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

% Judgement delivered on: 22.09.2025

\+ **RFA(OS)(COMM) 4/2022**

M/S MEHRA JEWEL PALACE PVT. LTD ..... APPELLANT

versus

MINISO LIFESTYLE PVT. LTD & ANR. ..... RESPONDENTS

Advocates who appeared in this case

For the Appellant : Mr. Kirti Uppal, Senior Adv. with Ms. Anita Sawhney, Ms. Shaini Bhardwauj, Mr. Aditya Sharma, Mr. Avichal Mishra, Mr. Vedic Thukral, Advs.

For the Respondents : Mr. Varun Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

V. KAMESWAR RAO, J.

CM APPL. 34718/2022

1. Exemption allowed subject to all just exceptions.

2. The application stands disposed of.

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3. This appeal has been filed against the judgment and decree dated 25.05.2022 passed by the learned Single Judge granting partial relief to the appellant/plaintiff, with the following prayers:

> *"a. Set aside the Judgment dated 25.05.2022 passed by the Ld. Single Judge Hon'ble Mr. Justice Amit Bansal in CS(COMM) No. 376 of 2020 to the extent of partial relief*

granted to Appellant/Plaintiff in respect of prayer 'b', 'c' and 'd' of the amended suit;
b. decree the suit of Appellant/Plaintiff with respect to its prayers made in the amended suit along with 18% interest;
c. Award costs of the appeal;
d. Award legal costs for the appeal of Appellant;"

4. The appellant is the owner of leased property situated at Connaught Place- Ground Floor measuring about 2400S.ft. and basement measuring about 400S.ft. (demised premises). A tripartite lease deed dated 04.01.2018 was executed between the appellant/plaintiff (lessor) and respondent No. 1/ defendant No. 1 along with one Keikaku India (P) Ltd. (collectively lessees) for a period of 9 years, i.e., from 01.12.2017 to 30.11.2026. The rent was fixed at ₹27,00,000/- per month from 30.01.2018 to 30.11.2020. Statutory tax such as GST applicable on the monthly rent was to be borne by the lessees. The lessees also deposited an amount of ₹1,08,00,000/- towards Interest Free Refundable Security Deposit as per Clause 7 of the lease deed.

5. On 10.01.2019, the appellant was informed about Keikaku India (P) Ltd. withdrawing from the lease deed with effect from 01.02.2019. Subsequent thereto, the respondent No.2/defendant no. 2 was appointed as the new franchisee of respondent No.1 and agreed to be bound by the terms and conditions of the lease deed.

6. On 30.03.2020, due to COVID-19 pandemic, the respondent No.1 via email made a request to the appellant for waiving off the obligation of paying rent as the demised premises were closed. A further notice was sent by the respondent No.1 to the appellant on 02.04.2020, asking for waiver of payment of rental dues till the demised premises became operational. Rent remained due for months of April and May of 2020. In reply, the appellant

informed the respondent No.1 by email dated 28.05.2020, that the *force majeure* clause in the lease deed is only for 'deferment of date of rent payment' and not for waiver of rent. Instead, the respondent No.1 was offered a pre-approved payment plan in view of the arrears for the months of April and May of 2020, whereby the respondent No. 1 was to pay an amount of ₹48,60,000/- which is 50% of the due amount after deduction of ₹5,40,000/- as TDS, in two installments: the first by 10.06.2020 and the second by 10.07.2020. Further, by email dated 01.06.2020 the appellant reminded the respondent No.1 about the outstanding rent for the months of April and May of 2020 by sending invoices.

7. On 01.06.2020, the respondent No. 1 called the appellant seeking a financial support package in the form of a waiver of contractual rent for the months of April and May, 2020. However by email dated 03.06.2020, the appellant declined the request made by the respondent No. 1.

8. Upon a further request by the appellant for release of the first installment under the pre-approved plan, respondent No.1 released ₹12,50,000/- on 17.06.2020. Though, the balance amount of Rs. 1,14,49,000/- was not paid but the respondent No. 1 continued to remain in possession of the demised premises.

9. The appellant sent a legal notice dated 11.07.2020, calling on the respondent No. 1 to pay ₹1,14,49,000/- along with 18% interest per annum within one month from the receipt of notice, failing which, the plaintiff would terminate the lease. The respondent No. 1, in reply dated 23.07.2020 to the legal notice, denied its liability on the ground of *force majeure* due to COVID-19 pandemic. Therefore, as the rent for August was not paid, by notice dated 19.08.2020, the appellant terminated the lease deed and called

upon the respondents to hand over vacant and peaceful possession of the demised premises.

10. Thereafter, the appellant filed the suit for possession of the demised premises, arrears of rent and *mesne* profits on 04.09.2020. By order dated 11.09.2020, the learned Single Judge observed that the respondents cannot continue the plea of *force majeure* post the opening of demised premises on 19.05.2020. By order dated 08.12.2020, the learned Single Judge directed the respondents to hand over vacant and peaceful possession of the suit premises to appellant on or before 13.12.2020, which was complied with by the respondents on 14.12.2020. Subsequently, the appellant received outstanding electricity and water bills amounting to ₹1,57,509/-, which were to be paid by the respondents.

11. Thereafter an application under Order XIII-A of the Code of Civil Procedure, 1908, (CPC) was filed by the appellant seeking a summary judgment for an amount ₹ 3,83,09,444/- along with pendente lite and future interest. However, the suit was decreed on 25.05.2022, without granting any penalties as prayed for by the appellant.

12. Mr. Kirti Uppal, learned senior counsel appearing for the appellant submitted at the outset that the suit could not have been decided on merits, as the appellant preferred an application under Order XIII A (4), CPC and the learned Single Judge could only have considered the respondents' admissions under the provisions of the contract and Section 10 of the Specific Relief Act, 1963. It was his case that the learned Single Judge has erred in considering COVID-19 as an act of God and a *force majeure* event, and that the appellant did not incur any loss and went beyond the application filed by the appellant.

13. It was further his case that the learned Single Judge failed to enforce the performance of different clauses in the lease deed as per the Specific Relief Act, 1963, particularly, in respect of Clauses 6.1 and 6.2, Clause 12, Clause 14.2, Clause 7.2 and Clause 11.3 of the lease deed.

14. He contended that the reliance placed by the learned Single Judge on the Office Memorandum (OM) of the Government of India whereby *force majeure* clause was invoked in government contracts, could not have been applied to contracts in which the government is not a party. Even in the case of ***MEP Infrastructure Developers Ltd. v. South Delhi Municipal Corporation & Ors. W.P.(C) No.2241/2020***, this Court favored the petitioner therein as the respondent was the Government and the Government had recognised COVID-19 as *force majeure* event.

