (West) withdrew the present case from this court and assigned to the court of Sh. Gurdeep Singh, ld. District Judge ( Commercial Court)-02, West, Delhi for appropriate orders.

(72) On 02.03.2020, Sh. Gurdeep Singh, ld. District Judge (Commercial Court)-02, West passed the following order :-

*“Perusal of record shows that the present dispute is not in nature of commercial dispute as defined under Commercial Courts Act, 2015. Ld. counsel for plaintiff as well as defendant also conceded same. Therefore, let the file be sent to Ld. District & Sessions Judge, West District, Tis Hazari Courts, Delhi to pass proper order.”*

(73) Ld counsel for the defendant had also conceded before Ld. District Judge (Commercial Court) -02, West that the suit is not of Commercial nature and he has never challenged the order of ld. District Judge ( Commercial Court) holding that the suit is

not of commercial nature. The said order has attained finality and defendant is bound by order dated 02.03.2020.

(74) The Hon'ble Supreme Court of India in a case titled *Ambalal Sarabhai Enterprises Ltd. Vs K.S. Infraspace LLP and Another(s)* 2019, SCC Online SC 1311, has held that the immovable property should actually be used in trade and commerce for the purpose of bringing the agreement within the ambit of sub clause (VII) of Section 2(1) (c) of the Act. It is further held that merely because the property is likely to be used in relation to trade and commerce, the same can not be ground to attract the jurisdiction of the Commercial Court and the relevant paras of judgment are as under:

*22. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used". Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.*

*23. On 03.11.2017, a Memorandum of Understanding was executed between the appellant-plaintiff, respondent-defendant and Ketan Bhailalbai Shah-second respondent. As per the terms of MOU, parties executed a Deed of Conveyance of the land. A mortgage deed was executed simultaneously along with the MOU with respect to the part of the land admeasuring 15,000 sq.ft. in favour of the plaintiff. It was understood between the parties that respondent No.1 would apply for change of land use permission for the land in question on signing of the MOU. Mortgage deed was executed by respondent No.1 in*

*favour of the appellant in order to ensure performance of obligations under the MOU. But the said mortgage deed was not presented for registration.*

*24. It appears that the trial court has proceeded under the footing that the parties to the suit more particularly, the appellant-plaintiff seems to be carrying on business as Estate Agent and to manage land, building, etc. and the very object as enumerated in Memorandum and Articles of Association of the appellant-plaintiff company established that the property in question are being used exclusively in trade or commerce rather in the business of the plaintiff. As rightly pointed out by the High Court, there is nothing on record to show that at the time when agreement to sell came to be executed in 2012, the property was being exclusively used in trade and commerce so as to bring dispute within the ambit of sub-clause*

*(vii) of Section 2(1)(c) of the Act. Merely because, the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court.*

*25. In the case of Ujwala Raje Gaekwar v. Hemaben Achyut Shah 2017 SCC Guj 583, a Special Civil Suit No.533/2011 was instituted for declaration that the sale deed valued at Rs.17.76 crores executed by the appellant-original defendant No.1 in favour of respondent No.4 be declared illegal and also, for permanent injunction with respect to the land in question. The appellants-defendants thereon filed an application that in sale deed, it has been clearly mentioned that the agreement relating to immovable property used exclusively in trade or commerce and falls within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act and that the matters above, the value of rupees one crore are to be transferred to the Commercial Court. Trial court rejected the said application which was challenged before the Gujarat High Court. The Gujarat High Court held that the aim, object and purpose of establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigant, and if such a suit which is as such arising out of the probate proceedings and/or is dispute with respect to the property are transferred to the Commercial Division/Commercial Court, there shall*

*not be any difference between the Regular Civil Courts and the Commercial Division/Commercial Courts and the object for the establishment of the Commercial Division/Commercial Courts shall be frustrated.*

