



2026:DHC:8466



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 30th July, 2026

Pronounced on: 29th September, 2026

Uploaded on: 29th September, 2026

CNR No. : DLHC010379602025

+ **RFA 553/2025, CM APPL.36615/2025**

JAGDISH KUMAR ARORA

S/o Late Sh. Mangha Ram Arora
R/o A-3/2019, Sunrise Apartments,
Sector-13, Rohini, Delhi-110085.

.....Appellant

Through: Mr. Vishal Bhatnagar, Ms. Sanskriti
Garg and Mr. Veer Pratap Singh,
Advocates.

versus

DINESH MITTAL

S/o Late Sh. Sita Ram Mittal
R/o C-3/122, Ashok Vihar,
Phase-II, Delhi-110052.

.....Respondents

Through: Mr. Satish Prakash Gupta and Mr.
Rahul Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) has been filed by the Appellant to challenge the judgment and decree dated 17.12.2024, *whereby the Suit of the Plaintiff/Respondent bearing CS DJ 126/2022 for possession, was decreed under Order XII*

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Rule 6 CPC.

2. **Brief facts as narrated in the Plaintiff are** that the Plaintiff is the owner of the property bearing No. C-3/122, Ashok Vihar, Phase-II, Delhi (*hereinafter referred to as the "suit property"*). The Defendant/Appellant, Jagdish Kumar Arora, along with his daughter, Ms. Vasudha Arora, approached the Plaintiff in the month of February, 2020 for taking his basement floor of the suit property on rent through one broker, Mr. Prateek of M/s Ashiana Associates.

3. The Defendant visited the premises and satisfied himself about the status of the offered premises, and the parties agreed to the terms and conditions. A written Note was executed by Mr. Prateek, the broker, enumerating the basic agreed terms and conditions of the lease, to be effective with effect from 01.03.2020.

4. The Defendant paid a token amount of Rs. 10,000/-. During the meetings, the Defendant was informed in clear terms, that the one-time registration charges as well as additional FAR for the basement (that is the suit premises) to the tune of Rs. 2,28,500/-, had been paid by the Plaintiff to the MCD.

5. It was clarified that the yearly conversion charges/house tax/MCD dues would be paid by the Plaintiff. It was also informed that the conversion charges for the previous year, i.e., 2019, had not been paid as demanded by the MCD, though the Plaintiff had got prepared the demand draft for payment of the dues.

6. The Defendant offered to assist in getting the conversion charges determined and also offered to make the payment instantly, if required, subject to the condition that the amount shall be reimbursed by the Plaintiff.

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7. In the Meeting held on 14.02.2020 between the Defendant, his daughter, the Plaintiff, and Mr. Prateek, *it was agreed that the lock-in period would be of one year; the rent would be Rs. 62,000/- per month for the first half of the first year, and Rs. 67,000/- for the second half, with the annual escalation reduced from 8% to 5%, and the rent-free fitment period was increased from 15 days to 30 days.* A written Memo dated 11.02.2020 recorded the basic lease terms as well as these subsequent relaxations.

8. The Defendant undertook to get the Lease Agreement prepared through a known deed writer. At that moment, Defendant's daughter, Vasudha Arora, mentioned that she too was a law graduate and would supervise the drafting of the lease deed, for her experience. The original handwritten Memo remained with the Defendant, while the handwritten Note dated 11.02.2020 remained with the broker, Prateek.

9. The Plaintiff further stated that the Defendant, *vide* WhatsApp message dated 15.02.2020, apprised the Plaintiff of the formalities for a registered rent agreement, but did not get the draft lease agreement prepared and subsequently, declined to get the same prepared. He shared an image of the handwritten Memo dated 14.02.2020 with the Plaintiff only on 18.03.2020. The Plaintiff thereafter, got the draft Lease Agreement prepared and forwarded it as a Word document, to the Defendant by email on 19.03.2020.

10. *The Defendant handed over a cheque of Rs. 2,50,000/- on 14.02.2020 towards the security deposit, which was duly encashed by the Plaintiff. On the same day, the keys of the tenanted suit property were handed over to the Defendant, for his use and enjoyment. The rent-free fitment period, initially agreed from 14.02.2020 to 18.02.2020, was subsequently increased to*



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14.03.2020, with payment of rent to commence from 15.03.2020.

