

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 15.07.2025

+ **RFA(COMM) 33/2024 & CM Nos.6948/2024 & 6949/2024**

**M/S ANSAL HOUSING AND
CONSTRUCTION LTD**

..... Appellant

Versus

MRS HARDARSHAN KAUR

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Mansi Gupta, Ms. Aishwarya Rao &
Ms. Mansi Rao, Advocates.

For the Respondent : Mr. Ajay Gaiind & Mr. Abhay Gaiind, Mr.
Prashant Pratap Singh & Mr. Arjun Gaiind,
Advocates.

CORAM

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant [**the defendant**] has filed the present appeal under Section 13 of the Commercial Courts Act, 2015 [**the CC Act**] impugning the judgment dated 25.04.2023 and decree dated 08.05.2023 [**impugned judgment**] passed by the learned District Judge (Commercial Court) -02, West District, Tis Hazari Courts, Delhi [**the**



Commercial Court] in CS (COMM) No.232/2019 captioned *Mrs Hardarshan Kaur v. M/s Ansal Housing & Construction Limited*.

2. The learned Commercial Court has, in terms of the impugned judgement, decreed the aforesaid suit in favour of the respondent [**the plaintiff**] for an amount of ₹24,29,285/- along with costs and future and *pendente lite* interest at the rate of 12 per cent per annum till its realisation.

3. The plaintiff – a senior citizen of an advanced age of eighty-four years – had filed the aforesaid suit for recovery of rent for the premises, which comprised of four flats bearing No.1009,1011,1016 and 1018 located at the 10th Floor, Classique Tower, Plot No.1, J Block, Community Centre, Rajouri Garden, New Delhi – 110027 comprising of total area of 2,516 square feet [**the demised premises**].

4. The plaintiff is the owner of the demised premises and had acquired the same by virtue of the allotment letter dated 30.03.2005 issued by the defendant.

5. The defendant had leased the demised premises from the plaintiff for a period of nine years commencing from 01.06.2014 to 31.05.2023 in terms of the lease agreement executed on 30.08.2014.

6. In terms of the lease deed, the defendant agreed to pay monthly rent of ₹1,25,800/- calculated at the rate of ₹50/- per square feet for the initial block of three years. The lease was extendable for further two terms of three years each, *albeit*, with an increase of rent by 15 per cent



over the rent for the previous block of three years. Thus, the lease for the second block of three years commencing from 01.06.2017 to 31.05.2020 was ₹1,44,670/- and the last block of three years commencing from 01.06.2020 to 31.05.2023 would be ₹1,66,370/- per month. The defendant also deposited a sum of ₹3,77,400/- [equivalent to three months lease rent] with the plaintiff as refundable security deposit.

7. The defendant had further sub-leased a larger space, which included the demised premises to HDFC Bank [**HDFC**]. HDFC terminated the sub lease, which was entered into between the defendant and HDFC in terms of the notice dated 18.01.2019.

8. The defendant issued the notice dated 21.01.2019 [Ex.DW1/P1] terminating the lease. It informed the plaintiff that HDFC had issued three months' notice dated 18.01.2019 terminating the sub lease, and would vacate the premises with effect from 21.04.2019. The plaintiff was called upon to adjust the rent for three months till 21.04.2019 from the security deposit paid by the defendant. The plaintiff was further informed that the defendant would hand over the physical possession of the demised premises to the plaintiff on "as is where is basis" on 21.04.2019 and would not be liable to pay the monthly charges with effect from the said date.

9. The plaintiff claims that her husband visited the demised premises to take the possession on 21.04.2019 and again on 22.04.2019, however, no representative of the defendant was present to hand over



the possession of the demised premises. The plaintiff also claims that the entrance to the 10th floor of the building was locked. The plaintiff claims that she sent a letter dated 26.04.2019 informing the same to the defendant and also called upon the defendant to give a firm date and time for handing over the possession, mark the outline of the units and complete the formalities of handing over / taking over of the possession. The plaintiff claims that the photographs of the locked door were also taken on 14.05.2019 and 19.05.2019 and were sent to the defendant on 19.05.2019.