15. He has attempted to draw a parallel between present case and that of the contractual situation between air carriers i.e., Air India & Air India Express (owned by Government of India), Vistara, Indigo, Spice Jet, Go First and Air Asia India, and lessors from whom these carriers had leased their airplanes. Though they were grounded during lockdown, the payment obligations under the lease agreements were not waived. That apart, neither government owned banks, nor the RBI, waived the obligation of borrowers to pay EMIs/ interest on account of COVID-19. At best, the RBI on 23.05.2023, had mitigated the burden of debt servicing brought about by disruptions due to pandemic, the obligations to pay EMI's/interest were rescheduled, working capital financing was eased, and borrowers' accounts were not classified as Special Mention Accounts (SMA) or Non-performing Assets (NPA) on account of defaults, i.e., borrowers were not held liable for consequences of default, and the Supreme Court has upheld the same.

16. He further submitted that the learned Single Judge while considering the use of the word 'etc.' in the *force majeure* clause of the lease deed, erred in concluding in paragraph 26 of the impugned judgment that the use of the word "etc." in Clause 12 makes it clear that the said *force majeure* conditions are illustrative and not exhaustive. He stated that according to the doctrine of *contra proferentum*, the use of the word “etc.” should be interpreted against the party's interest who sought to create, introduce, or request such ambiguity, and as such, it has to be read against the respondents. Further, according to the doctrine of contract interpretation *expressio unius est exclusio alterius*, the absence of particular words in the contract should be considered and if an item was not included in the list of item therewith, then it should not be included. Therefore, the *force majeure* events defined in Clause 12 of the lease deed ought to be restricted to the conditions specifically listed, i.e., “act of God, flood, earthquake, tempest, war, riots, embargoes.”

17. According to him, the learned Single Judge had erroneously held in paragraph 27 of the impugned judgment that closure of demised premises will constitute a *force majeure* event under Clause 12 of the lease deed, as it is covered under “act of God” as well as “embargo”. As per Black’s Law definition of “embargo” is ‘a proclamation or order of state, usually issued in time of war or threatened hostilities, prohibiting the departure of ships and goods from some or all the ports of such state until further order’. There was no justification in holding that the temporary lockdown initiated by the government was an embargo. Furthermore, it was not appreciated that the respondents continued to use the premises during the period of the lockdown, i.e., they maintained the showroom at the premises and their

goods remained in the premises. More so, since the learned Single Judge in the order dated 11.09.2020 had observed as under:

> *"Thus prima facie the case of the defendants was covered by force majeure clause and at least for the months of April and May, 2020 when the premises could not be opened due to the embargo and the defendants could have omitted to perform the contract. However, subsequent to the opening of the leased premises defendants cannot continue to take the plea of force majeure."*

18. Though the learned Single Judge had opined that the respondents cannot take the plea of *force majeure* subsequent to the opening of the leased premises, the impugned order was contrary to the lease deed. In any case, mere invocation of *force majeure* clause would not have granted any entitlement to the respondents since the learned Single Judge had to verify whether the ingredients of *force majeure* clause i.e., Clause 12 were met or not. In the emails dated 30.03.2020 and 02.04.2020 the respondent No.1 focused on the need to cut costs in order to prevent loss and remain profitable. The learned Single Judge failed to determine whether *force majeure* actually prevented the respondents from making payments.

19. He also submitted that the respondents had paid an amount of ₹12,50,000/- to the appellant on 17.06.2020 according to the pre-approved payment plan, which was the rent payable by them for the months of April and May in 2020, which would further dis-entitle them to claim the benefit of *force majeure*.

20. That apart, since Clause 12 describes that the date for making the payment 'shall be postponed', it is apparent from the language therefrom that it refers to being liable for the consequences of delay or omission, e.g., liable to pay interest on the delayed or omitted payment or liable for

termination due to breach of contract and does not mean that the obligation to pay rent is waived. Even the RBI, and the government exempted all COVID-19 related debt from the definition of default under the IBC and suspended any fresh initiation of insolvency for up to a year but did not waive the obligation of service or payment of debt.

21. He further submitted that the failure of the respondents to handover the premises even after notice of termination was sent to them on 19.08.2020, renders them liable to only pay the unauthorised occupation charges from 20.08.2020 to 14.12.2020 as per Clause 7.2 of the lease deed. These charges were not awarded, instead lease rentals for the mentioned period have been wrongly awarded by the learned Single Judge.

22. Further, he submitted that the learned Single Judge has erroneously opined in paragraph 40 of the impugned judgment that because the first part of Clause 14.2 provides for additional six months of rent in the event that the lessor terminates the lease for breach or defaults on the part of lessee 'during the lock-in period,' and that because the word "additional" is conspicuously missing from the latter part of the Clause which provides for six months of rent in the event that the lessor terminates the lease for breach or default on the part of lessee 'after the expiry of the lock-in period,' therefore after the lock-in period is over, the appellant would only be entitled to lease rentals for the period the appellant continued to be in occupation of the demised premises, is completely wrong. In S.No.17 of Letter of Intent by respondent-1, the word ‘additional’ has been used in former part of Clause 14.2 qua termination during the initial lock-in period in conformity with initial lock-in period “36 months (including 6 months' notice period)”, since all payment obligations under the lease are considered as lease rent, there was no need to

use the word ‘additional’ along 6 months of rent in Clause 14.2 of the lease deed. Therefore, the use of the word is calculated and factual, it is in addition to the entire agreed rent for the entire lock in period. The exact language has been used in Clause 2 and Clause 14.4 of the lease deed. In essence, his argument is that Clause 14.2 states “the lessee will be liable to pay 6 months of rent to the lessor”.

23. He also stated that the learned Single Judge in paragraph 46 rejected the damages claimed by the appellant, stating that no loss was claimed in the plaint, which was an essential element under Section 74 of Indian Contract Act, 1872. It is his submission that the enforcement of a contract is at the discretion of the Court, and that while considering a suit for specific performance of a contract, the Court can exercise its discretion as to whether the amounts claimed are reasonable. Here, the learned Single Judge failed to appreciate the amended Section 10 of the Specific Relief Act, 1963. In any case, there is no contradiction between the amended Section 10 of Specific Relief Act, 1963 and Section 74 of Indian Contract Act, 1872.

24. He further submitted that the judgment in ***Fateh Chand v. Bal Krishan Das, (1964) 1 SCR 515***, on which reliance was placed by the learned Single Judge has two parts: the first part is regarding compensation/penalty by a party for breach under Section 74 of Indian Contract Act, 1872 and the second part deals with issue of *mesne* profits, these are separate and distinct things. The impugned judgment has not dealt with the issue of *mesne* profits, and the learned Single Judge applied the wrong part of the said judgment to appellant’s case. That apart, ***Fateh Chand*** (supra) and ***Kailash Nath Associates v. Delhi Development Authority and Anr., 2015 (4) SCC 136***, relied upon by the learned Single

Judge, were passed prior to the 2018 amendment of Specific Relief Act, 1963 which mandated that "the specific performance of a contract shall be enforced by the Court." He has placed reliance on the judgment of the Supreme Court in ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar, Civil Appeal Nos. 837-838 of 2022*** passed in 01.02.2022, which has laid down that the Court cannot alter the terms and conditions of a valid contract executed between the parties.

