IN THE COURT OF SH. HARJYOT SINGH BHALLA
DISTRICT JUDGE-03, SOUTH-WEST DISTRICT,
DWARKA COURTS, NEW DELHI

Appeal No.	:	RCA DJ/17/2026
CNR No.	:	DLSW01-001844-2026
Date of Institution	:	04.02.2026
Date of concluding arguments	:	02.07.2026
Date of judgment	:	09.07.2026

IN THE MATTER OF:

Gaurav Sethi
S/o Sh. Subhash Chander Sethi
R/o L-51C, Second Floor, Gali No.22,
New Mahavir Nagar, New Delhi-110018

......Appellant

Versus

M/s Aar Pee Apartments Pvt. Ltd.
Registered Office at:
M-132, Adinath Shree House,
Connaught Circus,
New Delhi-110001

........Respondent

JUDGMENT

1. This is a Regular Civil Appeal filed by the Appellant/Defendant against the ex-parte judgment and decree dated 27.09.2025, passed by the Ld. SCJ-cum-RC, South-West, Dwarka, New Delhi against the defendant/appellant.

Plaint

2. Briefly stated, case of the plaintiff is that plaintiff is a Private Limited Company incorporated under the Companies Act 1956 and is the Builder and Promoter and is engaged in the building activities The plaintiff company, had, acquired leasehold rights in the Plot no.6, District Centre Janak Puri New Delhi-110058 from Delhi Development Authority in the open auction on which a building "T.C. Jaina Tower-II was constructed.

3. That the plaintiff allotted various spaces in the said building to persons on a license Basis. license agreements which contained detailed terms and conditions were executed. That the mother of the defendant was also a licensee and was allotted space no. 315, 3rd Floor, T.C. Jaina Tower-II, Plot No.6, Jankapuri District Centre New Delhi-110058 by virtue of license agreement dated 08.07.2002. Under the said license agreement she was given specific right to use the said space for the period of 5 years. That the said license agreement has since expired.

4. That the license rights of the above said space was in the name of the mother of the defendant namely Mrs. Sudesh Sethi, however after demise of the mother of the defendant, the defendant was similarly bound by the said terms and conditions being legal heirs of the licensee Late. Mrs. Sudesh Sethi.

5. That as per the terms of the perpetual lease between plaintiff and DDA, the plaintiff is bound to pay the ground rent and e- Ground Rent every six months in advance to DDA, without any demand being raised by the DDA and it is clearly provided in the said lease that in case of default, the plaintiff is liable to pay the interest/penalty.

6. That the DDA has the right to cancel the lease and resume the possession of the entire building, as the DDA has

done in most of the cases in the Janakpuri District Center and recently on 20.01.2021 in Pitampura complex. That abovesaid payment of the ground rent, e-ground rent and licensee fee by the plaintiff company is a mandatory obligation on part of the plaintiff company which has to be complied with, even without any demand being received from the DDA and the defendant is bound to pay the proportionate amount of Ground Rent & enhance ground rent and licensee fee every year in advance.

7. That DDA in its Press Note has extensively advertised in the daily Newspaper Hindustan Times dated 15.02.2020 about the mandatory payment of the ground rent and e-ground Rent as well as about the consequences of non-payment of the ground rent and e-ground Rent. That the said advertisement/ press note is being filed herewith for the kind perusal of this court.

8. That the plaintiff company is regularly making payment of the said charges to the DDA in advance every year. That as per the clause 16(a) & 17(a) of the license Agreement signed between the parties, the defendant is in use and occupation of the said space, However, the defendant is bound by the terms and conditions of the terms of auction/perpetual lease of the plot on which the building is constructed and as per the terms and conditions of the lease, by DDA, it has been clearly provided in Clause Ill and Clause IV (vi) (vii) that the DDA has the right to cancel the allotment in case the ground rent is not paid in time, and therefore the defendant are in clear breach of the terms and conditions of the license agreement.

9. That as per Clause 16(a) and 37 of the terms of the said license agreement the defendant was liable to make the

payment of ground rent, e-ground rent and license fee in advance every year to the plaintiff company in respect of the above said space time to time. That the plaintiff was under no obligation to raise any bill or reminder, but still the plaintiff on its part sent the bills to the defendant.