10. In view of the above, the plaintiff claims that the possession of the demised premises continued to be in possession of the defendant and it would be liable to pay compensation for the same till the possession was handed over.

11. Notwithstanding, that the possession of the demised premises was not handed over to the plaintiff, the defendant did not voluntarily make payments of any rent or compensation. In view of the above, the plaintiff issued the legal notice dated 08.06.2019 to the defendant, *inter alia*, calling upon the defendant to pay a sum of ₹5,13,641/- comprising of rent amount of ₹4,90,620/- payable till June 2019 and interest aggregating ₹23,021.40 computed at the rate of 24% per annum. The notice further states that till the demised premises are not restored and handed over to the plaintiff, the defendant would be liable to pay the rent.



12. Since the defendant did not make any further payments nor handed over possession of the demised premises, the plaintiff filed the aforesaid suit for recovery of rent of the demised premises till the possession of the same was returned. The plaintiff had also sought a decree that the demised premises be restored to its original condition in order to enable the plaintiff to enjoy each of the four flats independently and exclusively. Additionally, the plaintiff sought damages suffered or liable to be suffered by her for restoration of the demised premises to the original status.

13. Summons in the suit were issued by the Commercial Court on 06.07.2019, returnable on 03.09.2019. The defendant was served on 15.07.2019 and entered appearance on 03.09.2019. On 30.09.2019, the plaintiff filed an application under Order XV-A read with Section 151 of the Code of Civil Procedure, 1908 [**the CPC**] seeking deposit of rent/shortfall of rent amounting to ₹10,92,312/- for the period from January 2019 to October 2019. The defendant filed its written statement on 14.10.2019 contesting the suit. The defendant also filed a reply to the plaintiff's application under Order XV-A of the CPC, *inter alia*, stating that it had received the possession of the demised premises from HDFC on 21.09.2019. It was thus, conceded, that the defendant did not have the possession of the demised premises prior to the said date. The application of the plaintiff filed under Order XV-A of the CPC was disposed by the Commercial Court by an order dated 18.06.2020 whereby the defendant was directed to pay the shortfall of rent of ₹18,870/- per month for the period of three months, that is, January



2019 to March 2019. Additionally, the Court also directed payment of rent from April 2019 to September 2019 at the rate of ₹1,44,670/- within the period of 15 days from de-containment of the red zone of the area, in which the office of the defendant was located or within the period of 15 days from the date of the order, whichever is later. The defendant had appealed the said order before this Court; however, the defendant's appeal was dismissed.

14. On 22.02.2021, the plaintiff filed another application under Order XV-A Rule 6(1)(k) read with Section 151 of the CPC, *inter alia*, seeking the decision of the Court. It is material to note that the defendant's in their reply dated 17.12.2019 to the application, *inter alia*, unequivocally stated that it is ready and willing to hand over the possession of the demised premises to the plaintiff. The defendant also prayed that directions be issued to the plaintiff for taking over of the possession of the demised premises. The plaintiff's application was initially listed on 29.02.2020 and was put up for completion of the pleadings for 16.03.2020. The plaintiff's arguments were completed on the said date. However, the order sheet indicates that further hearing was adjourned at the request of the defendant to 30.03.2020. The application was finally heard and disposed of by the order dated 18.06.2020.

15. It is material to also note that while the defendant was certain that it had handed over the possession of the demised premises, the same was stoutly disputed by the plaintiff. However, considering that the



defendant had expressed that it was ready and willing to hand over the possession of the demised premises, the Commercial Court passed the order dated 18.01.2021, *inter alia*, directing for handing over of the possession of the demised premises to the plaintiff. The relevant extract of the said order is set out below:

“It is further submitted by Ld counsel for the defendant that they have also handed over the peaceful possession of the premises in question to the plaintiff, however, same is disputed by Ld. Counsel for plaintiff.

