

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 15 OF 2025

BETWEEN:

1. SMT. SAROJAMMA
AGED ABOUT 83 YEARS
WIFE OF LATE RAMU
2. MR. D.R. CHANDRADHARA
AGED ABOUT 63 YEARS
SON OF LATE RAMU
3. MR. D.R. RAVIKUMAR
AGED ABOUT 56 YEARS
SON OF LATE RAMU

ALL ARE RESIDING AT
NO. 433/30/1, 28TH 'A' CROSS
4TH BLOCK, JAYANAGAR
BANGALORE - 560 011

...APPELLANTS

(BY SRI LEELADHAR H.P., ADVOCATE)

AND:

1. PALLICKAMALIL CINEMA COMPANY PVT. LTD.
A PRIVATE LIMITED COMPANY
INCORPORATED UNDER
THE PROVISIONS OF
THE INDIAN COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT



ARAKKUNNAM POST
ERNAKULAM DISTRICT
KERALA - 682 313
REP. BY ITS MANAGING DIRECTOR
MR. ABY TOM NICHOLSON

...RESPONDENT

(BY SRI C.K. NANDAKUMAR, SENIOR ADVOCATE A/W
SRI ASWIN PRABHU S.D., ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION
13(1) OF COMMERCIAL COURT ACT, PRAYING TO SET ASIDE
THE JUDGMENT AND DECREE DATED 16/11/2024 PASSED BY
THE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
(EXCLUSIVE DEDICATED COMMERCIAL COURT)
BENGALURU, IN COM.OS. NO. 124/2023 IN SO FAR AS
REJECTING THE CLAIM OF THE PLAINTIFFS/ APPELLANTS
TOWARDS ARREARS OF RENT AND DAMAGES FROM THE
DEFENDANT AS SOUGHT CLAIM IN THE PLAINT FOR THE
RS.1,76,20,040.25 & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING ON FOR
PRONOUNCEMENT THIS DAY, JUDGMENT WAS
PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. For the reasons stated in the application—I.A.No.1/2025, the same is allowed. The delay of twenty five days in filing the appeal is condoned.
2. The appellants have filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015, impugning a judgment and decree dated 16.11.2024 [**impugned order**] delivered by the Court of LXXXVII Additional City Civil and Sessions Judge, Bengaluru [**Commercial Court**] in Com.O.S.No.124/2023.
3. The appellants [hereafter also referred to as **plaintiffs**] had filed the said suit, *inter alia*, seeking a decree for eviction and for recovery of a sum of ₹1,76,20,040.25/- (Rupees one crore seventy six lacs twenty thousand forty and twenty five paisa only). The said amount comprised of: (i) ₹69,75,900/- as arrears of rent for the period from 01.04.2000 to 30.11.2021; (ii) ₹53,58,937.50/- towards damages for holding

over from 01.02.2021 till the date of filing of the suit that is, 21.01.2023; (iii) Interest on arrears of rent quantified at ₹30,64,932/- till 16.01.2023; and (iv) a sum of ₹22,20,270.75/- towards service tax. Additionally, the plaintiffs also sought further damages from the date of termination of the lease in question, that is from 16.11.2021, till delivery of vacant possession of the demised premises along with interest at the rate of 18% per annum. The plaintiffs also sought a decree for recovery of water and electricity charges.

4. The learned Commercial Court passed the impugned judgment partially decreeing the suit and directed that the possession of the scheduled property be handed over to the plaintiffs against receipt of security deposit amount paid by the defendant. The other prayers were rejected.

Factual Context & The Dispute

5. The plaintiffs are the owners of the commercial property along with the building constructed thereon bearing Municipal No.433/30/1, 28th "A" Cross, 10th Main, 4th Block, Jayanagar, Bengaluru-560011. The parties have entered into

a registered lease agreement dated 01.12.2019 in respect to the demised premises, which is described as northern portion of the ground floor of the premises bearing Municipal No.433/30/1, 28th "A" Cross, 10th Main, 4th Block, Jayanagar, Bengaluru-560011 [**the demised premises**] for a term of nine years commencing from 01.12.2019 and expiring on 30.11.2028. The said lease agreement [**the lease agreement**] was registered with the concerned Sub-Registrar on 17.12.2019.