25. It was submitted that in S.No. 28 of the Letter of Intent dated 29.08.2017, the respondent no.1 itself proposed vacating the premises and handing over the peaceful possession of the demised property, failing which will the respondents would be liable to pay double the last paid rent to the lessor for the continued possession of the premises. Hence, the contract and the Letter of Intent clearly established the parties' intention.

26. Further, the sum of ₹81,05,226/- claimed in the application under Order XIII A Rule 4, CPC is towards GST, of which ₹40,52,613/- is due towards CGST and ₹40,52,613/- is due towards SGST and by not enforcing the contract, the learned Single Judge has subsidised the respondents at the expense of the Government of India and the Government of Delhi.

27. It is his submission that the learned Single Judge accepted the argument that respondents were liable to pay rent to appellant, as they did not terminate the lease deed or surrender the possession. However, contradicting this observation, it has been held in paragraph 39 that there was no breach by respondents and Clause 14.2 cannot be invoked. In fact, as the respondents had moved an application before the Court to vacate the premises, if the termination was not valid and accepted by the respondents, then they could not have moved such an application to exit the premises.

28. The learned Single Judge granted 50% rent for the month of April till 19.05.2020, though this claim was not part of application under Order XIIIA CPC. Even then only 50% rentals were awarded for the said months, whereas Clause 12 only provides for postponement but not waiver of rent upon invocation of *force majeure*. Though the appellant is entitled to full rent from 19.05.2020, the impugned judgment granted rent only from 01.06.2020.

29. The claim of the appellant to recover double the rent was rejected on the ground that the appellant has not suffered any loss. His submission is that the learned Single Judge should have put the issue to trial, whereby the appellant would have had the opportunity to prove his case by leading evidence on the issue of any loss has been suffered.

30. He further submitted that the right of the appellant to enforce Clauses 7.2 and 14.2 of the lease deed were rejected as Sections 73 and 74 of the Indian Contract Act, 1872 were interpreted incorrectly and the applicability of Section 10 of Specific Relief Act, 1963 was ignored, despite the admission of the respondents in stating that the amount claimed is payable when defaulted by a party.

31. With regard to the *force majeure* clause, the impugned judgment failed to consider the principle laid down by a learned Single Judge of this Court in ***H.S. Bedi v. National Highway Authority of India***, ***RFA 784/2020*** decided on 22.01.2016, wherein it was held that a wrong averment in pleading pollutes the stream of justice, invites the Court into passing an erroneous judgment, and is to be treated as an offence. In the present case, instead of strictly enforcing the provisions of the lease deed, the respondents

were rewarded for their wrongful stand, by granting them an advantage not contemplated by the contract.

32. In view of the aforesaid contentions, he has sought prayers as made in the appeal.

33. On the other hand, Mr. Varun Sharma, the learned counsel for the respondents/defendants submitted that the period of COVID-19 pandemic is fully covered under the *force majeure* clause contained in the lease deed and would thus, exempt them from any liability towards payment of rent for the period commencing from April 2020, and more so, since it is not restricted to the time period during which the demised premises were not operational and would extend beyond May 2020.

34. That apart, since the lease deed was wrongfully terminated by the appellant, Clause 14.1 of the lease deed would have no applicability in the facts and circumstances of this case. The said clause is only triggered in the event of a breach committed by the lessee. In the present case, the respondents only exercised their right to waiver of rent in terms of the *force majeure* clause in the lease deed. Therefore, the respondents did not commit any breach of the lease deed.

35. He has drawn our attention to the OM dated 19.02.2020 issued by the Ministry of Finance, Government of India, with respect to invocation of the *force majeure* clause provided in paragraph 9.7.7 of the Manual for Procurement of Goods, 2017. The same reads as under:

> *"A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and*

any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

2. A doubt has arisen if the disruption of the supply chains due to spread of corona virus in China or any other country will be covered in the Force Majeure Clause (FMC). In this regard it is clarified that it should be considered as a case of natural calamity and FM Clause may be invoked, wherever considered appropriate, following the due procedure as above."

36. Even though the aforesaid OM was in the context of the disruption of the supply chains due to the coronavirus in China, it specifically states that the COVID-19 pandemic will be covered in the *force majeure* clause, as provided in paragraph 9.7.7 of the Manual for Procurement of Goods, 2017. In the judgment dated 12.06.2020 passed in W.P.(C) No.2241/2020 titled ***MEP Infrastructure Developers Ltd. v. South Delhi Municipal Corporation & Ors.***, a learned Single Judge of this Court took into account the aforesaid OM while analysing the *force majeure* clause in a Toll Tax Collection Agreement dated 28.09.2017. Placing reliance on the said OM, the Court gave the benefit of the *force majeure* clause to the petitioner

therein on account of the onset of the COVID-19 pandemic. The expression "act of God", used in the OM, has also been used in the lease deed in the present case.

37. He also submitted that the National Disaster Management Authority (NDMA) directed the Government of India, Disaster Management Authorities in states and Union Territories to take measures with the spread of COVID-19. Further, the Ministry of Home Affairs (MHA) under section 10(2)(1) of the Disaster Management Act, 2005 had issued guidelines to all the authorities, in furtherance of the order passed by the NDMA. The Delhi Disaster Management Authority (DDMA) had also issued guidelines by order dated 25.03.2020 for strict implementation of COVID-19 restrictions, relevant portion of which is reproduced as under:

> *"4. Commercial and private establishments shall be closed down except the following:*
> *a. shops, including ration shops (under PDS), dealing with food, groceries, fruits and vegetables, dairy and milk booths, meat and fish, animal fodder. However, district administration may encourage and facilitate home delivery to minimize the movement of individuals outside their homes.*
>
> *xxxx xxxx xxxx*
>
> *All other establishments may work from home only."*

38. Based on the above orders and guidelines, a lockdown was imposed on all shops except the shops selling essential commodities, which remained in force till 17.05.2020. Thereby the respondents' shops were shut down from 24.03.2020 till 17.05.2020, approximately for 2 months.

39. It is his submission that the law with regard to *force majeure* clauses in contracts, and the provisions of the Indian Contract Act, 1872 dealing

with such clauses is no more *res integra*, in view of the judgment of the Supreme Court in ***Energy Watchdog v. Central Electricity Regulatory Commission (CERC) (2017) 14 SCC 80***.

40. He submitted that the learned Single Judge had rightly examined and interpreted Clause 12 of the lease deed which had mentioned various events of *force majeure* events i.e., act of God, flood, earthquake, tempest, war, riots, embargoes, etc. The use of the word "etc." in the said clause was rightly held by the learned Single Judge to be illustrative but not exhaustive. Even Black's Law Dictionary defines *force majeure* as "an event or effect that can be neither anticipated nor controlled: The term also includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes and wars)". COVID-19 pandemic was neither an anticipated event nor a controlled event, the effect of which was felt to a large extent by owners of shops and restaurants, which had to be forcibly shut down on account of orders passed by the Government/DDMA.