10. That the plaintiff company sent the various bills/ demand letters time to time and lastly dated 25.08.2023 towards, the ground rent, e-ground rent and license fee charges for the period up to 31.03.2024 to the defendant in respect of the space no. 315, 3rd Floor, T.C. Jaina, Tower-II, Plot No. 6, Janakpuri, District Centre, New Delhi-110058, amounting to Rs. 10,73,163/- however the defendant failed to pay the said outstanding ground rent, e-ground rent and license fee amount, to the plaintiff company.

11. That the defendant is a regular defaulter in making payment of the ground rent, e-ground rent and license fee of his proportionate share of the suit space alongwith license fee and interest thereof by deliberately avoiding to make payment of the Government dues since for which the Plaintiff company on several occasions raised various demands and reminders letters to the said Defendant.

12. That defendant has also made additions & alteration by breaking columns/beems which has resulted developing cracks in the other parts of the building and which is very dangerous for other occupants of the building and deviations in the space in sheer violation of the sanction plan as well as to the public at large visiting the said building. That all above mentioned acts of demolition and destruction are strictly in contravention of the building by laws, rules and regulations of

Govt. Authorities like MCD & DDA etc., various local bodies / authorities; as well as in violation of Clause 21 (a) of the Agreement.

13. That the damages caused is much more but the plaintiff is entitled to claim Rs. 1,00,000/- from the defendant on account of damages caused to the structure and elevation of the building. That the plaintiff sent the show cause notice dated 12.09.2023 to the defendant through Speed post whereby the Plaintiff asked the defendant to show cause as to why the cancellation of the above said space should not made by the plaintiff for non-payment of arrears of said ground rent, e Ground Rent and license fee of the space and violation of terms of license agreement and also demanded Rs. 100000/- towards the amount of damages caused to the building of the plaintiff. However the defendant have failed to complied with the said notice.

14. That since the defendant has failed to perform his part of obligation as per the license agreement. That a termination notice dated 23.12.2023 was sent on behalf of the plaintiff company to the defendant thereby the plaintiff terminated the license agreement and the plaintiff company asked the defendant to vacate the suit premises by removing himself and his belongings lying therein within a period of 15 days of the receipt of the termination notice of said space and also enclosed cheque bearing number 000490 dated 22.12.2023 drawn on ICICI Bank, C.P Branch New Delhi amounting Rs. 1,30,000.00/- towards refund security of deposited at the time of execution of license Agreement and also pay the due ground rent and e-ground rent and license fee amount alongwith interest and

penalty of Rs. 10,73,163/- failing which the plaintiff company shall take appropriate legal action.

15. That the plaintiff is not claiming arrears of ground rent, license fees, etc. from the defendant and relinquishes the part of claiming recovery of the said amount as provided in Order II Rule 2 of CPC an claiming the relied of removing the defendant from the suit space in the present suit.

16. The defendant is liable to pay the damages for the unauthorized use and occupation of the suit spaces @ Rs. 1,000/- per day as such the plaintiff is entitled for the damages @ Rs. 1,000/- per day from the defendant on account of unauthorized use and occupation of the suit space which amount comes to Rs.23,000/- from the date of termination of license till the date of filing of the suit. That the plaintiff is also entitle for the future damages at the same rate of Rs.1,000/- per day from the date filing of the present suit till the removal of the defendant himself: and his belongings from the suit space. Hence, the suit.

17. The Ld. Trial Court issued summons to the defendant.

18. The summons, attempted to be served on the defendant, were returned with remarks “refused”. None appeared on behalf of the defendant and accordingly, Ld. Trial Court proceeded against the defendant ex-parte and ultimately, passed a judgment and decree dated 27.09.2025.

19. The defendant herein, thereafter, filed an application under Order 9 Rule 13 of CPC before the Ld. Trial Court and also filed the present appeal under Section 96 of CPC.