Without prejudice to the contentions and rights of the parties, it is directed that defendant shall handover the peaceful possession of the premises in question to the plaintiff or his representative on 20.01.2021 at 4.00 PM. Parties or their respective representative shall remain present at the time of handing over of possession of the premises in question and plaintiff or his representative shall give acknowledgment in writing regarding receiving possession of the premises in question.

It is expected that counsel of both parties shall remain present at the spot.

Put up for compliance report on 18.02.2021.”

16. In compliance of the aforesaid order, the physical possession of the demised premises was handed over by the defendant to the plaintiff on 20.01.2021.

17. The plaintiff filed another application dated 22.02.2021 under Order XV -A Rule 6(1)(k) of the CPC seeking disposal of the suit in



terms of the admitted facts, which was disposed of by an order dated 15.07.2021, the Commercial Court noted that there subsists a dispute involving question of facts as to whether the defendant was ready and willing to hand over the possession of the demised premises to the plaintiff after receiving the possession from HDFC, but the plaintiff was not willing to accept the possession. The Commercial Court reasoned that the said question cannot be decided on the basis of the pleadings alone.

18. The relevant extract of the order dated 15.07.2021 passed by the learned Commercial Court is set out below:

“13. Coming to real controversy as to whether the defendant had handed over the possession of the premises to the plaintiff after it was vacated by HDFC Bank sub-lessee? The said issue had arisen in the earlier application and on perusal of the record it is transpired that in Para 8 of the written statement it was observed that possession was not handed over by HDFC Bank to the defendant on the stipulated date i.e. 21.04.2019. After receiving the possession from HDFC Bank on 21.09.2019 the defendant when contacted by plaintiff was ready and willing to hand over possession to plaintiff in the same condition as it was received from HDFC Bank but the plaintiff was not willing for the same. Hence, the period of September 2019 was taken into account while directing payment of rent. Once it was observed that the defendant was to hand over the possession and alter premises was received from the Bank but the plaintiff was not willing to take the same which is although disputed by plaintiff cannot be determined on the basis of pleadings alone. It is disputed question of fact to whether offer to hand over premises was made or not? Whether plaintiff deliberately avoided to take possession? Therefore, the amount as claimed by plaintiff till actual physical possession was handed over under the orders of the Court be made to the plaintiff is not tenable.”



19. Thereafter by an order dated 30.11.2021, the learned Commercial Court framed the following issues for its consideration:

- “1. Whether defendant had handed over peaceful possession of the premises in question before 20.01.2021 (when premises was handed over under the order of the court) O.P.D.
2. Whether plaintiff is entitled to rent or enhanced rent, if so, for which period? O.P.P.
3. Whether plaintiff is entitled to interest, if yes, at what rate and for what period? O.P.P.
4. Whether suit is not maintainable for non-compliance of S. 12 A of Commercial Courts Act, 2015? O.P.D.
5. Relief.”

20. The plaintiff did not lead any oral evidence. The defendant examined its Manager (Legal) [DW-1] who tendered his affidavit by way of evidence and was also cross-examined by the learned counsel for the plaintiff. The learned Commercial Court heard the oral submissions and rendered the impugned judgment.

DISPUTE

21. As noted above, there is no dispute as to some of the basic fundamental facts and the controversy is essentially confined to (a) dispute relating to the date of handing over the possession of the demised premises and (b) whether there was non-compliance of Section 12A of the CC Act, and if so, whether the suit is liable to be dismissed on that ground. The said issues were covered by issues no. (1) and (4)



as framed by the learned Commercial Court *vide* order dated 30.11.2021.

22. The learned Commercial Court had decided the abovementioned issues in favour of the plaintiff as it found that there was no credible evidence to prove that the defendant had called upon the plaintiff to take physical possession of the demised premises but the same was declined by the plaintiff. Thus, the learned Commercial Court found that the date of handing over the possession of the demised premises was required to be reckoned as 20.01.2021.