11. It was claimed by the Plaintiff that the Defendant, along with his daughter, opened the property on 14.02.2020 itself, took measurements, and prepared a rough sketch plan of the proposed fittings and fixtures. When the Plaintiff expressed concern over the fitment being carried out, the Defendant assured that the tenanted premises would be restored to their original condition at the time of vacating, and that the Plaintiff should not be concerned about the drill holes being made in the wall and the floor.

12. It was further stated that the Defendant could not complete the fitment work within the specified period, and the work continued till March, 2020 when the nationwide lockdown was imposed. The fitment work resumed on 04.05.2020 and continued till the end of May 2020. The Defendant undertook the fitment work in the leased property, which still exist, at the time of filing of the Suit.

13. The Defendant, as a tenant, paid the electricity bills raised by M/s TPDDL for the tenanted premises for March to May, 2020.

14. The Plaintiff thus, asserted that there was an admitted relationship of landlord and tenant between the parties, that the Defendant had been in physical and peaceful possession of the leased premises, and that the fittings and signboards continued to exist over the suit premises.

15. Though a draft lease deed was prepared, it did not materialize into a registered document, as the Defendant did not have the requisite number of cheques to hand over as post-dated cheques, having applied for a fresh cheque book.

16. Thereafter, the Defendant accepted that on account of the nationwide COVID-19 lockdown, the registration of the formal lease deed could not be



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executed in accordance with the draft agreement. No formal lease agreement was executed. However, the Defendant digitally accepted the terms and conditions of the lease agreement and forwarded, in a PDF file, images of his PAN card and Aadhaar card, together with the details of 12 cheques, including cheque no. 715976 for Rs.64,500/- in favour of the Plaintiff, on 02.04.2020 and 03.04.2020.

17. The Plaintiff claimed that the Defendant did not pay monthly rent for the months of March to May 2020, although he continued to pay the electricity bills of the tenanted premises.

18. The Plaintiff thus, made a demand for the arrears of rent, but instead of paying, the Defendant sent a letter dated 01.07.2020 through email and WhatsApp raising false, frivolous, and baseless allegations. *The Plaintiff gave a written Reply dated 08.07.2020, reiterating the demand for rent from March 2020 to July 2020 along with interest, and payment of the electricity bill dated 03.07.2020 for Rs. 3,870/-.*

19. The Defendant was also called upon to hand over the PDCs for the remaining lock-in period up to March 2021 and three PDCs for the Notice period from April 2021 to June 2021. Instead of paying rent, the Defendant issued a *Legal Notice dated 16.07.2020*, containing complete misrepresentations and improvements made as an afterthought to avoid his liability for rent and other charges.

20. *The Plaintiff gave a Reply dated 27.07.2020*, reminding the Defendant of his liability to pay arrears of rent and electricity charges.

21. The Plaintiff further asserted that on 15.08.2020, a young lady, accompanied by two workmen, visited the suit premises. On being asked, she identified herself as Ms. Prerna and stated that she had come at the



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Defendant's instance to get the cleaning work done, as fresh batches of students were being enrolled, and work was to commence immediately. The tenanted premises were opened again, by the same lady, on 23.08.2020 and 06.09.2020.

22. Ms. Perna also stated to the Plaintiff that efforts were being made to assess the feasibility of operating from the tenanted premises, either together with the Defendant and his daughter or independently. The Plaintiff requested Ms. Perna to convey to the Defendant that he should clear his dues.

23. The Plaintiff thus, asserted that the Defendant had failed to pay the arrears of rent, and filed the suit for possession as well as for directions to remove his fittings, fixtures, and furniture and to restore the tenanted premises to its original shape.

24. **The Defendant, in the Written Statement,** took preliminary objections that the Plaintiff had not approached the court with clean hands and was guilty of suppression of true facts. It was explained that an identical Suit bearing No. 405/20 titled 'Dinesh Mittal v. Jagdish Kumar Arora' was pending between the parties on an identical cause of action, seeking **recovery of rent, damages, mesne profits, and** electricity charges, along with a Permanent Injunction, and the present suit was barred under Order II Rule 2 CPC, since the Plaintiff ought to have claimed the relief of possession of the suit property in the first suit.