20. In the memorandum of appeal, the appellant has raised the following grounds:

i. That the decree has been obtained by fraud i.e., by forging the agreement between the parties by scoring off Clause 41, which is an Arbitration clause;

ii. That the court had no jurisdiction in view of the Commercial Courts Act;

iii. All the LRs of deceased Smt. Sudesh Sethi were not impleaded as defendants and that too, fraudulently;

iv. That the agreement dated 08.07.2002 was actually a builder-buyer agreement and not a license agreement as projected by the plaintiff and that the words "total agreed deposit" used in the said agreement was the "total agreed sale consideration";

v. That the suit for possession was falsely/wrongly filed in the garb of suit for mandatory injunction;

vi. That the agreement was a colorable device employed by the plaintiff company to circumvent the provisions of Delhi Apartment Ownership Act, 1986, to evade the execution of a Deed of Apartment;

vii. That the suit for recovery was time barred and therefore, the plaintiff company gave up the claim of recovery of arrears and the Ld. Trial Court failed to appreciate the said conduct;

viii. That the Ld. Trial Court wrongly relied upon the report of the Process Server regarding refusal of summons by defendant and the Process Server was neither examined, nor proof of affixation furnished;

ix. That the plaintiff has concealed the factum of receiving payment of Rs.1,50,000/- from the defendants during the pendency of the suit; and

x. That the judgment has been passed on the basis of no evidence, because the award of damages @ Rs.1,000/- per day is arbitrary, excessive and contrary. That the Ld. Trial Court was bound to consider the bar under Arbitration and Conciliation Act, 1996.

21. No other grounds have been raised.

22. After the arguments were concluded on the appeal, an application was filed under Order 7 Rule 14 of CPC to place additional documents on record before the date when the matter was reserved for orders.

23. The appellant has, by way of the said application, tried to place on record the affidavit of Sh. Rakesh Jaina, Director of the respondent/plaintiff company submitted with the MCD, where the said Director has claimed that all units and spaces in the building have been sold and the flat buyers are liable to pay the property tax.

24. First of all, the application could not have been filed by the appellant under Order 7 Rule 14 of CPC. In appeal, the only provision which should have been invoked was for leading/recording of additional evidence under Order 41 Rule 27 of CPC.

25. Secondly, mere production of a photocopy of a document would not ipso facto imply that the same has been proved in accordance with law for the court to act on it. Interestingly, there are only prayers in the said application. One is to take the affidavit on record and second to permit the appellant to re-argue the appeal.

26. In the present case, the defendant never appeared and the plaintiff’s witness was never cross examined. Therefore,

how, merely on filing of a copy of an affidavit, which is not part of the Trial Court record, the decision can be modified? Even if the said document is taken on record, it cannot be a valid proof of sale of suit property by the respondent to the appellant. A sale can only be by way of sale deed. There cannot be any estoppel against the statute. The provisions of Transfer of Property Act and Stamp Act cannot be bypassed even by the plaintiff and the defendant admitting transfer in the absence of a duly stamped and registered sale deed. There is no suggestion given to the plaintiff's witness in the absence of cross examination that the real transaction between the parties was not license, but sale. If indeed the intent was to sell, even then, at the most, the document would have been an agreement to sell (which I do not agree with) in which case, the appellant was bound to file a counter claim or may file a separate suit, if permissible in law, seeking specific performance of contract. In fact, during the course of arguments, the Ld. Counsel for the appellant was relying upon the decision in ***Raka Singhal Vs. Pushpa Builder,*** AIR 2007 Del 222, which is a decision arising out of suit for specific performance, based on a similar plea. Needless to say that the appellant has never invoked the provisions of Specific Relief Act, whereby an instrument or a contract can be rectified under Section 26 of Specific Relief Act. Such relief, at this stage, may be barred by limitation.

27. The application is accordingly, without any merits and is accordingly required to be dismissed.

28. That takes me to the grounds urged.

29. It is settled law that in a civil appeal, except with the permission of the court, a party cannot go beyond the grounds raised.