23. Before proceeding further, it is relevant to refer to the written statement filed by the defendant. The defendant had terminated the agreement by letter dated 21.01.2019 [Ex.DW1/P1]. In terms of the said letter, the defendant had informed the plaintiff that it would hand over the physical possession of the demised premises on 21.04.2019. It was plaintiff's case that she had visited the demised premises on 21.04.2019 and again on 22.04.2019 but there was no representative of the defendant at the demised premises to handover the possession of the same. The plaintiff further asserted that her husband had visited the demised premises and had found the tenth floor locked. She also claimed that she had forwarded the photographs of the said unit to the defendant. The defendant filed the written statement denying the said assertions. Paragraph 8 of the written statement is relevant and is set out below:



“8. That the contents of para no.8 of plaint are wrong and denied. It is denied that the plaintiff visited the leased premises on 21.04.2019 and again on 22.04.2019 and found no one to hand over the possession. It is further denied that office of Sunrise Estate Management Services, was also contacted, who informed LESSOR that they did not have any instruction to this effect and they are concerned only with maintenance and cleaning jobs. It is further denied that the entrance to 10th floor was locked. It is further denied that this information was placed on record by plaintiff on 26.04.2019 and again on 04.05.2019 when a photograph of locked door was also enclosed. It is further denied that thereafter on 14.05.2019 and 19.05.2019, photographs were taken and communications to defendant at its offices were sent on 19.05.2019 which stand received by said defendant on 21.05.2019. It is submitted that the defendant company has not received any such communication from the plaintiff.”

24. Apart from the aforesaid, the defendant had also made averments that in terms of Clause 9 of the Lease Agreement, it was obligated to only hand over the demised premises on an ‘as is where is basis’ and it had asked the plaintiff to take possession and get the demised premises restored to its original position, but the plaintiff had declined. Paragraph six of the written statement is relevant and the same is set out below:

“6. That the contents of para no. 6 of plaint pertaining to HDFC Bank issuing termination notice dated 18.01.2019 and defendant issuing notice dated 21.01.2019 to the plaintiff regarding handing over the vacant physical possession on “as is where is basis” to the plaintiff on 21.04.2019 are matter of record. However it is submitted that the HDFC Bank had substantially delayed delivery of possession to the defendant making the predicament of the defendant difficult and because of which the defendant suffered huge losses. It is further submitted that HDFC



Bank has not paid the rent for the delayed period to the defendant, and the defendant has suffered huge losses due to the above said reason. Also in terms of the agreement between the parties, the defendant is not liable to pay any rent to the plaintiff after termination of the lease deed.”

25. It is material to note that there is no averment in the written statement as to when and in what manner the defendant had called upon the plaintiff to take possession of the demised premises. The only written communication referred to by the defendant in this regard is the letter of termination dated 21.01.2019, whereby the plaintiff was called upon to take possession of the demised premises on 21.04.2019.

26. Concededly, the defendant did not have the physical possession of the demised premises on 21.04.2019 and was not in a position to hand over the same to the plaintiff as on that date. HDFC handed over the possession of the demised premises to the defendant on 21.09.2019. The defendant did not lead any evidence to establish that there was any written communication calling upon the plaintiff to take possession of the demised premises after the said date. As noted above, the only written communication issued by the defendant to the plaintiff in this regard is the notice of termination dated 21.01.2019.

27. It is relevant to note that the letter of termination [Ex.DW1/P1] also expressly stated that the rent payable for the period of three months till 21.04.2019 (the date on which the plaintiff was called upon to take possession) would be adjusted from the security deposit. And, “*any amount payable / recoverable after adjustment of security deposit would be intimated to the plaintiff separately*”. The defendant has not



produced any written communication intimating the plaintiff of the payment of any further amount payable after adjustment of the security deposit. Undisputedly, the defendant would be liable to pay the damages or compensation till the date of handing over of possession. The defendant has also not produced any written communication quantifying the amount payable as mentioned in the termination letter, which would have been possible only after the date of handing over of the possession of the demised premises.