25. The Defendant further asserted that it was only after he moved an Application under Order VII Rule 11 CPC in the first Suit, that the Plaintiff, as an afterthought, filed the present suit. It was claimed that the Plaintiff had thereby, relinquished his right to claim possession and was estopped from



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doing so in a separate Suit.

26. The Defendant/Appellant further asserted that the correct facts had not been placed before the Court, revealing an intent to harass the Defendant and mislead the Court. The Defendant explained that he was a teacher by profession, offering coaching and educational services to students from his home, where he had a small setup.

27. Being one of the reputed teachers in Rohini, New Delhi, the Defendant, like any other professional, aspired to expand his coaching/educational institute. His daughter, Ms. Vasudha Arora, an advocate by profession, was also one of the reasons for seeking such expansion. His wife, Smt. Geeta Arora, employed with Punjab National Bank, was nearing retirement, which was a further reason for the Defendant to expand his work.

28. The Defendant admitted that he had approached one Mr. Dinesh Choudhary, a real estate agent, who introduced him to Mr. Prateek for taking a property for commercial activity. Mr. Prateek introduced the Defendant to the Plaintiff, and the suit property was shown to the Defendant, with a view to letting it out to him on rent.

29. Being satisfied with the favourable location of the property, the Defendant agreed to negotiate for taking it on lease. The negotiations took place on 11.02.2020, in the course of which several issues were discussed, and major terms were noted by Mr. Prateek in his diary, in his own handwriting.

30. The handwritten Note of Mr. Prateek recording the terms to be incorporated in the Lease Agreement, was signed by both the Plaintiff and the Defendant. Ms. Vasudha Arora, who had also participated in the



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discussion held on 11.02.2020, photographed the handwritten Note, for the Defendant's reference.

31. The Plaintiff, while offering the property on lease, assured the Defendant that he had complied with all the prerequisites imposed by administrative authorities for use of the residential property for commercial purposes, including conversion charges, MCD tax, house tax, parking charges, additional FAR, and specifically represented that all dues had already been paid by him with no amount outstanding.

32. The Defendant admitted that he had agreed to bear the rent of Rs. 67,000/- per month, that the lock-in period was renegotiated to one year, and that he was required to submit PDCs towards rent. It was also agreed that a registered Lease Agreement was to be executed, with the registration charges to be borne by the Defendant.

33. However, admittedly, the Plaintiff undertook to draft the Lease Agreement and share the same with the Defendant. It was expressly agreed that registration of the Lease Agreement would be a condition precedent, and that the rent for the suit property would begin only after such registration. The Plaintiff was given 20 days to have the Lease Agreement drafted and registered, since the rent was scheduled to commence from 01.03.2020.

34. The Plaintiff suggested to the Defendant to begin the furnishing work in the suit property immediately, as the Plaintiff himself was getting the renovation work in his building, during this time. It was initially proposed that the Defendant may retain the keys of the suit property, but during the same Meeting, it was decided that the keys would be kept in the custody of the Watchman, who was the Plaintiff's employee.



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35. In the Meeting held on 14.02.2020, it was agreed that the lock-in period would be reduced from two years to one year, and the rent was fixed at Rs.64,500/- per month, of which Rs.54,500/- was to be paid in cash without receipt and the balance Rs.10,000 by cheque; an arrangement with which the Defendant was not comfortable

36. In the earlier Meeting held on 11.02.2020, the Plaintiff had asked for the post-dated cheques, whereas in the subsequent Meeting of 14.02.2020, he sought undated cheques, a request which the Defendant declined. *The commencement of rent was accordingly, deferred from 01.03.2020 to 15.03.2020, once the Lease Agreement was drafted and registered.*

37. The terms discussed at the Meeting dated 14.02.2020 were noted by the Plaintiff in the diary in his own handwriting, though unsigned. The Defendant also handed over a cheque of Rs.2,50,000/- on 14.02.2020 as security deposit, which was encashed by the Plaintiff on 15.02.2020.