41. He stated that prior to the pandemic, the respondents had duly paid the rental amount to the appellant. It was only in the month of April, 2020 that the respondents had defaulted and had sought to suspend payment of rent by emails dated 30.03.2020, 02.04.2020 and 03.04.2020.

42. With regard to the contention of penal rent under Clause 14.2, he stated that the said clause becomes operative only where the termination of lease is on account of breach or default on the part of the lessee, including non-payment of rent or violation of other obligations. In the present case, the factual circumstances did not disclose such a breach so as to justify termination of the lease deed. The respondents were rightly held entitled to waiver of rent for the months of April and May 2020. The learned Single

judge, according to him, was justified in observing that since the appellant had expressly disagreed with the proposal for waiver of rent advanced by the respondents, and no mutually satisfactory agreement on waiver of rental payments was arrived at, the appellant could not invoke Clause 14.2 to claim an additional six months' rent.

43. Insofar as the claim of damages under Clause 7.2 of the lease deed is concerned, he has contested the case of the appellant that the lessee was liable to pay damages equivalent to twice the last monthly rent. Section 73 of the Indian Contract Act, 1872 mandates that compensation for breach of contract can only be awarded for loss or damage caused by such breach, while Section 74 requires that such compensation must be reasonable and cannot exceed the amount specified in the contract, irrespective of whether actual loss is proved. He has referred ***to Fateh Chand (supra)*** and ***Kailash Nath Associates (supra)***, both relied upon by the learned Single Judge, wherein it was it was clarified that while proof of actual damage is not necessary where it is impossible or difficult to assess loss, in cases where such proof is possible, it cannot be dispensed with. As such, the claim of the appellant for double rent as damages could not be sustained without proof of actual loss.

ANALYSIS AND FINDINGS

44. Having heard the learned counsel for the parties and perused the record, at the outset, we may state here that the core issue which needs to be decided is whether the learned Single Judge was justified in drawing the conclusion that the *force majeure* clause contained in the contract shall be applicable in the facts of this case. The conclusion of the learned Single

Judge is primarily by relying upon the OMs issued by the Government of India dated 19.02.2020 and also referring to the judgment in this Court in ***WP (C) 2241/2020 in M.E.P. Infrastructures Developers Ltd. (supra)***, and also the declaration of the WHO on 11.03.2020 that COVID-19 is a pandemic and the restrictions put by the MHA, NDMA and DDMA, resulting in the lockdown imposed in the Union Territory of Delhi which continued to remain in force till 17.05.2020.

45. A reference has been made to the judgment of the Supreme Court ***Energy Watchdog (supra)***, and the law laid down therein, which was summed up by a learned Single Judge of this Court in ***Halliburton Offshore Service Inc. v. Vedanta Limited and Anr., 2020 SCC OnLine Del 2068***, as under:

> *"64. The law relating to Force Majeure has been recently settled by the Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80. The principles laid down by the Supreme Court in paragraphs 34-42 are as under:*
>
> *a) Force Majeure would operate as part of a contract as a contingency under section 32 of the Indian Contract Act 1872 ('ICA').*
>
> *b) Independent of the contract sometimes, the doctrine of frustration could be invoked by a party as per Section 56, ICA.*
>
> *c) The impossibility of performance under Section 56, ICA would include impracticability or uselessness keeping in mind the object of the contract.*
>
> *d) If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement it can be said that the promisor finds it impossible to do the act which he had promised to do.*

e) Express terms of a contract cannot be ignored on a vague plea of equity.
f) Risks associated with a contract would have to be borne by the parties.
g) Performance is not discharged simply if it becomes onerous between the parties.
h) Alteration of circumstances does not lead to frustration of a contract.
i) Courts cannot generally absolve performance of a contract either because it has become onerous or due to an unforeseen turn of events. Doctrine of frustration has to be applied narrowly.
j) A mere rise in cost or expense does not lead to frustration.
k) If there is an alternative mode of performance, the Force Majeure clause will not apply.
l) The terms of the contract, its matrix or context, the knowledge, expectation, assumptions and the nature of the supervening events have to be considered.
m) If the Contract inherently has risk associated with it, the doctrine of frustration is not to be likely invoked.
n) Unless there was a break in identity between the contract as envisioned originally and its performance in the altered circumstances, doctrine of frustration would not apply."

46. Clause 12 of the lease deed reads as under:

"12. FORCE MAJEURE:
Neither party shall be liable to the other party for any delay or omission in the performance of any obligation under this Agreement where the delay or omission is due to any Force Majeure condition, i.e. Acts of God, flood, earthquake, tempest, war, riots, embargoes etc. (Force Majeure). If Force Majeure prevents or delays the performance by a Party of any obligation under this Agreement, then the Party claiming Force Majeure shall promptly notify the other party thereof in writing. Except as expressly provided

> *otherwise in this Agreement, the date and time for the performance by any party of any obligation in this Agreement shall be postponed automatically to the extent, and for the period of time, that the party is prevented from doing so by an event of Force Majeure."*

47. In paragraph 20 of the impugned judgment, the learned Single Judge enumerates various events that make up *force majeure* to hold that the use of the word "*etc.*" in Clause 12 of the lease deed makes it clear that the *force majeure* conditions are illustrative and not exhaustive. In this regard we may reproduce paragraphs 26 and 27 of the impugned judgment.

> *"26. Clause 12 of the Lease Deed enumerates the various events of force majeure i.e., Act of God, flood, earthquake, tempest, war, riots, embargoes, etc. The use of the word "etc." in Clause 12 makes it clear that the said force majeure conditions are illustrative and not exhaustive. As noted in Halliburton supra, Black's Law Dictionary defines force majeure as "an event or effect that can be neither anticipated nor controlled: The term also includes both acts of nature (e.g., floods and hurricanes) and acts of people (e.g., riots, strikes and wars)". It is nobody's case that the COVID-19 pandemic was an event that could be anticipated or controlled. The pandemic came suddenly and affected our lives like no other event in recent memory. The impact of the COVID-19 pandemic was felt to a large extent by owners of shops and restaurants, which had to be forcibly shut down on account of orders passed by the Government/DDMA.*
>
> *27. As noted above, the O.M. dated 19th February, 2020 recognizes the COVID-19 pandemic as an "Act of God" and this has been affirmed in the decision of this Court in MEP Infrastructure supra. In view of the DDMA order dated 25th March, 2020, an "embargo" was imposed on the operation of shops which were not selling essential commodities. The demised premises was not covered in the said exception and was therefore, not operational. Therefore, in my view, the*

> *COVID-19 pandemic, to the extent that it resulted in the closure of the demised premises, would constitute a force majeure event in terms of Clause 12 of the Lease Deed, as the same would be covered under the expression "Act of God" as well as "Embargo" and therefore, would be a contingency under Section 32 of the Indian Contract Act. A similar view was also expressed by this Court while issuing summons in the suit vide order dated 11th September, 2020."*

48. We agree with the conclusion of the learned Single Judge that COVID-19 pandemic was an event that could not have been anticipated or controlled. The onset was sudden and affected human life unlike any other event in recent memory. Therefore, we find that the learned Single Judge was justified in holding that the *force majeure* clause, i.e., Clause 12 of the lease deed was rightly invoked.