28. Mr. Alam Zameer [DW-1] in his affidavit had affirmed that the defendant was always ready and willing to handover the possession of the demised premises and had also stated the same in its written statement. DW-1 also referred to the reply dated 17.12.2019 to the plaintiff's application under Order XV-A of the CPC whereby defendant had reiterated its willingness to handover possession of the demised premises on as is where is basis. DW-1 had also affirmed that *"the defendant when contacted by the plaintiff / his agent / representative telephonically was ready and willing to hand over possession to the plaintiff in the same condition as it was received from HDFC Bank but the plaintiff was not willing for the same."* However, the affidavit was silent as to when the plaintiff had contacted the defendant telephonically after 21.09.2019 and expressed her unwillingness to accept the possession of the demised premises.

29. DW-1 was cross-examined by the plaintiff. He, in his cross-examination, accepted that the plaintiff was not given possession of the



demised premises in question. He further accepted that after the letter of termination dated 21.01.2019 [Ex.DW1/P1] no other written notice was issued to the plaintiff for possession of the demised premises. However, he also stated that the plaintiff was informed telephonically and personally and the same was also mentioned in the written statement. He reiterated that the plaintiff was informed telephonically and personally by Mr. Navtej Singh and other marketing persons of the defendant. However, we do not find his deposition to that effect credible as DW1 did not have any specific information as to when the plaintiff had refused to take possession or the date of handing over of the demised premises.

30. We concur with the finding of the learned Commercial Court that the defendant had not led any credible evidence in the form of any communication, whereby the plaintiff was called upon to take over physical possession of the demised premises after 21.09.2019. Although, it was stated by DW-1 that the plaintiff was informed telephonically by Mr. Navtej Singh and other marketing persons but there were no specific particulars as to when such oral communications were made. However, it is important to note that even according to DW-1, the defendant had not initiated the telephone call, whereby the plaintiff was to take over possession of the demised premises. The affidavit filed by DW-1 is to the effect that the plaintiff was informed about the same when the plaintiff had telephonically contacted the defendant. However, as stated above, we are unable to accept the same in the absence of any direct evidence in this regard.



31. In view of the above, the only question to be examined is whether the averments made by the defendant in his written statement, pleadings or the reply to the application under Order XV-A of the CPC could be considered as constructive handing over of possession of the demised premises to the plaintiff.

32. As noted above, the written statement does not contain any averment calling upon the plaintiff to take over possession of the demised premises nor can it be construed as a notice for taking over possession of the demised premises. The averments made in the written statement are ambiguous and appear to be in support of the notice of termination dated 21.01.2019. There is no unequivocal averment for handing over the physical possession of the demised premises. On the contrary, the averments suggest the defendant's stand was that it had already handed over possession of the demised premises as it has denied all the averments made by the plaintiff to the effect that the plaintiff had visited the site and there was no representative of the defendant present to handover the possession of the demised premises on 21.04.2019 and 22.04.2019.

33. Ms. Mansi Gupta, learned counsel appearing for the defendant mainly focused her submissions on the reply filed by the defendant to the plaintiff's application under Order XV-A of the CPC. She contended that the said reply was filed on 17.12.2019 and therefore, it should be deemed that the defendant had handed over the possession of the demised premises to the plaintiff on 17.12.2019. In its reply, the



defendant had averred “*that it is ready and willing to handover the possession of the premises as per Clause 9 of the Lease Deed.*” It had also made the following prayers:

- “i) Dismiss the application under reply with heavy costs;
- ii) Direct the plaintiff to receive the possession in terms of clause 9 of lease agreement;”

34. Section 108 of the Transfer of Property Act, 1882 [**TP Act**] sets out the rights and liabilities of a lessor and a lessee. Specifically, Section 108(B) of the TP Act sets out the rights and liabilities of the lessee. In terms of Clause (q) of Section 108 of the TP Act, a lessee is bound to put the lessor into possession of the property. The said Clause is set out below:

“108. Rights and liabilities of lessor and lessee –

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.”