38. The Defendant further asserted as of the Meeting held on 14.02.2020, he was not in possession of the suit property. The Plaintiff's handwritten Note dated 14.02.2020, was shared with the Defendant for his record by Mr. Prateek, through a WhatsApp message.

39. On the Plaintiff's assurance that a registered Lease Deed would be executed, the Defendant commenced renovation work in the suit property on 16.02.2020 and engaged carpenters, labour, and other resources for fittings and fixtures. He claimed that he incurred an expenditure of Rs.5,15,011/- on various items and labour for carrying out the renovation work, intending to run an educational studio, apart from offering regular classes to students of Classes 11th and 12th, college students, junior students of Classes 6th to 10th; and Fine Art classes for children and adults.



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40. The Defendant claimed to have been in discussion with various teachers for their appointments, and to have shown the suit property to one Ms. Prerna, the Fine Arts Teacher, who visited it along with her mother during February-March 2020, in the Plaintiff's presence.

41. The Defendant asserted that he repeatedly requested the Plaintiff for the registered Lease Deed. Trusting the Plaintiff's word, he waited patiently, but the Lease Agreement remained unprepared even by 15.03.2020, by which date more than 90% of the work in the suit property was complete, with only the final furnishing, estimated to take a further 10 days, remaining.

42. On 18.03.2020, when the Defendant visited the Property, he again sought the registered Lease Agreement from the Plaintiff. The Plaintiff's conduct raised suspicion, and the Defendant asked him to produce documentary proof of payment of the conversion charges, for the suit property.

43. At the Meeting held on 18.03.2020, the Plaintiff admitted that the conversion charges had not been paid, and that this was the reason for the delay in the draft of the Lease Deed. The Defendant had deeply invested in the Project and was left with no choice, but to pay the conversion charges to ensure that the Lease Agreement was registered. The Defendant claimed to have by then, parted with Rs.8,00,000/- and Fitment work was also complete.

44. On 19.03.2020, the Plaintiff shared a draft Lease Agreement with the Defendant by email, but it did not incorporate the terms mutually agreed at the Meetings on 11.02.2020 and 14.02.2020, and in the Defendant's submission, amounted to a mere template, rather than a concluded lease agreement.



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45. At the Meeting held on 21.03.2020, the Defendant pointed out the deficiencies, and the Plaintiff assured him that the necessary modifications would be made to the draft of Lease Agreement. A national lockdown was thereafter, imposed by the Government with effect from 23.03.2020. In a further Meeting scheduled on 31.03.2020 was at the office of Mr. Chaudhary, the Plaintiff did not participate, deepening the Defendant's doubts about the intentions of the Plaintiff and Mr. Prateek, the broker.

46. The Defendant claimed that despite this uncertainty, he paid Electricity Bills for the period 29.01.2020 to 29.02.2020 (Rs.1,740/-) and 29.02.2020 to 01.04.2020 (Rs.3,240/-), even though the Lease Agreement was not in place. With the lockdown relaxed in May 2020, *work at the suit property resumed on 06.05.2020 and was completed on 17.05.2020.*

47. The Defendant came to know that, during the interim period, the Plaintiff had permitted a third party to use the suit premises, for selling laptops and attending to customers. Left with no option, the Defendant sent a message dated 10.06.2020 seeking *to terminate the Arrangement and requesting a Meeting with the Plaintiff.* At that Meeting, the Plaintiff reluctantly agreed to refund the security amount along with damages, including the Defendant's construction costs, within a few days.

48. However, through subsequent WhatsApp exchanges, the Plaintiff began demanding long-term dues from the Defendant. At a further Meeting on 25.06.2020, the Defendant informed the Plaintiff that he was no longer inclined to enter into the Lease Agreement. Subsequently, the Plaintiff began demanding rent for entire one year, on the pretext of the lock-in period and other charges, which were not only baseless, but fell within the definition of extortion.



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49. At the Meeting held on 28.06.2020, the Plaintiff admitted that the keys of the suit property were in his possession and not with the Defendant. The Defendant claimed that the Plaintiff thereafter, started harassing him with messages, seeking arbitrary and frivolous amounts.