30. That as far as civil appeal is concerned, it is different from a criminal appeal and the relevant provisions reads as follows:

<u>Cr.P.C for Criminal Appeal:</u>

> *382. Petition of appeal. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.*

<u>Order XLI Rule 1 & Rule 2 of CPC:</u>

> ***Rule 1 Order XLI of Code of Civil Procedure 1908 "Form of appeal, What to accompany memorandum"***
> *(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. the memorandum shall be accompanied. by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the Judgment on which it is founded:*
> *Provided that where two or more suits have been tried together and a common Judgment has been delivered therefor and two or more appeals are filed against any decree covered by that Judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the Judgment.*
> ***(2) Contents of memorandum- The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.***
> *(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.*

Rule 2 Order XLI of Code of Civil Procedure 1908
"Grounds which may be taken in appeal"

The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection set forth in the memorandum of appeal, but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

31. Since civil cases proceed on pleadings of both plaintiff and defendant, the appeals are also subjected to stricter rules of pleadings. In criminal law, the accused is neither called upon nor required to file any written statement and the rules of pleadings cannot be made applicable to the appeal filed by an accused or a convict. Therefore, the language of Section 382 is quite different from the language of Order XLI Rule 1 & Rule 2.

32. Further, a criminal appeal by its nature enjoins a duty upon the court to rehear and re-evaluate the evidence and appellant is entitled to agitate all questions of facts and law before the court of criminal appeal. It is virtually a complete rehearing of the matter.

33. The appellant in a civil appeal, on the other hand, cannot be, without the leave of the court, be heard on any ground or objection not said forth in the memorandum of appeal. The appellant cannot, therefore, urge a ground not set forth in the memorandum of appeal.

34. I would first deal with the ground (viii) hereinabove indicated i.e., *that the service report was manipulated or the defendant was not properly served.*

35. A perusal of record reveals that the Trial Court had attempted to serve the appellant at the residential address and the Process Server, as well as, the Postman, both have indicated that the process was refused. It was argued that it is not indicated as to who refused the process.

36. First of all, the provisions dealing with delivery of summons by post and by Process Server have been dealt with separately in the Code. Order 5 Rule 9 of CPC deals with service by post and its refusal, whereas Order 5 Rule 17 of CPC deals with refusal made to a official of the court trying to serve process. They are quoted for ease of reference:

Order 5 Rule 9 of CPC:

9. Delivery of summons by Court.

> ***(1)*** *Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.*
>
> ***(2)*** *The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.*
>
> ***(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High***

Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) *Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.*

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) *The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).*

<u>Order 5 Rule 17 of CPC:</u>

17. Procedure when defendant refuses to accept service, or cannot be found.
Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, ***the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued,*** *with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.*

37. There is no challenge to the address given by the plaintiff where the summons were attempted to be served. In the memorandum of appeal the challenge seems to be limited to the attempt made by the Process Server and failure of the Ld. Trial Court to examine the Process Server and non affixation. There is no challenge to the report of the Postman on the registered/Speed Post. In my view, in law, there is no further requirement if the Postman returns the summons sent by post with the remark refused. There is no error in the Trial Court record and the procedure adopted in this regard. In my view, the appellant chose to sit on the fence to see what the Trial Court would do by refusing to accept the summons sent. He chose not to participate and now must bear the brunt of what has transpired. Therefore,

the ground that defendant was not served properly has no basis and is hereby rejected.

38. That takes me to the next ground i.e., ground (i) as hereinabove indicated i.e., *of manipulation in the license agreement and alleged existence of an arbitration clause, which the plaintiff deleted fraudulently.*

39. First of all, such a plea was required to be taken in the written statement, which was never filed before the Trial Court. The agreement was also required to be filed alongwith an application under Section 8 of Arbitration & Conciliation Act. Merely producing a photocopy, claiming the same to be the real agreement between the parties without invoking provisions for leading additional evidence under Order 41 Rule 27 of CPC is of no avail. Mere production of a photocopy of a document would not ipso facto imply that the same has been proved in accordance with law for the court to act on it.