49. Another submission of Mr. Uppal that the OM issued by the Government of India, whereby the *force majeure* clause was invoked in government contracts could not have been applied to contracts in which the government is not a party, is not agreeable with us for the reason that a principle of law that holds good for government contracts, also holds good for contracts between two private parties. No distinction can be drawn based on the type of parties involved. In any event, it is a matter of fact that the pandemic ushered in chaos in all facets of life and affected every citizen and business in the country and across the globe, including government and private entities.

50. Suffice to state, even the judgment relied upon by the appellant in the case of ***Energy Watchdog (supra)***, which was summed up by a learned Single Judge of this Court in ***Halliburton Offshore Service Inc. v. Vedanta***

Limited and Anr., 2020 SCC OnLine Del 2068, has been appropriately dealt with by the learned Single Judge, by examining the law laid down therein, in paragraphs 19 to 24 of the impugned judgment, which we reproduce as under:

> *"19. The law with regard to force majeure clauses in contracts and the provisions of the Indian Contract Act, 1872 (Indian Contract Act) dealing with force majeure have been analysed by the Supreme Court in Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80. A Co-ordinate Bench of this Court in Halliburton Offshore Service Inc. v. Vedanta Limited and Anr., 2020 SCC OnLine Del 2068 has summarized the law laid down by the Supreme Court in Energy Watchdog supra in the following manner:*
>
> > *"64. The law relating to Force Majeure has been recently settled by the Supreme Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80. The principles laid down by the Supreme Court in paragraphs 34-42 are as under:*
> >
> > *a) Force Majeure would operate as part of a contract as a contingency under section 32 of the Indian Contract Act 1872 ('ICA').*
> >
> > *b) Independent of the contract sometimes, the doctrine of frustration could be invoked by a party as per Section 56, ICA.*
> >
> > *c) The impossibility of performance under Section 56, ICA would include impracticability or uselessness keeping in mind the object of the contract.*
> >
> > *d) If an untoward event or change of circumstance totally upsets the very foundation upon which the parties entered their agreement it can be said that the promisor finds it impossible to do the act which he had promised to do.*

e) Express terms of a contract cannot be ignored on a vague plea of equity.

f) Risks associated with a contract would have to be borne by the parties.

g) Performance is not discharged simply if it becomes onerous between the parties.

h) Alteration of circumstances does not lead to frustration of a contract.

i) Courts cannot generally absolve performance of a contract either because it has become onerous or due to an unforeseen turn of events. Doctrine of frustration has to be applied narrowly.

j) A mere rise in cost or expense does not lead to frustration.

k) If there is an alternative mode of performance, the Force Majeure clause will not apply.

l) The terms of the contract, its matrix or context, the knowledge, expectation, assumptions and the nature of the supervening events have to be considered.

m) If the Contract inherently has risk associated with it, the doctrine of frustration is not to be likely invoked.

n) Unless there was a break in identity between the contract as envisioned originally and its performance in the altered circumstances, doctrine of frustration would not apply."

20. On the issue of whether or not the COVID-19 pandemic would justify non-performance or breach of a contract, the following observations were made in Halliburton supra:

"69. The question as to whether COVID-19 would justify non-performance or breach of a contract has to be examined on the facts and circumstances of each case. Every breach or non-performance cannot be justified or excused merely on the invocation of COVID-19 as a Force Majeure condition. The Court would have to assess the conduct of the parties prior to the outbreak, the deadlines that were imposed in the contract, the steps that were to be taken, the

various compliances that were required to be made and only then assess as to whether, genuinely, a party was prevented or is able to justify its non-performance due to the epidemic/pandemic.

70. It is the settled position in law that a Force Majeure clause is to be interpreted narrowly and not broadly. Parties ought to be compelled to adhere to contractual terms and conditions and excusing non-performance would be only in exceptional situations. As observed in Energy Watchdog (supra) it is not in the domain of Courts to absolve parties from performing their part of the contract. It is also not the duty of Courts to provide a shelter for justifying non-performance. There has to be a 'real reason' and a 'real justification' which the Court would consider in order to invoke a Force Majeure clause."

21. In Halliburton supra, the Court did not give the benefit of the force majeure clause to the contractor on the ground that the contractor committed breach of the contract even prior to the onset of the COVID-19 pandemic. In the present case, admittedly, there was no default in the payment of lease rent till the onset of the COVID-19 pandemic.

22. In Ramanand and Ors. v. Dr. Girish Soni and Anr., 2020 SCC OnLine Del 635, a Co-ordinate Bench of this Court was ceased of an issue in relation to the applicability of the doctrine of force majeure in the context of lessor-lessee dispute during the period affected by the COVID-19 pandemic. The relevant observations of the Court are set out below:

"12. In circumstances such as the outbreak of a pandemic, like the current COVID-I9 outbreak, the grounds on which the tenants/lessees or other similarly situated parties could seek waiver or non-payment of the monthly amounts, under contracts which have a force majeure clause would be governed by Section 32 of the Indian Contract Act,

1872 (hereinafter, "ICA"). This section reads as under:

"32. Enforcement of contracts contingent on an event happening.- Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

13. 'Force Majeure' is defined by Black's Law Dictionary as "an event or effect that can be neither anticipated nor controlled". As per the dictionary, "The term includes both acts of nature (e.g. floods and hurricanes) and acts of people (e.g. riots, strikes and wars)".

14. The Supreme Court in Energy Watchdog v. CERC & Ors., (2017) 14 SCC 80 has clearly held that in case the contract itself contains an express or implied term relating to a force majeure condition, the same shall be governed by Section 32 of the ICA. Section 56 of the ICA, which deals with impossibility of performance, would apply in cases where a force majeure event occurs outside the contract. The Supreme Court observed:

"34. "Force majeure" is governed by the Contract Act, 1872. Insofar as it is relatable to an express or implied clause in a contract, such as the PPAs before us, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. Insofar as a force majeure event occurs dehors the contract, it is dealt with by a rule of positive law under Section 56 of the Contact Act."

Thus, in agreements providing for a force majeure clause, the Court would examine the same in the light of Section 32. The said clause could be differently worded in different contracts, as there is no standard draft, application or interpretation. The fundamental principle would be that if the contract

contains a clause providing for some sort of waiver or suspension of rent, only then the tenant could claim the same. The force majeure clause in the contract could also be a contingency under Section 32 which may allow the tenant to claim that the contract has become void and surrender the premises. However, if the tenant wishes to retain the premises and there is no clause giving any respite to the tenant, the rent or the monthly charges would be payable."