50. In the Letter dated 01.07.2020, the Defendant expressed his disappointment at the state of affairs and sought recovery of his security amount as well as the cost of electricity, water and infrastructure, expended by him.

51. The Plaintiff, in his Reply dated 08.07.2020, admitted that the Lease Agreement had not been entered into, citing the national lockdown, and promised to enter into it within a week. *Left with no option, the Defendant issued a Legal Notice dated 16.07.2020, to which the Plaintiff replied on 27.07.2020, making vague, unreal and unfounded allegations.*

52. The Defendant thereafter, filed a Complaint dated 25.08.2020 with the SHO, PS: Ashok Vihar, recorded vide DD No.55, and received a Legal Notice dated 14.09.2020 from the Plaintiff.

53. The Plaintiff filed **CS No. 405/2020** against the Defendant, for recovery of arrears of rent, damages & mesne profits, in which the Defendant filed Counter-claim seeking recovery of money.

54. The Defendant, **on merits**, denied all the allegations and reiterated the defence taken in his preliminary objections and submitted that the Suit was liable to be dismissed.

55. Thereafter, an **Application under Order XII Rule 6 of CPC dated 16.09.2022 was filed on behalf of the Plaintiff for a Decree of Possession on admission**, which was contested by the Defendant, by way of his Reply.

56. The **learned District Judge, vide an Order dated 17.12.2024**

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observed that the Defendant had admitted his intention to take the suit property on rent, upon execution of a registered Lease Deed, and that the keys of the suit property were also handed over the premises to him, on 14.02.2020. He had undertaken the renovation work and had even handed over a cheque of Rs.2,50,000/- to the Plaintiff, as security.

57. It was further observed that although the formal Lease Deed did not materialise, the WhatsApp messages conveying the terms were duly accepted by the Defendant, who admitted that he had not paid the rent.

58. The Defendant did not deny Plaintiff's ownership. It was noted that the Defendant was in possession of the suit property, whether as a tenant or as a licensee. In either situation, he was liable to vacate the Property and had no protection of rent law. On the plea that the Suit of the Plaintiff was barred under Order II Rule 2 of CPC, it was held that the earlier Suit was only for recovery of arrears of rent, while the present Suit was found on a distinct cause of action, namely, recovery of possession.

59. In view of the admissions in the Written Statement, **the Suit of the Plaintiff for Possession was decreed under Order XII Rule 6 of CPC, vide Judgement dated 17.12.2024.**

60. Aggrieved by this Judgment dated 17.12.2024, Defendant / Appellant **has filed the present Appeal.**

61. **The grounds of challenge are** that there were no unequivocal, unambiguous, or unconditional admissions of the Defendant, in his Written Statement. The Appellant had consistently denied being delivered the possession of the suit property, as is supported by pleadings, correspondence and judicial records, including the Order dated 03.10.2023. The question of possession was the core contention, being contested by the Defendant before



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various forums, and in the absence of any admission, a Decree of Possession could not have been passed.

62. The Appellant has, from inception contended that in the absence of a registered Lease Deed and of possession of the suit property having been handed over to him; *the existence of a landlord-tenant relationship was in serious dispute*. He had given a detailed Legal Notice dated 16.07.2020 seeking refund of the advance, paid by him. *Further, in the Order dated 03.10.2023 passed by the Commercial Court, it was noted that the Defendant was not in possession of the suit property.*

63. The learned Trial Court failed to appreciate that the existence of a landlord-tenant relationship was itself under challenge, and that where such foundational facts were disputed and required evidence; no Judgement under Order XII Rule 6 of CPC could have been passed. The documents relied upon by the Respondent i.e. WhatsApp exchanges, token receipts, and an unsigned draft lease, were insufficient to conclusively establish possession. The Appellant had consistently asserted the unusable condition of the suit premises and the Plaintiff's breach of promises regarding structural alterations.