40. Next, the doctrine of waiver, stands duly recognized by Section 4 of Arbitration & Conciliation Act, the doctrine of limited judicial intervention stands recognized in Section 5 of Arbitration & Conciliation Act. Section 8 of Arbitration & Conciliation Act, is not absolute and does not take away jurisdiction of a civil court to deal with the dispute for which there may exist an arbitration agreement. It requires the defendant before a civil court, to move appropriate application conforming with the pre-conditions and within the time provided.

41. Section 8 prior to the amendment of 2015, reads as follows:

> *8. Power to refer parties to arbitration where there is an arbitration agreement.-*

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Nothwithstanding that an application has been made under sub-section (1) and that the issued is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

42. The amended Section 8 of Arbitration & Conciliation Act is being reproduced for ease of reference:

"(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall

> *file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the party to produce the original arbitration agreement or its duly certified copy before that court..........".*

43. In ***N. Radhakrishnan Vs. Maestro Engineers & Ors,*** (2010) 1 SCC 72 and ***Atul Singh & Ors Vs. Sunil Kumar Singh & Ors,*** AIR 2008 SC 1016 the Hon'ble Apex Court has held that the requirement of filing the original as well as certified copy under section 8 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as the Act) is a mandatory requirement. An application not supported by the original agreement or certified copy thereof as required by the Section 8 is required to be dismissed. In ***N. Radhakrishnan (supra),*** a copy of the partnership deed containing the arbitration agreement had been filed by the plaintiff and the defendant had, instead of filing a copy, wished to rely on the copy filed by the plaintiff. The Hon'ble Supreme Court held that:

> *"The court would not be empowered to refer the matter to an Arbitrator due to the non compliance of the provisions mentioned under Section 8 (2) of the Act".*

44. The decision in an earlier case of ***Atul Singh (supra)*** is also to same effect as is apparent from para 10 of the judgment relevant portion of which reads as follows:

> *"There is no whisper in the petition dated 28.2.2005 that the original arbitration agreement or a duly certified copy thereof is being filed along with the application. Therefore, there was a clear non-compliance of sub-section (2) of Section 8 of 1996 Act which is a mandatory provision and the dispute could not have been referred to*

> *arbitration. Learned counsel for the respondent has submitted that a copy of the partnership deed was on the record of the case. However, in order to satisfy the requirement of sub-section (2) of Section 8 of the Act, defendant No.3 should have filed the original arbitration agreement or a duly certified copy thereof along with the petition filed by him on 28.2.2005, which he did not do. Therefore, no order for referring the dispute to arbitration could have been passed in the suit."*

45. Two decisions of the Hon'ble Apex Court in ***N. Radhakrishnan Vs. Maestro Engineers & Ors,*** (2010) 1 SCC 72 and ***Atul Singh & Ors Vs. Sunil Kumar Singh & Ors,*** AIR 2008 SC 1016, make it amply clear that if the mandatory requirement has not been complied with application has to be dismissed.

46. The aforesaid view has also been relied upon by the Hon'ble Delhi High Court in ***Ansal Housing Construction Limited Vs. M/s Power House Health Club India,*** CS (OS) 2574/2013 order dated 11.10.2018.

47. The Delhi High Court in ***Punjab State Electricity Board v. Vee Kay General Industries*** ("Vee Kay Industries"), I(2008)BC36 has made a crucial distinction, holding that while there is no bar on filing a civil suit even if there is an arbitration clause, if the suit pertains to a contract requiring arbitration, the defendant can seek appropriate orders under Section 8. The Court emphasized that it is "altogether one thing to say that the dispute as raised in the plaint, being arbitrable, should be stayed (position under the Old Act) or referred to arbitration (position under the New Act) vis-a-vis to state that the suit is not maintainable."

48. The defendant, who refused service of summons, can be said to have waived his right to file application under Section 8 of Arbitration & Conciliation Act and therefore, cannot now claim that the civil court had no jurisdiction to deal with the matter. This ground also, therefore, cannot help the appellant.