23. In Ramanand supra, the request of the tenant for suspension of payment of rent was rejected by the Court on the ground that there was no rent agreement or lease deed between the parties and hence, Section 32 of the Indian Contract Act had no applicability. It was further noted by the Court that the tenants were not even lessees as an eviction decree had been passed against them under the provisions of the Delhi Rent Control Act, 1958. What distinguishes the present case from Ramanand supra is that there is an elaborate force majeure clause in the present case, which has been invoked by the defendants.

24. The judgment in Professor P.R. Ramanujan v. Vice Chancellor (IGNOU) and Anr., 2020 SCC OnLine Del 1081 relied on behalf of the plaintiff has no applicability in the present case as the said judgment was in the context of a person occupying government premises even after his superannuation in August, 2019 before the outbreak of the COVID-19 pandemic. The Court had given time to the petitioner till 10th August, 2020 to vacate the premises. It was in that context that this Court observed that force majeure condition would not mean that payment which the petitioner is liable to make can be completely discounted."

xxxx xxxx xxxx

51. We completely agree with the aforesaid conclusion drawn by the learned Single Judge in that regard.

52. Another challenge by the appellant is to the direction of the learned Single Judge that the appellant and respondent shall equally bear the impact of COVID-19 pandemic and the respondent herein shall pay 50% of the rent due towards the lease rentals for the months of April and May 2020.

53. The justification given by the learned Single Judge to apportion the impact of the pandemic on both the parties i.e., the parties herein, is keeping in view that if the lessee suffered a loss due to shutdown of his shop on account of the pandemic, the lessor would also have continued to incur various financial obligations such as maintenance and upkeep of the demised premises and also the obligation to pay appropriate tax, and provide for insurance and repairs of the demised premises. In effect, it was observed that since both the parties have incurred some losses as a result of the pandemic, they shall both equally absorb the impact of the same. As the aforesaid is the reason to direct the respondents to pay 50% towards the lease rentals for the month of April 2020 and May 2020, we do not see any infirmity in the conclusion drawn by the learned Single Judge.

54. Another issue which arises for consideration is whether the lessor i.e., the appellant is entitled to penal rent in view of Clause 14.2 the lease deed which we reproduce as under:

> *"14.2 In the event that the Lessor terminates this lease for breach or defaults on the part of the Lessee during the lock in period, the Lessee shall be liable to pay the entire agreed rent for the entire lock in period, plus an additional 6 {Six) months of rent. Further, at any time after expiry of the Lock in Period, in the event that the Lessor terminates the lease for breach or default on the part of Lessee, such as in payment of rent or other obligations, even after expiry of cure period mentioned above, the Lessee shall be liable to pay 6 (SIX) Months of Rent to the Lessor."*

55. The finding of the learned Single Judge in that regard are in paragraphs 39 and 40, reproduced as under:

> *"39. Penal rent in terms of Clause 14.2 could be recovered only in the event that the lessor terminated the lease on account of breach or defaults on the part of the lessee, including payment and other obligations. In the facts and circumstances of the present case, it cannot be said that the defendants committed breach of the terms of the Lease Deed. As already observed by me above, the defendants had validly invoked the force majeure clause in terms of the Lease Deed and therefore, the defendants were entitled to waiver of rent for the months of April, 2020 and May, 2020. Therefore, it cannot be said that there was a breach of contract on behalf of the defendants that justified termination of the Lease Deed. The plaintiff was insisting on rents for the months of April, 2020 and May, 2020 along with the rents of the future months. The defendants insisted that they were not liable to pay rents for the months ofApril, 2020 and May, 2020 under the force majeure clause. Since the plaintiff did not agree on the waiver of the rent at all, there was no agreement between the parties with regard to payment of rent for the period ofApril, 2020 and May, 2020 and thereafter. Consequently, the plaintiff could not have invoked Clause 14.2 of the Lease Deed and demand additional six months' payment.*
>
> *40. Even otherwise, the plaintiff is claiming six months' additional rent in terms of the latter part of Clause 14.2 of the Lease Deed. The former part of Clause 14.2 provides for additional six months of rent in the event the lessor terminates the lease for breach or defaults on the part of lessee "during thelock-in period". However, the latter part of the said clause provides that in the event the lessor terminates the lease for breach or default on the part of lessee, the lessee shall be liable to pay six months of rent to the lessor. The word "additional" is conspicuously missing from the latter part of the clause. Therefore, in terms of the*

> *latter part of Clause 14.2 of the Lease Deed, it cannot be said that the plaintiff is entitled to six months' additional rent from the date of termination of the lease. After the lock-in period is over, the plaintiff would only be entitled to lease rentals for the period the plaintiff continued to be in occupation of the demised premises."*
>
> *(Emphasis supplied)*

56. The justification of the learned Single Judge to reject such a plea are the following:

a. Penal rent in terms of Clause 14.2 can be recovered only in the event that the lessor terminates the lease deed on account of breach or defaults, on part of the lessee.

b. It cannot be stated that the respondents committed breach of the terms of the lease deed as it validly invoked *force majeure* clause in terms of the lease deed.

c. The latter part of Clause 14.2 has been emphasised in paragraph 38 to hold that the same has the word "additional" conspicuously missing, and as such it cannot be stated that the appellant is entitled to an additional rent from the day of termination of the lease.

d. After the lock in period is over, the appellant would only be entitled to lease rentals for the period the respondents continued to be in occupancy of the demise premises.

57. A related issue which arises is whether the appellant here is also entitled to double the amount of the last paid rent as the stipulated in the lease deed as per Clause 7.2, reproduced as under:

> *"7.2 In the event of failure on the part of the Lessor to refund the Security Deposit, as detailed above, the Lessee shall be entitled to continue to occupy and use the 'Demised Premises' at its discretion, without paying Rent or other*

charges, until the Lessor refunds the Security Deposit to the Lessee, along with the interest at the rate of 18% (eighteen percent) per annum from the date of delay till full repayment, and such staying over by the Lessee in the 'Demised Premises' shall not constitute renewal or extension of Term of Lease, or breach on the part of Lessee or unauthorized occupation by the Lessee. However, despite the Lessor being ready & willing to refund the Security Deposit, if the Lessee fails to redeliver the 'Demised Premises' to the Lessor as agreed herein above, or continues to use the premises beyond the stipulated period pursuant to termination of lease for any reason, such occupation of the 'Demised Premises' by Lessee shall be treated as wrongful occupation, and the Lessor shall be entitled for double the amount of last paid monthly rent, as damages, during each month or part thereof of wrongful occupation of 'Demised Premises' by the Lessee till it hands over vacant peaceful possession."