64. The Plaintiff had stated that he was facing a problem in obtaining an Assessment Report from Government- approved Valuers, since the premises were locked. It was accordingly, agreed that the Local Commissioner would open the lock and steps would be taken for the valuation by the Government-approved Valuers and thereafter, the Property would be locked, and the keys would be deposited with the Court.

65. A Local Commissioner was appointed accordingly, and he submitted a Report stating that the Respondent himself opened the Rainwater



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Reservoir room of the suit property in the presence of all the parties, which, according to the Appellant, demonstrated that the suit property was never in his possession. As per the Plaintiff's own averments, the suit property included the Rainwater Reservoir Room; this was said to contradict the Local Commissioner's findings and to cast doubt on Respondent's claim of possession.

66. The Local Commissioner's Report coupled with the Order dated 03.10.2023 confirmed that the possession was never handed over to the Appellant. On 03.10.2023 as well, the Defendant had submitted his Affidavit before the learned Commercial Court indicating that he was not in possession of the suit property.

67. The alleged handwritten Note of Plaintiff dated 14.02.2020, and the subsequent e-mail and WhatsApp exchanges reflected inconclusive negotiations and preparatory steps towards the proposed Lease and could not be constructed as deliberate, conscious or unequivocal admissions. In the absence of a concluded or an enforceable contract, no tenancy rights could have arisen in respect of the suit premises.

68. The learned Trial Court committed a grave error in treating the contested facts as admitted, thereby depriving the Defendant of a proper trial and adjudication, on the mixed issues of fact and law. The Defendant/Appellant has raised various issues, which could be adjudicated only after evidence was recorded.

69. *Therefore, the impugned Decree of Possession under Order XII Rule 6 of CPC be set aside.*

Submissions heard and record perused.

70. It is admitted in detail, by the Defendant/Appellant in the Written

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Statement that he was introduced to the Plaintiff by a Broker for taking the suit premises on rent; that multiple Meetings took place between the parties and it was finally agreed in the Meeting dated 14.02.2020, that the suit property would be taken on rent @Rs.64,500/- with a lock-in period settled at one year, though initially was proposed for two years. The security of Rs.2,50,000/- had also been given.

71. It is further not in dispute that since the suit property was to be used for commercial purposes for holding classes for the Students, *for which the Fitments were required to be erected in the suit premises.* It is also not denied that the possession of the suit premises was handed over to the Defendant on 14.02.2020 for the purpose and fitments were also carried out by the Defendant. *As per the negotiations, it was agreed that the Defendant would commence payment of rent w.e.f. 15.03.2020.*

72. It is not in dispute that formal Lease Deed could not be executed, which, according to the Plaintiff, was on account of default on the part of the Defendant in getting it executed in terms of the covenants agreed between the parties. *But, the question that arises herein is whether the possession was, in fact, given to the Defendant.*

73. It is pertinent to observe that the Defendant admittedly got the possession of suit property in February, 2020 since when he had been carrying out the fitments in the suit property. Not only that, due to the imposition of the lockdown from 23.03.2020, the fitment work had to be stopped, and admittedly, ***it was resumed by the Defendant on 06.05.2020 and completed by 17.05.2020.***

74. The Defendant has merely contested that the possession was given to him for the purpose of carrying out the fitments, but the keys were agreed to



be kept with the Watchman, who was an employee of the Plaintiff. It is thus, claimed that though he had access to the suit property; he never got possession of the suit property and therefore, there could not have been any decree of Possession against him.

75. In the present case, from the averments made by the Defendant himself, it is evident that he had been given the possession of the suit property, even if it was for the purpose of erecting the fitments. The Lease Agreement may not have got formally executed, but he cannot deny that he was not in possession merely by asserting that while he was getting the work done, the keys were being kept by the Watchman. Even if keys were handed over to the Watchman by the Defendant, it was only for security, and the Defendant cannot claim that he did not have the possession of the suit property. In fact, from the entire detailed Written Statement, it is admitted that the Defendant was in possession and in fact, had even carried out the renovations.

