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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 30th May, 2024

+ **CS(COMM) 903/2023**

M/S DEVCAS DEVELOPERS AND BUILDERS PVT.
LTD. Plaintiff

Through: Mr. Kirti Uppal, Sr. Adv. With Mr.
Aditya Raj and Ms. Anju Aggarwal,
Advs. (M: 7073011531)

versus

MKM CREATIONS PVT. LTD. Defendant

Through: Mr. Kunal Tandon and Mr. Saurabh
Dev Karan Singh, Advs

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AND

+ **CS(COMM) 631/2023**

MKM CREATIONS PVT LTD Plaintiff

Through: Mr. Kunal Tandon and Mr. Saurabh
Dev Karan Singh, Advs

versus

M/S DEVCAS DEVELOPERS AND BUILDERS PVT.
LTD. Defendant

Through: Mr. Kirti Uppal, Sr. Adv. With Mr.
Aditya Raj and Ms. Anju Aggarwal,
Advs. (M: 7073011531)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

PRATHIBA M. SINGH, J.

1. This hearing has been done through hybrid mode.

CS(COMM)-903/2023 & I.A. 31204/2024
CS(COMM) 631/2023 & I.A. 17276/2023

2. These are two cross suits. The first suit **CS(COMM) 631/2023** is for



specific performance and injunction filed by M/s. MKM Creations Pvt. Ltd. (*hereinafter*, 'MKM'). The second suit **CS(COMM)-903/2023** is for possession and *mesne* profits filed by M/s. Devcas Developers and Builders Pvt. Ltd. (*hereinafter*, 'Devcas').

3. The facts are mostly admitted. MKM had taken on lease the property bearing No. '**Khasra Nos. 432, 433 and 343 at M.G. Road, Sultanpur, New Delhi-110030**' from Devcas vide lease agreement dated 15th June, 2017.

4. The lease agreement was for a period of six years from 19th September, 2017 and expired on 18th September, 2023. The monthly rent for the said period was Rs.7,00,000/- with an increase of 15% after every 3 years. The case of MKM is that the lease had an automatic renewal clause of which it seeks specific performance. This is disputed by Devcas because the lease agreement was terminated due to various breaches.

5. On 22nd January, 2022, **CS(COMM) 903/2023** was treated as the lead suit and directions were given for filing of the written statement. In the interim application, the following directions are issued:

"6. Insofar as application bearing no. I.A. 25583/2023 under Order XXXIX Rule 10 in CS(COMM) 903/2023 is concerned, seeking deposit of user and occupation charges by the Defendant in favour of the Plaintiff at rate of Rs. 50,000/- per day as penal charges for continuing to occupy the said suit property since 18th September, 2023, let the Defendant pay the admitted lease amount from September, 2023 which shall be without prejudice to the rights and contentions of the parties.

7. In the meantime, both ld. Sr. Counsels agree that they would try to resolve the disputes. Arrears of rent shall be tendered within four weeks which shall be without prejudice to rights and contentions of the



parties.

8. The Defendant shall continue to pay, as per the terms of the lease agreement, the admitted rent for the future as well. Mr. Chandiook disputes the terms and conditions of the lease agreement. The deposit shall be without prejudice to the contentions of the Defendant. If there is a settlement, parties are free to move an application.”

6. Today, parties have reported that they have amicably resolved their disputes and filed an application being ***I.A. 31204/2024*** under Order XXIII Rule 3 CPC. Along with the said application, a Memorandum of Settlement dated 28th May, 2024 has been placed on record.

7. In terms of the said Memorandum of Settlement dated 28th May, 2024 it is agreed by MKM that it will handover vacant and peaceful possession of the subject property being land at Khasra No. 432, 433, 434 situated at M. G. Road, Sultanpur, New Delhi – 110 030 admeasuring about 6500 sq. ft. as soon as possible and latest by 15th June, 2024.

8. The remaining terms and conditions of Memorandum of Settlement dated 28th May, 2024 are set out in paragraph 1 to 6 of said Memorandum of Settlement, which are extracted below:

“1. Second Party will vacate and handover the physical possession of the subject property as soon as possible and latest by 15.06.2024.

1.1 *Second Party will sign the joint application to be filed before the Hon’ble High Court of Delhi for seeking disposal of the aforesaid suits in terms of the present memorandum.*

1.2 *The Second Party undertakes to provide to the First Party the complete TDS certificates that is due and payable to the First Party*



towards the amount of TDS payable for the period upto 30.04.2024.

- 1.3 The Second Party also undertakes to clear the dues, if any, pending towards electricity of the subject premises till such date when the Second Party vacates the subject property.*
- 1.4 The Second Party agrees and acknowledges that upon the execution of the MOS, all the rights, claims, disputes, lien, etc., if any, existing in its favour under the Lease Deed against the First Party shall stand extinguished.*
- 1.5 The Parties agree and acknowledge that upon the execution of the MOS, they shall immediately withdraw/ recall all their actions, including but not limited to litigations, proceedings, legal notices, police complaints, and/or any other civil or criminal action/ proceedings initiated by them against each other before any court of law, tribunal or other authorities, in relation to the Lease Deed.*
- 1.6 The Parties agree and acknowledge that upon the execution of the MOS, they shall not pursue any existing or initiate fresh legal proceedings and/or litigations against each other in respect of the terms of the Lease Deed before any court of law, tribunal, police and/or other authority whether judicial or quasi-judicial.*
- 1.7 Second Party will sign the joint application to be filed before the Hon'ble High Court of Delhi for seeking disposal of the aforesaid suits in terms of the present memorandum.*

OBLIGATIONS OF THE FIRST PARTY:



2. First Party will pay a lump sum amount of Rs. 30,00,000/- vide Demand Draft No. 520541 drawn on ICICI Bank, Green Park, New Delhi dated 24.05.2024 to the Second Party towards the depreciated cost of improvements made by the Second Party to the subject property under the Lease Deed dated 15.06.2017 immediately prior to / simultaneously to vacation / handover of keys of the subject property.