*26. In Vasu Healthcare Private Limited v. Gujarat Akruiti TCG Biotch Limited & Another 2017 SCC OnLine Guj 724, referred to in extenso by my learned Brother, it was held that “on plain reading of the relevant clause, it is clear that the expression “used” must mean “actually used” or “being used”. If the intention of the legislature was to expand the scope, in that case the phraseology used would have been different as for example, “likely to be used” or “to be used”. The word “used” denotes “actually used” and it cannot be said to be either “ready for use” or “likely to be used”; or “to be used”. We entirely agree with the above purposive interpretation adopted by the Gujarat High Court.*

*27. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed brother Justice A.S. Bopanna.”*

(75) In the present case, the possession of suit property was never given by the defendant to the plaintiff and suit property was never used by the plaintiff for running restaurant, pub or lounge under the name and style of “Barshala” or any other trade name or for any other commercial purpose.

(76) The judgments relied upon by defendant that suit is of commercial nature are not applicable to the facts of the present case as in the said judgments, possession of the immovable property was delivered and the property was actually used for commercial purpose but in the present case, the possession of immovable property was not delivered to the plaintiff and plaintiff had not used the suit property for commercial purpose.

(77) In view of the fact that the possession of suit property was never delivered to plaintiff and suit property was never used in relation to trade and commerce, it is held that the present suit is not of commercial nature and this court has jurisdiction to try the suit.

(78) Defendant/DW-1 has deposed that the present suit is without any cause of action and there is arbitration agreement between the parties, therefore, suit is liable to be rejected under order 7 rule 11 CPC.

(79) I have seen the lease deed Ex. DW-1/P1 and also exhibited as Ex. DW-3/P2. This is a photocopy of lease deed. The original lease deed has not been filed on record by the defendant.

(80) Defendant/DW-1 has deposed during cross-examination that he does not remember as to how many times, he had shared the lease deed with the plaintiff's company. He further deposed that it is in his knowledge that his advocate Mr. Anuj Kapoor sent a draft lease deed through e-mail to plaintiff's company on

17.07.2017. He voluntarily said that he is confused about the date of the said e-mail. He further deposed that he does not remember that the draft lease deed dated 18.03.2026 with stamp paper of Rs. 100/- was sent to the plaintiff by his lawyer but he remember that the same was signed by him.

(81) Defendant/DW-1 further deposed during cross-examination that he does not remember that draft lease deed Ex. DW-1/P1 was ever signed by the plaintiff. He further deposed that it is correct that plaintiff had not signed the lease deed on the first appointment and did not come for execution of lease deed. He further deposed that he does not remember whether any document was executed between plaintiff and him that on failure to execute the lease deed, the whole security amount would be forfeited.

(82) I have seen the photocopy of lease deed Ex. DW-1/P1. The photocopy of the lease deed is signed only by the defendant and there is no signature of any representative/Director of plaintiff company on the said lease deed. Without signing the lease deed by any authorized representative or Director of the plaintiff company, the plaintiff company cannot be made bound by the terms mentioned in the above said lease deed. There is no document or evidence on record that the plaintiff has admitted the execution of draft lease deed Ex. DW-1/P1. The defendant has not filed original lease deed on record. The defendant has also failed to prove that the plaintiff had agreed upon the terms mentioned in the draft lease deed Ex. DW-1/P1. If the term of lease deed were finalized on 18.03.2016 then

there was no need to again send the draft of lease deed by defendant to the plaintiff on 17.07.2017. This fact also proves that the terms of lease deed were not finalized between the parties.

(83) The defendant has not filed any of the document signed between the parties containing the arbitration clause. The defendant has not led any evidence to prove that the plaintiff had ever agreed to refer the matter to Arbitration, in case, any dispute arises between them.

(84) From the testimony of plaintiff as well as defendant, it is proved that the deal of letting out the suit property was not finalized between plaintiff and defendant and due to which the lease deed was neither signed by the plaintiff nor got registered in the office of concerned Sub-Registrar.