76. The Defendant has placed reliance on the Order dated 03.10.2023 of the learned Commercial Court, whereby on the Defendant's claim that he was not in possession, a *Local Commissioner* was appointed to inspect the suit premises; submit a Report, and ensure that the keys were deposited in Court. The Local Commissioner inspected the suit premises and submitted the report wherein he stated that the Rainwater Reservoir Room, forming part of the suit premises, was opened by the Plaintiff himself. It was contended by the Defendant that this shows that he was not in possession or else the Plaintiff would not have the keys to the Rainwater Reservoir Room.

77. Merely because the keys to reservoir Room was produced by the plaintiff, cannot neutralize the fact that the defendant had the possession of



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the suit premises, in which he was carrying out the fitments. It has been rightly observed by learned District Judge that *whether as a tenant, licensee or occupant, the possession of the Defendant over the suit premises stood established, and the Plaintiff was accordingly, entitled to recover possession.*

78. In any event, once the Defendant himself claims that he is not in possession of the suit property, and it is on record that the keys have been deposited before the learned Commercial Court, the Defendant can have no legitimate objection to the Decree of Possession, in favour of the Plaintiff.

79. In order to succeed in getting a Decree of Possession, it is not a prerequisite that *there must necessarily be a relationship of landlord and tenant.* Even if the Defendant is in occupation of the suit property in any capacity, the possession is liable to be restored to the Plaintiff, who is admittedly the owner of the same.

80. On the question whether a tenancy can exist in the absence of a registered lease deed, it is well settled in the case of Anthony v. K.C. Ittoop & Sons, (2003) 6 SCC 394, that the owner had inducted the Appellant into a shed under an unregistered lease deed dated 04.01.1974, for five years at a monthly rent of Rs. 140/-, and the owner's successor sued for possession on the ground that the lease was void for want of registration. *The Court has held,*

“But the above finding does not exhaust the scope of the issue of whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for



a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property, a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus: “All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.”

When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.

When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant’s possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact-situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second para of Section 107



of the TP Act extracted above. From the pleadings of the parties, there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee.”

81. The Court has held that a lease is that a lease is essentially a transfer of the right to use a property in return for rent, whether paid or promised, and that it can be created even without a registered document, by an oral agreement accompanied by delivery of possession, unless it is a lease from year to year, for more than one year, or reserving a yearly rent. Even where a written lease exists but is unregistered and therefore useless as a document, the Court is not barred from examining the conduct of the parties to decide whether a lease was in fact created. Further, where both sides admit that the owner put the person into possession and that rent was being paid or had been agreed, the possession can only be that of a lessee, and nothing else.

82. Applying this to the present case, the Defendant himself admits in his Written Statement that the Plaintiff had agreed to let him into the suit premises; that a monthly rent was agreed, that the rent was to start from 15.03.2020, that he paid a security deposit of Rs. 2,50,000/- which was encashed, and that he had been given the possession of the suit property in which he had put up his fittings, fixtures and signboards. He says rent had not begun because the registered lease was a condition precedent. That does not help him, because Anthony (supra) covers a person who has “*agreed to pay rent*” and not only one who is actually paying it.

83. The lack of a registered lease, or of a signed draft, does not show that possession was never given. But it is the Defendant’s own case shows that he was in possession, whether or not a formal tenancy was ever completed.



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This aspect may be relevant for the purpose of liability to pay the arrears of rent, which the Appellant is at liberty to establish in the appropriate proceedings.

84. Further, an objection has been taken by the Defendant that the **Plaintiff's Suit was barred under Order II Rule 2 of CPC**, since he had already **filed a Suit for recovery of arrears of rent**. It has, however, been rightly held by the learned District Judge that the earlier Suit was for recovery of arrears of rent, while the present Suit is for recovery of Possession, founded on a distinct cause of action, **and the Suit is thus, not barred under Order II Rule 2 of CPC.**

85. It has been vehemently argued on behalf of the Defendant that there were disputed facts and he should have been allowed to prove his defence. However, his defence is essentially in regard to the payments and recoveries, for which a separate Suit is already pending. *In so far as the relief of possession is concerned, there is no dispute and the Suit for Possession under Order XII Rule 6 of CPC, has been rightly decreed.*

86. There is no merit in the present Appeal, which is hereby, **dismissed**. The pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 29, 2026
va/R