35. Clause(e) and (f) of Section 111 of the TP Act are relevant and are set out below:

“111 Determination of lease.—A lease of immoveable property determines—

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;”



36. It is now well settled that once a tenant gives a notice to the landlord that he no longer requires the premises and calls upon the landlord to take back the possession, the landlord cannot resist the same. The remedies available to the landlord for any breach is to claim damages for loss sustained by the landlord.

37. In *Onida Finance Ltd. v. Malini Khanna: 2022 (3) AD Delhi 231*, this Court considered a case where the tenant had terminated the lease and called upon the landlord to take over the possession and return the security. The landlord did not do so and the tenant instituted a suit for recovery of security and unadjusted advance rent. The tenant also deposited the keys in the court. In this context, this Court observed as under:

“28. It is trite that when the lease is terminated by notice and the possession is offered, the landlord cannot refuse to take the possession. If the landlord refuses to take the possession, the lease would not continue. Therefore, even if the contention of the defendant herein was that the tenancy was for a period of three years, she could take possession and thereafter sue the plaintiff for rent. She did not do so. She took calculated risk by challenging the action of the plaintiff in terminating the tenancy and avoided to take possession.

29. ... It is held that the plaintiff had offered to surrender the actual vacant possession of the premises and it is he defendant who did not take the possession thereof on 15th February, 1997 although offered by the plaintiff. Therefore, the valid surrender of the tenanted premises took place on 15th February, 1997 even when the actual possession was taken on 13th September, 1997 when the



keys of the tenanted premises were taken by the defendant which was deposited by the plaintiff while filing the suit.”

38. This Court also held in *Uberoisons (Machines) Ltd. v. Samtel Color Ltd.: 2003 (69) DRJ 523* that the tenant cannot withhold the possession of the premises till the security amount was refunded. In that case, the tenant had terminated the lease and called upon the landlord to refund the security deposit and take possession of the tenanted premises. The representative of the landlord visited the leased premises on the specified date, however, did not take possession as the premises had not been restored to a condition in which the possession of the premises were handed over to the tenant. Thereafter, the tenant restored the premises and called upon the landlord to take possession and refund the security deposit but the landlord was unwilling to refund the security and the tenant was not willing to handover possession till the security was refunded. The landlord instituted a suit against the tenant for possession, recovery of rent, *mesne* profits and damages. The tenanted premises were handed over during the pendency of the suit. In this context, the Court held as under:

“12. Now the question arises whether the tenant could have retained the possession of the premises without paying the rent thereof on account of non-refund of security amount by the plaintiff. The answer is emphatic ‘no’. The tenant has an independent remedy to recover the security but in no way can retain the possession of the premises on the plea that until and unless security is refunded, possession will not be handed over. Such a possession by the tenant is a possession for which he has to pay the rent as the premises could not have been put



in use by the landlord nor have been let out by the plaintiff. No tenant can take the defence that he is entitled to retain the possession of the premises unless security amount is refunded to him. When there is an independent remedy to recover this amount, the retention of possession cannot be justified. In order to avoid the liability of rent, the tenant has the obligation to handover the possession. It is immaterial whether premises was put into use by the defendant/tenant or not. What is material was whether possession is retained by him or not.

13. In view of this position of law, the suit of the plaintiff has to be decreed in respect of recovery of arrears of rent upto the period the possession was retained by the defendant...”

39. In *H.S. Bedi, v. National Highway Authority of India: 2015 SCC OnLine Del 9524*, this Court had examined a catena of decisions and summarized the law as under:

“**10. Summary of Principles of law** : From the analysis of the above decisions and the provisions with which we are concerned, the following principles emerge : -

10.1. Determination of lease - Section 111 of the Transfer of Property Act provides various modes of determination of lease such as determination by efflux of time [Section 111(a)]; expiry of the period of notice of termination [Section 111(h)]; express surrender [Section 111(e)] and implied surrender [section 111(f)].