49. That takes me to Ground (ii) i.e., *the jurisdiction of the court was barred under Commercial Courts Act* read with Ground (v) *the suit for possession was wrongly filed in the garb of suit for mandatory injunction.*

50. The suit was filed by the plaintiff seeking permanent injunction and past, pendente lite and future damages valuing the same at Rs.1,23,000/- for the relief of recovery of damages and Rs.130/- each for the relief of permanent and mandatory injunction. Suit was filed on a license deed duly executed between the parties, all provisions whereof (except the clause 41 as hereinabove indicated) are admitted between the parties. As already indicated, the oral testimony of plaintiff's witness is unrebutted in the absence of cross examination. Even otherwise, the aspect of valuation has to be decided on the plaint as it is and neither on the decision on merits nor on the pleas contained in the written statement.

51. A suit for mandatory injunction is maintainable for claiming possession against a licensee, and law on this aspect is no longer *res integra* in view of a plethora of pronouncements by various High Courts as well as by the Hon'ble Supreme Court. Reference may be made to the decisions relied upon by the Defendant in support of his application ***Renu Nagar (supra),*** reference may also be made to Apex Court's decision in ***Sant Lal Jain vs Avtar Singh,*** *AIR 1985 SC 857.*

52. It is well settled that a suit for permanent and mandatory injunction can be valued by the plaintiff in his/her discretion and the same is not required to be valued at the market value of the property. In ***Padmavati Mahajan Vs. Yogender Mahajan,*** 152 (2008) Delhi Law Times 363, the aforesaid principle was reiterated and the court observed relied upon the decision in ***Oriental Trading Corporation Vs. Punjab Spin Trading Company***, 1976 RLR 650 and quoted the following paragraph:

> *"The law on the subject is well settled- Under Section 7(iv)(d) of the Court Fees Act in a suit to obtain injunction, discretion is given to the plaintiff to value the relief and pay the Court fees accordingly and a local amendment made in the law has provided that the Court fees paid in such a suit shall be not less than Rs. 13. on the other hand, in suits for possession of land and houses, the Court fee is to be paid on the market value as provided in Sub-clause (c) of Clause (v) of Section 7 of the Court Fees Act. In Sathapana Chettiar v. Ramanathan, AIR 1958 SC 245, the Supreme Court laid down that the question of Court fees must be considered in the light of the allegations made in the plaint and this decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. A Full Bench of the Circuit Bench of the Punjab High Court at Delhi in Jai Krishna Dass v. Babu Ram, 1967 PLR 52, observed that it was settled law that for deciding the question relating to the amount of Court fee payable on a plaint, not only have the averments in the plaint alone to be taken into account but the said allegations are to be assumed to be correct and the decision can neither depend on the maintainability of th suit as framed nor upon the assumption that the Court must somehow spell out of the plaint such a claim which is ultimately capable of being decreed and he Court has to take the plaint as it is without*

omitting anything material and without reading in it by implication what is not stated therein "

53. The Ld. Single Judge, Hon'ble Justice Sanjeev Khanna noted that in the case before his lordship plaintiff was claiming to be in joint occupation of the property with the defendant and had alleged revocation of license and therefore the suit was not for recovery of possession but for grant of mandatory injunction to vacate the same. In such a case, if the plaintiff is content to have a decree of mandatory injunction, it is open for the plaintiff to pay court fees on the suit as framed. Therefore, the court was of the view that when the plaintiff chooses to sue for injunction instead of possession and pays the court fees as if it was a suit for injunction there is no defect in the valuation.

54. In fact, in case of a licensee even if the word possession is used in a prayer for mandatory injunction, court fees need not be paid on value of the property. In any event, the prayer in the present suit does not use the expression possession. In another decision of the Delhi High Court in ***Sunil Sharma and Anr Vs. Uma Sharma***, RSA No. 166/2012 decided on 14.03.2014 by another Ld. Single Judge of the Delhi High Court wherein a prayer for vacation and handing over of physical possession was sought and the court upheld the orders of the trial court as well as the first appellate court to treat the case as one seeking relief of mandatory injunction and valued under the provisions Section 7 (iv) (d) of the Court Fees Act.