2.1 First Party would also refund the entire security deposit of Rs. 14,00,000/- vide Demand Draft No. 520540 drawn on ICICI Bank, Green Park, New Delhi dated 24.05.2024 to the Second Party immediately prior to / simultaneously to vacation / handover of keys of the subject property.

2.2 First Party would not charge any rentals for the period after 30.04.2024. First Party acknowledges that complete rentals have been paid by the Second Party upto 30.04.2024 and nothing remains payable.

2.3 First Party will sign the joint application to be filed before the Hon'ble High Court of Delhi for seeking disposal of the aforesaid suits in terms of the present memorandum.

MUTUAL COVENANTS OF THE PARTIES:

3. The Parties hereto unequivocally agree and acknowledge that subsequent to all the payments received by the Parties in the manner as mentioned above, no dues and/or claims in any manner whatsoever of the Second Party shall survive against the First Party under the Lease Deed.



- 3.1 *The Parties hereto unconditionally and unequivocally agree and acknowledge that the present MOS is being entered into between the Parties towards full and final settlement and as a way to bring complete quietus to the disputes, issues, and/or claims, between the Parties in respect of the said Lease Deed and/or any transaction in relation thereto.*
- 3.2 *The Parties hereto unconditionally and unequivocally agree and acknowledge that the present MOS contains and constitutes the entire understanding between the Parties and as such, supersedes any prior agreed terms, agreements, both oral and/or written, and other understanding between the Parties regarding the Lease Deed.*
- 3.3 *The Parties agree and acknowledge that this MOS has been entered into by the Parties without any coercion, pressure or undue influence, and out of their free will and consent.*
- 3.4 *The Parties agree and acknowledge that they have put their respective hands onto this MOS after having understood the contents hereof, which have been fully read over and explained to them in the presence of witnesses, and thus, the same shall be binding upon the Parties.*
- 3.5 *Parties have mutually decided that the demand drafts payable to the Second Party will be kept with Mr. Ashok Chaudhary (common friend) after signing of this MOS.*



Mr. Chaudhary undertakes to hand over the drafts to the Second Party immediately prior to / simultaneously to vacation of the subject property in terms of this MOS.

Separate undertaking signed by Mr. Ashok Chaudhary is made Appendix – I to this MOS.

REPRESENTATION AND WARRANTIES

4. *The Parties hereby confirm that they are legally competent to enter into and have the full right, power, and authority to execute and deliver this MOS and perform, carry out, and/or comply with the terms, conditions, and obligations hereunder.*
- 4.1 *The Parties hereby confirm that execution and performance of this MOS does not breach any contractual or other obligations owed by the Parties to any other person, authority, and/or any applicable law.*
- 4.2 *The Parties hereby confirm that this MOS has been duly executed and it constitutes as a valid, legal, and binding document.*

MISCELLANEOUS:

5. **Amendment:** *This MOS may be amended or modified with the mutual consent of the Parties, only with a written amendment and duly signed by both the Parties.*
- 5.1 **Severability:** *In the event that any provision of this MOS is held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal, and enforceable as though the invalid, illegal or unenforceable parts had not been included in this MOS.*
- 5.2 **Entirety:** *This MOS constitutes the entire understanding between the Parties regarding the subject-matter hereof and supersedes any*



prior MOS and/or arrangements between the Parties, both oral and/or written, representations and other understanding between the Parties, regarding the said subject-matter.

- 5.3 **Governing Law & Jurisdiction:** *This MOS shall be governed by the applicable laws of India and except as provided otherwise, the Courts/ Tribunals in Delhi shall have exclusive jurisdiction over any dispute, differences and claims, arising in and out of this MOS.*

ATTACHMENTS:

6. *Undertaking signed by Mr. Ashok Chaudhary is made Appendix – I.*
- 6.1 *Copy of the board resolutions of the respective parties signing this MOS to establish authority are annexed in Appendix – II.”*

9. The said Memorandum of Settlement dated 28th May, 2024 contains various other obligations of the parties as also covenants and other representations/warranties. Payment in terms of the Memorandum of Settlement dated 28th May, 2024 shall be made by Devcas as per Clause 2 of the Memorandum of Settlement dated 28th May, 2024.

10. The Court has considered the Memorandum of Settlement dated 28th May, 2024 and has perused the terms of the said Memorandum of Settlement. The terms are lawful. There is no impediment in recording the same. It is, accordingly, directed that the suits shall stand decreed in terms of paragraph 1 to 6 of the Memorandum of Settlement dated 28th May, 2024. All parties, and anyone acting for and, on their behalf, shall be bound by the terms of the Memorandum of Settlement dated 28th May, 2024.



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11. Let the decree sheet be drawn. The Memorandum of Settlement dated 28th May, 2024 shall form part of the decree. All pending applications are disposed of.
12. Full court fee is refunded in both these matters.
13. The next dates are cancelled in both the matters.

PRATHIBA M. SINGH
JUDGE

MAY 30, 2024
dj/dn