10.2. Obligations of the landlord and the tenant upon determination of lease - The tenant is bound to handover the vacant and peaceful possession of the tenanted premises to the landlord upon determination of lease [under Section 108(q)].



10.3. Duty of tenant to restore the tenanted premises -

The tenant is bound to restore the tenanted premises in the same condition in which it was taken.[Section 108(B)(m)].

10.4. Remedy of landlord in the event of non-restoration by the tenant -

In the event of non-restoration of the tenanted premises to their original condition, the remedy of the landlord is to adjust the damages in the security deposit or sue the tenant for damages after taking over of the possession.

10.5. Landlord cannot refuse to take over the possession upon determination of lease and offer of possession by the tenant -

The landlord, upon determination lease and offer of possession by the tenant, cannot refuse to take over the possession on the ground that the property has been damaged or not restored to its original condition.

10.6. Consequences of the landlord refusing to take the possession offered by the tenant -

In the event of refusal of the landlord to take the possession offered by the tenant, the possession shall be deemed to have been delivered to the landlord and the tenant shall not be liable to pay the rent thereafter.

10.7. Consequences of the tenant refusing to handover the possession -

If the landlord is ready to accept the possession but the tenant refuses/fails to handover the possession, the liability of the tenant to pay the rent shall continue till the handing over of the possession.

10.8. Remedy of tenant in case of non-refund of security deposit by the landlord-

The tenant cannot refuse to hand over the possession till the security deposit is refunded. In the event of non-refund of security deposit by the landlord, the remedy of the tenant



is to sue the landlord for refund of security deposit after handing over the possession.”

40. In the facts of the present case, the defendant had called upon the tenant to take possession of the premises on 21.04.2019. However, it is clear that the defendant did not handover the possession to the plaintiff on that date. As noted above, the defendant had also failed to establish that it had at any point thereafter notified the time and date for handing over the possession of the demised premises and the plaintiff had failed and neglected to accept the same. However, the defendant had offered that it was ready and willing to handover the possession of the premises in its reply dated 17.12.2019 in response to the plaintiff’s application for payment of rent filed under Order XV-A of the CPC. The record does not indicate that the plaintiff had refused to take over possession of the demised premises.

41. It is contended on behalf of the defendant that the plaintiff was insisting that the demised premises be restored to its original condition and was refusing to take possession of the demised premises. The defendant has been unable to establish the same. The controversy, thus, is effectively reduced to whether making an averment in the reply constitutes constructive handing over of the possession of the demised premises in question.

42. Making an averment in the pleadings cannot by itself be construed as constructive handing over of the possession of the demised premises. The tenant is also required by its conduct to establish that it



has taken all steps for handing over of the possession of the demised premises. In the facts of the present case, it is established that:

- (i) the defendant had taken the demised premises on rent to sublease the same to HDFC. The same is reflected in the Lease Agreement as well;
- (ii) HDFC had terminated the sub-lease by a three months' prior notice dated 18.01.2019;
- (iii) Consequently, the defendant had terminated the lease of the demised premises by a three months' prior notice dated 21.01.2019 [Ex PW1/D1]
- (iv) the defendant had called upon the plaintiff to take possession of the demised premises on 21.04.2019 but did not hand over the possession of the demised premises on that date as HDFC had not handed over possession of the same to the defendant;
- (v) HDFC handed over the premises leased from the defendant, including the demised premises, to the defendant on ____ after vacating the same;
- (vi) the defendant did not use the demised premises after HDFC had vacated the same and there is no material to even remotely suggest that it had any intention of using the demised premises;
- (vii) the defendant had also – in unequivocal terms – stated that it was ready and willing to handover possession of the demised premises and also made a prayer to the said effect in its reply filed on 17.12.2019



43. It is apparent from the above that the defendant had not only offered possession of the demised premises to the plaintiff but its conduct was also in conformity with its offer to put the plaintiff in possession. It appears that the defendant also persisted with its stand that it had already handed over the possession of the premises. The order sheet indicates that this contention was advanced by the defendant before the Court on 18.01.2021. However, the plaintiff had disputed the same.