(85) In view of the foregoing facts, it is held that the defendant has failed to prove that there is any arbitration agreement between the parties for referring the matter to the Arbitrator. Accordingly it is held that the suit of the plaintiff is not required to be referred to Arbitrator under the provisions of Arbitration & Conciliation Act, 1996.

(86) It is further contended by the defendant in the written statement that the entire documents which were required by the plaintiff, were provided to the plaintiff through Mr. Nikhilesh Singh, at the time of signing the lease deed, in the presence of broker.

(87) DW-3/Sh. Gurpreet Singh @ Buntly Chadha has deposed during cross-examination that the owner of the suit property did not give any document of the property to him. He further deposed that he did not see any document of the property. He further deposed that the owner of the property handed over the mutual agreement to Sh. Sumit, in which the terms of rent and advance were settled. He further deposed that on the said date a stamp paper of Rs. 100/- was purchased but he does not remember who purchased the stamp paper. He further deposed that it is correct that only one party has signed the said draft lease deed. He further deposed that it is correct that the month and year of the draft lease deed is August, 2016. He voluntarily deposed that the document was signed on 13.08.2016. He further deposed that landlord of the property has never shown the documents of the property to him. He further deposed that the day on which the terms were settled no documents were brought by the landlord of the property.

(88) In the present case, the tenancy between the parties could not be commenced as deal of letting out the suit property had not been finalized and possession of suit property was also not delivered by defendant to the plaintiff due to the said reason.

(89) The defendant is claiming that he is entitled to receive rent of 3 years lock in period from plaintiff. The said claim of defendant is not sustainable in law, firstly on the ground that deal of letting out the suit property had not been finalized and lease deed was never signed and executed by the plaintiff.

(90) **Section 106 of Transfer of Property Act reads as under:**

*1 [106. Duration of certain leases in absence of written contract or local usage.—(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.*

*(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.*

*(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.*

*(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]*

(91) **Section 17 of the Registration Act reads as under:**

**17. Documents of which registration is compulsory.—***(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*

- (a) instruments of gift of immovable property;*
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred*

rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

**(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;**

*[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]*

*Provided that the 2 [State Government] may, by order published in the 3 [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.*

*4 [(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]*

*(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—*

*(i) any composition deed; or*

*(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or*

*(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting*

or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) 1 [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court 2 [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by 3 [Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

3 [(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

4 [Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration 5

[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

(92) As per Section 17 of Registration Act, a Lease Deed of immovable property for exceeding one year must be registered. If, the Lease Deed of immovable property for exceeding one year is not registered then as per Section 49 of Registration Act, the unregistered Lease Deed cannot be admitted in evidence to prove the terms of the lease. No oral evidence is also admissible in evidence to prove the terms of the Lease Deed of lease exceeding one year i.e. duration of Lease Deed, Lock in period etc. The lock in period clause in lease exceeding one year is enforceable only if the Lease Deed is valid and registered.

(93) The claim of defendant seeking entitlement of recovery of rent of 3 years lock in period is not sustainable in law as lease deed between the parties has not been registered in the office Sub-Registrar. Without getting the lease deed register in the office of Sub-Registrar, the terms of lock in period of 3 years tenancy can not be legally enforced.

(94) I have perused judgment of Hon'ble Hon'ble High court of Delhi titled “ **Deepak Chopra Vs M/s Flakt (India) Pvt Ltd.** CS (OS) 3032/2024, decided on 06.01.2020 and the relevant para of the said judgment is reproduced as under:

*11. The position with respect to rent of lock-in period is akin to that of earnest money/security and qua which the Supreme Court in Kailash Nath Associates Vs. Delhi Development Authority (2015) 4 SCC 136, followed by me in Speed Track Cargo Vs. State Bank of Patiala 2016 SCC OnLine Del 919, Palm Art Apparels Pvt. Ltd. Vs. Enkay Builders Pvt. Ltd. 2017 SCC OnLine Del 12776, Mera Baba Pvt. Ltd. Vs. Ram Lubhaya Puri 2018 SCC OnLine Del 9502, Klintoz Pharmaceuticals Pvt. Ltd. Vs. Ravinder CS(OS) 3032/2014 Shankar Mathur 2018 SCC OnLine Del 11954, Satish Verma Vs. Garment Craft (India) Pvt. Ltd. 2018 SCC OnLine Del 6829 and Mahendera Verma Vs. Suresh T. Kilachand 2019 SCC OnLine Del 9333, held that mere entitlement in the agreement to forfeit is not enough and loss/damages from breach of contract has to be proved. In fact, the matter is no longer res integra. The Division Bench of this Court in Tower Vision India Pvt. Ltd. Vs. Procall Pvt. Ltd. 2012 SCC OnLine Del 4396 (DB) has held that rent of the lock-in period in a Lease Deed cannot be claimed without pleading loss from vacation by the tenant of the property prior to the expiry of the term of lease. I have also, following the said dicta of the Division Bench, in order dated 2nd December, 2019 in CS(COMM) 1438/2016 titled L.R.Builders Pvt. Vs. Goldenara Leisure & Entertainment Pvt. Ltd. and order dated 18<sup>th</sup> December, 2019 in CS(OS) 1789/2006 titled Sunita Rekhi Vs. Y.D.Puri taken the same view.*

(95) As per above judgment of Hon'ble High court of Delhi, the rent of lock in period cannot be claimed without pleading loss due to vacation of property by the tenant before expiry of the terms of lease.

(96) In case lease deed executed between the parties of present suit was registered with Sub-Registrar, even then the defendant was bound to plead about loss suffered by him due to not taking the property on lease by the plaintiff. The defendant has not mentioned in his written statement as to how much loss, he suffered and in what manner, the said loss was suffered by him due to not taking the property on lease by the plaintiff.

(97) In view of the above-said judgment of Hon'ble High Court of Delhi and foregoing discussions, it is held that the defendant is not entitled to receive any rent of the lock-in-period of three years from the plaintiff.

(98) The defendant has also contended that he is entitled to forfeit the amount of Rs.5 lakh given by plaintiff as interest free refundable security as the plaintiff has breached the terms of Lease Deed & due to the said breach of terms, he has suffered huge loss.

(99) It is already held that the tenancy of the suit property between the parties could not be commenced as deal of letting out the property has not been finalized and Lease Deed of suit property had not been executed and registered.

(100) Defendant/DW-1 deposed in court during cross-examination that document was executed regarding forfeiting the security amount between him and plaintiff before sending the draft Lease Deed. No such document has been placed on record by the defendant. In the written statement, the defendant

has not contended that any document regarding forfeiture of the security amount was executed between him and the plaintiff.

(101) The plaintiff has deposed in his affidavit in evidence that before execution of the lease deed, the defendant was required to produce/serve the copy of the requisite documents i.e. copy of the sanction plan issued by the Local Municipal Authorities of the demised premises, copy of the Sale Deed, copy of the latest electricity and water bills etc. but the defendant was unable to produce the same due which, the plaintiff could not take the requisite permissions from the MCD, excise and other related departments. He further deposed that this was the primary condition before taking the demised premises on lease from the defendant because in the absence of the above documents it was not possible for the plaintiff to run or operate a restaurant cum bar from the demised premises.

(102) The defendant in his affidavit in evidence Ex. DW-1/A deposed that the entire documents which were required by the plaintiff at the time of signing of the lease deed were provided to the plaintiff through Sh. Nikhilesh Singh in presence of broker.

(103) The defendant further deposed that plaintiff never contacted him in regard to sanction plan and other requisite documents as the same were already gone through by the representative of the plaintiff in the month of August, 2016 before handing over security cheque and finalization of lease deed.

(104) During cross-examination, defendant/DW-1 deposed that all above said documents have been supplied to Sh. Bunty Chadda and Sh. Pappu Chadda, who are broker of plaintiff company by him. He further deposed that he does not know whether he has mentioned the same in the reply of Legal Notice or written statement or not. He further deposed that it is correct that the said documents have not placed on record with his written statement.