58. In so far as the plea of double the rent as per Clause 7.2 of the lease deed is concerned, the learned Single Judge has dealt with the same in paragraphs 41 to 46 which we reproduce as under:

"41. The plaintiff has also placed reliance on Clause 7 .2 of the Lease Deed and claimed double the amount of last paid monthly rent as damages for the period the defendants continued to be in wrongful occupation of the demised premises. Clause 7 of the Lease Deed is set out as under:

"7. SECURITY DEPOSIT

The Lessee has paid to and deposited with the Lessor a total sum of Rs.l,08,00,000/- (Rupees One Crore Eight Lakhs Only) towards Interest Free Refundable Security Deposit which is hereinafter referred to as "Security Deposit" ,vide cheque No.181646 dated 6/9/17 and the Lessor acknowledges the receipt of the same.

7.1 Subject to Lock-in period above and Clause-12 herein below, the Security Deposit shall be refundable by the Lessor to the Lessee, without any interest, on determination or earlier termination of this Lease, subject to deduction towards arrears of rent, electricity and water charges, or other outstanding dues, if any, as per mutual reconciliation of accounts by the parties, simultaneously at the time of Lessee vacating and handing over possession of the 'Demised Premises' to Lessor in tenantable condition, normal wear and tear being exempted. The Lessee shall not seek any adjustments of rent for the notice period before vacating from the security deposit and will continue to pay till the date of vacation.

7.2 In the event of failure on the part of the Lessor to refund the Security Deposit, as detailed above, the Lessee shall be entitled to continue to occupy and use the 'Demised Premises' at its discretion, without paying Rent or other charges, until the Lessor refunds the Security Deposit to the Lessee, along with the interest at the rate of 18% (eighteen percent) per annum from the date of delay till full repayment, and such staying over by the Lessee in the 'Demised Premises' shall not constitute renewal or extension of Term of Lease, or breach on the part of Lessee or unauthorized occupation by the Lessee. However, despite the Lessor being ready & willing to refund the Security Deposit, if the Lessee fails to redeliver the 'Demised Premises' to the Lessor as agreed herein above, or continues to use the premises beyond the stipulated period pursuant to termination of lease for any reason, such occupation of the 'Demised Premises' by Lessee shall be treated as wrongful occupation, and the Lessor shall be

entitled for double the amount of last paid monthly rent, as damages, during each month or part thereof of wrongful occupation of 'Demised Premises' by the Lessee till it hands over vacant peaceful possession."

42. It is not the case of the plaintiff that it has suffered any loss or that the market rent has gone up in this period so as to justify payment of double rent as per Clause 7.2 of the Lease Deed. Under Section 73 of the Indian Contract Act, compensation for breach of contract can only be claimed upon damage or loss caused by such breach of contract by the other side. Section 74 of the Indian Contract Act provides that where an amount is mentioned in the contract as payable in case of breach, the party alleging breach is entitled to receive reasonable compensation, not exceeding the amount so named, whether actual damage is proved or not.

43. While interpreting Section 74 of the Indian Contract Act, a Constitution Bench of the Supreme Court in Fateh Chand v. Bal Krishan Das, (1964) 1 SCR 515 held that under Section 74 of the Indian Contract Act, where the compensation payable for breach of contract is predetermined in a contract, the Court will only award to the aggrieved party reasonable compensation not exceeding the compensation so named.

44. The judgment in Fatel Chand supra was followed by the Supreme Court in Kailash Nath Associates v. Delhi Development Authority and Anr., (2015) 4 SCC 136. The relevant paragraphs of the aforesaid judgment are set out hereinafter:

"43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to he found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43. 6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43. 7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however,

forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

45. Based on the aforesaid position of law, the Supreme Court in Kailash Nath supra held the forfeiture of earnest money by the Delhi Development Authority (DDA) to be bad as no losses could be stated to have been suffered by the DDA.

46. Applying the ratio of the aforesaid judgments in the present case, it emerges that the plaintiff has not even claimed in the plaint that it has suffered a loss on account of the defendants not vacating the demised premises after the termination of the lease. Therefore, even if it is assumed that the defendants are guilty of breach of contract, the amounts under Clauses 7.2 and 14.2 can only be claimed if the plaintiff has suffered any loss on account of the said breach. Otherwise, the plaintiff cannot be entitled to any amounts over and above the lease rentals provided under the Lease Deed. It is not the case of the plaintiff that the rentals had increased during this period or that the plaintiff had suffered losses for which the plaintiff was entitled to double the amount of monthly rent. Therefore, in view of the aforesaid position of law, the plaintiff would not be entitled to claim double the amount of monthly rent in terms of Clause 7.2 or additional six months' rent in terms of Clause 14.2. In fact, judicial notice can be taken of the fact that post the onset of the COVID-19 pandemic in March 2020, till December, 2020, there has been no increase in the rentals of commercial properties. Therefore, ends of justice would be met if the defendants pay to the plaintiff the lease rentals as per the Lease Deed even for the post termination period i.e., 20" August, 2020 till 14th December, 2020, the date on which the possession was handed over."

59. The plea of Mr. Uppal in this regard is that in view of the 2018 amendment to Section 10 of the Specific Relief Act, 1963, the discretion that was vested with the Court to enforce specific performance of a contract

has been taken away, and now if the contract stipulates grant of damages the Court has no option but to enforce the same.

60. The relevant part of Section 10 of the Specific Relief Act, 1963 prior to the amendment read as under:

> *"10. Cases in which specific performance of contract enforceable-*
> *Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced- ……"*

61. However, the amended Section 10 now reads as under:

> *"10. Specific performance in respect of contracts.*
> *The specific performance of a contract shall be enforced by the court subject to the provisions contained in subsection (2) of section 11, section 14 and section 16."*

62. The amended Section 10 of the Specific Relief Act, 1963 came up for interpretation before the Supreme Court in the case of ***B. Santoshamma & Anr. v. D Sarala & Anr., Civil Appeal No. 3574/2009*** decided on 18.09.2020, wherein it has been held that after amendment, the discretion vested with the Court to enforce the specific performance of a contract has been taken away, and now the Court has to mandatorily enforce the same, subject to the provisions of Sections 11(2), 14 & 16. The relevant part of the judgment is reproduced below:

> *"70. After the amendment of Section 10 of the S.R.A., the words "specific performance of any contract may, in the discretion of the Court, be enforced" have been substituted with the words "specific performance of a contract shall be enforced subject to ...". The Court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub section (2) of Section 11, Section 14 and Section 16 of the S.R.A. Relief of specific performance*

of a contract is no longer discretionary, after the amendment."