44. It is in the aforesaid context, this Court had passed an order for handing over possession of the premises in question which was extracted hereinabove.

45. The physical possession of the demised premises was handed over to the plaintiff pursuant to the said order. In terms of Section 108(q) of the TP Act, it is the obligation of the tenant to handover the leased premises to the landlord. It is only in case where the landlord refuses to take over the possession as offered by the tenant that the inference of handing over of constructive possession can be drawn. Merely making an averment that the tenant is ready and willing to handover the possession without taking further steps in this regard, would be insufficient to discharge the obligation to hand over the possession of the leased premises. In the present case, the demised premises had been vacated and the defendant had not only offered possession but also sought a direction to the said effect from the learned Commercial Court.



46. In view of the above, it is difficult to accept that the defendant had not offered possession of the demised premises to the plaintiff until the date of actual handing over of the possession of the demised premises. The statement made in the reply filed on 17.12.2019 coupled with the conduct of the defendant clearly indicates that on 17.12.2019, the defendant had called upon the plaintiff to take over possession of the demised premises on an 'as is where is basis'. However, the defendant had not indicated any time for handing over possession. Accounting for reasonable period of two weeks for the plaintiff to act pursuant to the said offer and to coordinate with the defendant; the defendant is liable to pay compensation for occupation of the premises till the end of the month of December 2019.

47. The plaintiff is entitled to rent/compensation for occupation of the demised premises at the rate of ₹144,670/- per month from January 2019 till December 2019. The plaintiff is also entitled to interest at the rate of 12 per cent per annum. In terms of the lease agreement, the parties had agreed that the rent would be paid on the 10th day of the subsequent month. The interest payable by the defendant would be payable considering the 10th day of the subsequent month as the due date. The defendant had furnished interest free security deposit to be refunded at the time of handing over of possession of the property. However, the plaintiff has adjusted the same over a span of three months – January 2019 to March 2019 – at the rate of ₹125800/- per month and has claimed interest on the shortfall of ₹18870/- per month for those months. Therefore, the interest payable on rent due for those



months (January 2019 to March 2019) will be confined to the shortfall. The amount paid by the defendant pursuant to orders of the court shall be duly adjusted from the amount payable on the dates when the amounts were paid.

48. Insofar as the defendant's contention that the suit is liable to be dismissed for non-compliance of Section 12A of the CC Act is concerned, we find no merit in the said contention.

49. The plaintiff is of an advance age of 84 years. According to her, the suit involved urgency as she is in need of funds. Section 12A of the CC Act 2015 proscribes the institution of a suit which does not contemplate urgent interim relief, till the plaintiff exhausts the remedy of pre-institution mediation in accordance with the prescribed procedure. Section 12A of the CC Act does not apply to a suit that contemplates urgent interim relief. The question whether the suit involved urgent interim relief is required to be viewed from the standpoint of the plaintiff and the said issue is not contingent upon whether any interim relief is granted. However, the urgent relief sought must be *bona fide* and not a ruse to avoid the provisions of Section 12A of the CC Act. The plaintiff must have reasonable grounds for seeking urgent relief. In the present case, the plaintiff has explained her sense of urgency.

50. It is also material to note that the suit was filed prior to the decision of the Supreme Court in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*: 2022 SCC OnLine SC 1028. The



Supreme Court held that provisions of Section 12A of the CC Act are mandatory. However, the Supreme Court had also clarified that this declaration would be effective from 20.08.2022. The suit in question was instituted prior to the said date.

51. In view of above, the impugned judgement and decree is modified to extent as set out above. The appeal is allowed to the aforesaid extent.

52. The parties are left to bear their own costs.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 15, 2025

M/‘gsr’/RK