55. Therefore, there was no error in filing a suit for mandatory injunction or its valuation. Further, in view of Order 2

Rule 2 of CPC, the plaintiff can always give up any claim or relief he may chose to. Therefore, if the plaintiff, chose to give up the relief of recovery of arrears of ground rent etc. till the date of legal notice, no fault can be found with it.

56. It is equally settled that Commercial Court Act has no application to disputes below Rs.3,00,000/- in value.

57. The Commercial Courts Act was enacted to expeditiously deal with the commercial disputes. The Constitution of Commercial Courts is governed by Section 3 of the said Act, which is quoted for ease of reference:

> ***3. Constitution of Commercial Courts***.—*(1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:*
>
> *[Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level: Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction,* ***the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]***
>
> ***[(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.]***
>
> *(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a*

Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The [State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a [Commercial Court either at the level of District Judge or a court below the level of a District Judge].

58. It is noteworthy that the words "specified value" is defined in Section 2(1)(i) of the Act and is quoted for ease of reference:

2. Definitions.*—(1) In this Act, unless the context otherwise requires,—*

(i) "Specified Value", in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with Section 12 [which shall not be less than three lakh rupees] or such higher value, as may be notified by the Central Government.

59. I would next refer to Section 12 of the Commercial Courts Act, which is also quoted for ease of reference:

12. Determination of Specified Value.*—(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:—*

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the

case may be, shall be taken into account for determining such Specified Value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value; 1 [and]

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value;

(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

(emphasis supplied)

60. A conjoint reading of three provisions implies that only a suit, the value whereof, is more than Rs.3 lacs, shall fall within the purview of the Commercial Courts Act and will have to be filed before a Commercial Court. This view is fortified by the observations made by the Hon'ble Division Bench of Delhi High Court in ***Pankaj Rajivbhai Patel Trading as Rakesh Pharmaceuticals Vs. SSS Pharmachem Pvt. Ltd.,*** 2023 SCC OnLine Del 7013, which is quoted for ease of reference:

6. It becomes relevant to note that undisputedly the pecuniary jurisdiction of commercial courts in Delhi *ranges from Rs. 3 lakhs to Rs. 2 crores. Suits which are valued at above Rs. 2 crores are to be placed before the Commercial Division of this Court. It is also the admitted position that insofar as specified value under the CCA is concerned, that too has been notified as Rs. 3 lakhs. Thus, the minimum pecuniary jurisdiction and specified value of District Courts in Delhi is at par.*

61. Therefore, the present plaint which seeks recovery of Rs.1,23,000/-, plus permanent and mandatory injunction, cannot be said to be a dispute of the specified value, which had to be filed before the Commercial Courts. The present dispute is also not an Intellectual Property Right dispute, which is required to be originally brought before the Ld. District & Sessions Judge.

62. It is settled law that simple suits for recovery of money of value less than Rs.3 lacs or simplicitor suit for injunctions not being IPR disputes have to be filed before the Ld. Senior Civil Judge, who may retain the same or assign the same to any Civil Judge working in the District. Same has been done in the present case. These grounds are also rejected.

63. Ground (iii) hereinabove indicated i.e., *All the LRs of deceased Smt. Sudesh Sethi were not impleaded as defendants and that too, fraudulently.*

64. The plaintiff's case is based on license and therefore, the person enjoying the licensed premises only is required to be impleaded in law. The appellant has not shown that the appellant had, at any point of time, after the death of the original licensee, all the LRs of the deceased licensee had sought attornment of the license in their favour. Even otherwise, even in the present appeal only one LR Gaurav Sethi has challenged the decree without impleading the other LRs. Therefore, I am of the view that

remaining LRs have not considered themselves as person aggrieved by the decree. The averments in the plaint and the evidence regarding the appellant having being treated as LR have also not been probed or challenged by filing any pleadings or by cross examination. The said ground is therefore, of no avail.