63. In fact, a co-ordinate Bench of this Court in the case of ***Global Music Junction Pvt. Ltd & Ors. v. Satrugan Kumar & Anr., 2023:DHC:6412-DB*** has reiterated the aforesaid proposition in the following manner:

> *"38. This Court is of the view that the Amendment Act, 2018 introduces a paradigm shift in law regarding contractual enforcement in India. A glaring instance of the legislative shift is the amendment of Section 14 of Act, 1963 which deletes the earlier sub-clause (a) which prescribed that the contracts for the non-performance of which compensation in money was an adequate relief would not be specifically enforced, meaning thereby that the plea that a party could be compensated in monetary terms as damages for breach of the contract and resultant refusal of interim injunction on the said ground, is no longer a ground to refuse specific performance of the contract. Consequently, the Amendment Act, 2018 does away with the primacy given to damages as a relief over specific performance. It shifts the focus from the previous default remedy of award of damages for breach of contract to enforcing specific performance of contracts."*

64. The learned Single Judge has denied the claim of the appellant under Clauses 7.2 and 14.2, primarily on the ground that the appellant has not claimed that he has suffered any damages because of the default and the unauthorised occupation of the demised premises by the respondents. The question that arises now is whether on the strength of the Clauses 7.2 and 14.2 of the lease deed, the appellant is entitled to the damages in the manner stipulated in the said clauses. In other words, the issue is whether benefit of the said clauses can be granted even though the appellant was unable to prove any damages.

65. In this regard, reliance was placed by the learned Single Judge on the judgment in the case of ***Fateh Chand (supra)*** and ***Kailash Nath Associates (supra)*** to hold that where a sum is named in a contract as a liquidated amount payable by way of damages, only a reasonable compensation can be awarded, not exceeding the amount so stated. Similarly, if an amount is fixed in the nature of a penalty, only a reasonable compensation can be awarded, not exceeding the penalty so stated. In other words, the amounts stipulated in the contract would be the upper limit, beyond which the Court shall not grant reasonable compensation and the said reasonable compensation is to be fixed on well known principles applicable to the law of contracts, which are to be found *inter-alia* in Section 73 of the Indian Contract Act, 1872. Similarly, Section 74 of the said Act contemplates award of reasonable compensation for damage or loss caused by a breach of contract. Damage or loss caused is a *sina qua non* for the applicability of the provisions.

66. Thus, there cannot be any dispute to the above position of law, as advanced by Mr. Uppal. However, what is important is whether the amendment to Section 10 of the Specific Relief Act, 1963 shall be applicable to the facts of this case since lease deed in the present case was executed on 04.01.2018 whereas the amendment came into effect on 01.10.2018. In effect, since the lease deed was created much before the amendment of the Section 10 of the Specific Relief Act, 1963, the issue is would it be applicable under the facts and circumstances involved herein.

67. In our view, it cannot be said that the amended Section 10 of the Specific Relief Act, 1963 will be applicable to the facts of this case as has been claimed by Mr. Uppal.

68. For this, we rely upon the case of ***Katta Sujatha Reddy v. Siddamsetty Infra Projects Ltd., Civil Appeal No. 5822/2022*** decided on 25.08.2022, wherein the Supreme Court has held that the amendment to Section 10 of the Specific Relief Act, 1963 is prospective in nature, as under:

> *"49. This provision, which remained in the realm of the Courts' discretion, was converted into a mandatory provision, prescribing a power the Courts had to exercise when the ingredients were fulfilled. This was a significant step in the growth of commercial law as the sanctity of contracts was reinforced with parties having to comply with contracts and thereby reducing efficient breaches.*
>
> *50. Under the preamended Specific Relief Act, one of the major considerations for grant of specific performance was the adequacy of damages under Section 14(1)(a). However, this consideration has now been completely done away with, in order to provide better compensation to the aggrieved party in the form of specific performance.*
>
> *51. Having come to the conclusion that the 2018 amendment was not a mere procedural enactment, rather it had substantive principles built into its working, this Court cannot hold that such amendments would apply retrospectively."*

69. In fact, the Supreme Court in ***P. Daivasigamani v. S. Sambandan, Civil Appeal No. 9006/2011*** decided on 12.10.2022, has followed the judgment in ***Katta Sujatha Reddy (Supra)***, to hold that the amendments made to the Specific Relief Act, 1963 would not apply to an agreement that took place prior to the said amendment. Relevant part of the judgment is reproduced below:

> *"13…… As per the recent decision of the three-judge bench of this Court, in case of Smt. Katta Sujatha Reddy v. Siddamsetty Infra Projects Ltd., Civil Appeal No. 5822 of*

2022 decided on 25th August, 2022, the said Act 18/2018 amending the Specific Relief Act is prospective in nature and cannot apply to those transactions that took place prior to its coming into force. In the instant case, the subject agreement having taken place prior to the said Amendment, we will have to take into consideration the legal position as it stood prior to the 2018 amendment."

70. A similar view was also taken by the Madras High Court in the case of ***K. R. Sundararaj and Ors. v. V. M. Nataraj and Ors, AS No. 1116/2015*** decided on 13.07.2023, as can be seen from the following:

"45. …As held by the Hon'ble Supreme Court in the judgment in Katta Sujatha Vs. https://www.mhc.tn.gov.in/judis Fertilizers & Chemicals Tranvancore Ltd and Others reported in 2002 [7] SCC 655, the amendment in the year 2018 is prospective and cannot be applied to the transaction that took place prior to the amendment coming into force."

71. Coming to the facts of the present case, no doubt the Court decided the issue post amendment to Section 10, but as the agreement between the parties, i.e., the lease deed, was entered into between the parties before the enactment of the 2018 amendment, in view of the settled position of law laid down by judgments of the Supreme Court, the same would not have any bearing in the present case. So, it follows that the adjudication of the issues arising from the lease deed would be governed by the provisions of Section 10 of the Specific Relief Act, 1963, as it existed before the 2018 amendment.

72. If that be so, the discretion to grant specific relief still vested with the Court. It is in exercise of this discretion that the learned Single Judge refused to grant damages as claimed by the appellant/ plaintiff in terms of Clauses 7.2 and 14.2 of the lease deed (even though Clause 14.2

contemplates an additional six months' rent), and held that the ends of justice would be met if the respondents pay to the appellant lease rentals, even for the period post termination of the lease deed, i.e., from 20.08.2020 till 14.12.2020 when the possession was handed over. The rationale behind the same has been set out by the learned Single Judge in paragraph 46 of the impugned judgment, which we have already reproduced above.

73. That apart, we find that the learned Single Judge has held the appellant entitled to 18% interest on the amounts payable as per Clause 6.1 of the lease deed and also arrears of GST, which would surely, further reasonably compensate the appellant.

74. Though an argument was put forth by Mr. Uppal that while passing a summary judgment, the learned Single Judge could not have decided the suit in the manner he did, and should have put the issue to trial, we do not find any merit in the same, as it was the appellant, who had moved the application before the learned Single Judge under Order XIII-A CPC inviting/seeking summary judgment. Merely because the said application has been disallowed, the appellant cannot seek to now contend otherwise before us.

75. In view of the discussion above, we find no infirmity with the impugned judgment. The reasons provided by the learned Single Judge for arriving at the said conclusion are also justified and sustainable.

76. Accordingly, the appeal is dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

SEPTEMBER 22, 2025 /*rt*