(105) DW-3/Sh. Gurpreet Singh @ Bunty Chadha deposed in his cross-examination that the owner did not give any document of the property to him. He further deposed that he did not see any document of the property. DW-3 further deposed that he alongwith his father had shown this property to the company and one, Sh. Sumit on behalf of the company sat with the owner of the property in his office. The terms between the parties were settled on the same day in front of him and his father. The terms were three months security, one month advance rent and one month commission.

(106) DW-3 further deposed in his cross-examination that the owner of the property handed over the mutual agreement to Sh. Sumit in which the terms of the rent and advance were settled. DW-3 further deposed that he does not remember that both the parties has signed the said draft of lease deed. After seeing the document Ex. DW-3/P2, he deposed that he cannot tell that which parties have signed. DW-3 further deposed that the landlord of the property has never shown the documents of the

property to him. DW-3 further deposed that the day on which the terms were settled, no documents were brought by the landlord of the property.

(107) There is above said material contradictions in the testimonies of DW-1 and DW-3. As per defendant, the documents were produced to plaintiff through Sh. Nikhilesh Singh in the presence of broker and the said documents were also supplied to Sh. Bunty Chadda and Sh. Pappu Chadda, but DW-3/Sh. Gurpreet Singh @ Bunty Chadha deposed that the defendant had not given any document of the property to him. As per DW-3, the terms were settled with plaintiff through Mr. Sumit Sharma and not through Mr. Nikhilesh Singh as deposed by the defendant. DW-3 did not disclose the name of Mr. Nikhilesh Singh as representative. DW-3 further deposed that the defendant has neither shown the document of the property to him nor brought the documents on the day on which terms were settled.

(108) From the testimony of DW-3, it is proved that no document of property was shown to plaintiff. As per plaintiff he could not get the license for running bar as defendant has not provided to him requisite documents of property including sanctioned site plan. The defendant has also not filed said documents. Moreover, the purpose of letting out the property was also frustrated before signing the Lease Deed by the plaintiff as government of NCT of Delhi did not give license to the plaintiff for running the bar.

(109) The defendant has also failed to prove that he is entitled to forfeit the security amount of the plaintiff. It is admitted case of the defendant that no deduction had to be made from the security amount as per terms agreement between him and the plaintiff.

(110) The defendant has not led any evidence to prove any loss suffered by him, due to not executing the lease deed by the plaintiff and due to not taking the suit property on rent by the plaintiff.

(111) In view of the foregoing facts and discussion, it is held that the plaintiff is entitled to receive his security amount of Rs. 5 lacs from the defendant. The defendant has wrongly withheld the abovesaid amount of the plaintiff, so, the plaintiff is also entitled to receive interest on the said amount of Rs. 5 lacs.

(112) The plaintiff is claiming interest @ 18 % per annum on the abovesaid amount of Rs. 5 lacs but considering the nature of transaction between the parties, the interest @ 18 % per annum is excessive, so, the court is not inclined to grant the interest @ 18 % per annum. However, considering current bank rate of interest, interest @ 9% per annum is granted to the plaintiff. Plaintiff is held entitled to receive interest @ 9 % per annum on the amount of Rs. 5 lacs w.e.f 01.09.2016 till its realization.

**RELIEF:**

(113) In view of the foregoing findings on the above-said issue no. 1, the suit of the plaintiff stands decreed with cost and the plaintiff is held entitled to recover an amount of Rs. 5,00,000/- (Rupees Five Lakhs) from the defendant along with interest @ 9% per annum w.e.f. 01.09.2016 till realization of the said amount.

(114) Decree-sheet be prepared accordingly.

(115) **File be consigned to record room after due compliance.**

**Announced in open Court  
today on 14.03.2026**

(SHIV KUMAR)  
DJ-02, West Distt. Tis Hazari  
courts Delhi