65. Ground (iv) hereinabove indicated i.e., *That the agreement dated 08.07.2002 was actually a builder-buyer agreement and not a license agreement as projected by the plaintiff and that the words "total agreed deposit" used in the said agreement was the "total agreed sale consideration"* & Ground (vi) hereinabove indicated i.e., *That the agreement was a colorable device employed by the plaintiff company to circumvent the provisions of Delhi Apartment Ownership Act, 1986, to evade the execution of a Deed of Apartment.*

66. At the cost of repetition, a sale can only be by way of sale deed. There cannot be any estoppel against the statute. The provisions of Transfer of Property Act and Stamp Act cannot be bypassed even by the plaintiff and the defendant admitting transfer in the absence of a duly stamped and registered sale deed. There is no suggestion given to the plaintiff's witness in the absence of cross examination that the real transaction between the parties was not license, but sale. If indeed the intent was to sell, even then, at the most, the document would have been an agreement to sell (which I do not agree with) in which case, the appellant was bound to file a counter claim or may file a separate suit, if permissible in law, seeking specific performance of contract. In fact, during the course of arguments, the Ld. Counsel for the appellant was relying upon the decision in ***Raka Singhal Vs. Pushpa Builder,*** AIR 2007 Del 222, which is a decision

arising out of suit for specific performance, based on a similar plea. Needless to say that the appellant has never invoked the provisions of Specific Relief Act, whereby an instrument or a contract can be rectified under Section 26 of Specific Relief Act. Such relief, at this stage, may be barred by limitation.

67. The court cannot in the absence of any admissible evidence, add to or subtract from the language of the license deed so as to treat it as a sale deed. Further, provisions of Section 91 to Section 97 of the Evidence Act cannot be ignored and it is doubtful that even if led, such an evidence was permissible. These grounds are therefore, without any substance and are rejected.

68. Ground (vii) hereinabove indicated i.e., *That the suit for recovery was time barred and therefore, the plaintiff company gave up the claim of recovery of arrears and the Ld. Trial Court failed to appreciate the said conduct.*

69. The giving up of any time barred relief, cannot have any consequence on relief for which period of limitation has not expired.

70. Secondly, even the relief of recovery of arrears for the last 3 years, immediately, preceding the service of legal notice and filing of the suit cannot be said to be time barred, limitation being 3 years from the date such amount became due. I have already, hereinabove, dealt with the aspect of plaintiff being competent to give up any portion of his claim, even for the purpose of bringing his suit to a court having lower pecuniary jurisdiction. This ground is also therefore, rejected.

71. Ground (ix) hereinabove indicated i.e., *That the plaintiff has concealed the factum of receiving payment of*

Rs.1,50,000/- from the defendants during the pendency of the suit.

72. There is no evidence before the court that plaintiff had concealed any such payment. If such payment was made, why it was made, if the property already stood purchased by the appellant, as was being claimed. Further, the appellant can always recover any payment made under mistake or fraud from the defendant. This ground is also rejected.

73. Ground (x) hereinabove indicated i.e., *That the judgment has been passed on the basis of no evidence, because the award of damages @ Rs.1,000/- per day is arbitrary, excessive and contrary. That the Ld. Trial Court was bound to consider the bar under Arbitration and Conciliation Act, 1996.*

74. As far as finding on damages is concerned, I find that indeed the Trial Court has granted the relief of Rs.23,000/- on account of unauthorized use for past damages, as also, future damages @ Rs.1,000/- per day. There is no evidence to indicate the market value of rent, which could have been fetched by the property. The amount is, accordingly, reduced to Rs.5,000/- for the period before the filing of the suit, as also, to Rs.7,000/- per month towards pendente lite damages and future damages till the vacation of the property. This direction has been passed taking judicial notice of the fact that a super area of 340 Square Feet of the suit property would have fetched some rent. This aspect cannot be a matter of mere oral evidence, but the plaintiff was bound to produce and prove the rent being paid or received from similar properties in the neighbourhood. To that extent, the order passed by the Ld. Trial Court stands set aside and the decree stands modified, and no more.

75. Decree sheet be drawn accordingly. TCR be sent back.

76. Appeal file be consigned to Record Room.

HARJYOT SINGH BHALLA Digitally signed by HARJYOT SINGH BHALLA Date: 2026.07.09 16:31:22 +0530

Pronounced in the open court on 09.07.2026

HARJYOT SINGH BHALLA
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NEW DELHI