6. The parties had agreed that the monthly rent for the demised premises would be ₹3,50,000/- per month (Rupees three lacs fifty thousand only) for the initial period of 12 months. Thereafter, the same would be increased by 5% successively for every 12 months. The lease agreement sets out a tabular statement clarifying the monthly rental for each of the nine years. The said tabular statement is reproduced below:

SERIAL NO.	FROM	TO	MONTHLY RENTAL
1.	01-12-2019	30-11-2020	Rs.3,50,000/-
2.	01-12-2020	30-11-2021	Rs.3,75,000/-
3.	01-12-2021	30-11-2022	Rs.3,93,750/-
4.	01-12-2022	30-11-2023	Rs.4,13,437.50/-
5.	01-12-2023	30-11-2024	Rs.4,34,109.38/-
6.	01-12-2024	30-11-2025	Rs.4,55,814.84/-

7.	01-12-2025	30-11-2026	Rs.4,78,605.59/-
8.	01-12-2026	30-11-2027	Rs.5,02,535.87/-
9.	01-12-2027	30-11-2028	Rs.5,27,662.66/-

7. The parties agreed that the said rent would be paid after deducting the applicable Tax Deducted at Source [TDS] and the defendant would also pay the Goods and Services Tax [GST] on the proportionate share of rents. It was agreed that the rents would be paid on or before 5th day of each calendar month. It was also agreed that the first sixty days of the term of the lease would be the fit-out period during which the defendant would not be liable to pay the monthly rental. Admittedly, the rental would be payable from, effectively, 01.02.2020.
8. The plaintiffs claimed that the defendant was irregular in payment of rent. The plaintiffs had acknowledged that they had received a sum of ₹17,24,100/- from the defendant till the filing of the suit. However, according to the defendant, the said amount was not paid towards rent but on account of financial accommodation.
9. The defendant claimed that it had paid the rent for the month of February, 2020 through banking channels on 05.03.2020.

Thereafter on 22.03.2020, the demised premises were closed pursuant to the national lockdown imposed on account of COVID-19 pandemic. The defendant claimed that the demised premises was used only for a period of three months from February, 2020 to November, 2020 on account of the force majeure event. The defendant claimed that on reopening, it was mutually agreed that the rents would be payable at the rate of 1/3rd of the agreed rent till the cessation of COVID-19 pandemic and return of normalcy.

10. In its written statement, the defendant claimed that no rent was payable for the period 01.12.2019 to 31.01.2020 in terms of clauses 1(e) and 1(g) of the lease agreement. He claimed that for the period 22.03.2020 to 30.09.2020, no rents were payable on account of "clause 23 of the lease agreement (force majeure)". He claimed for the period 01.10.2020 to 26.11.2021, it was agreed that one-third of the rents due and payable, would be paid. However, for the period 22.04.2021 to 28.06.2021, no amount was payable on account of force majeure. There is no dispute that no rent was payable for the period 01.12.2019 to 31.01.2020 as the

same was agreed to be the fit out period for which no rent was payable.

11. The defendant issued a letter dated 16.09.2021 [**the termination notice** – Ex P2] terminating the lease agreement.
12. Plaintiff No.2 responded by a letter dated 21.09.2021 (Ex P5), inviting the defendant for discussions at its convenience.
13. The Director of the defendant, responded by a letter 29.09.2021 (Ex-P6) expressing his inability to join any discussions on account of medical emergency of his child, and his aged parents being vulnerable to Covid. He, however, stated that he had appointed Mr.Hiran Krishnaswamy and his team to conduct and conclude negotiations on his behalf. Apparently some discussion were held but the disputes remain unresolved.
14. On 16.11.2021, the plaintiffs sent a letter (Exhibit P7) to the defendant formally responding to the termination notice dated 16.09.2021. They claimed that the defendant had requested the plaintiffs to accept part payment of rent during the month of March-April, 2020 with an assurance that the

defendant would pay the balance amount subsequently. The plaintiffs acknowledged the receipt of ₹17,24,100/- towards part payment of rent and claimed that the total rent payable by the defendant from 01.12.2019 to 30.11.2020 was ₹42,00,000/- and from 01.12.2020 to 30.11.2021 was ₹45,00,000/-. They claimed that after adjusting an amount of ₹17,24,100/-, the defendant was in arrears of rent to the extent of ₹69,75,900/-.

15. The plaintiffs accepted the termination of lease agreement and called upon the defendant to vacate the demised premises, hand over the vacant possession of the same, and pay all rentals within a period of thirty days. The defendant was also put to notice that, on failure to do so, the plaintiffs would initiate appropriate legal action for eviction and recovery of rent.
16. The defendant sent a letter dated 11.12.2021 (Exhibit P8) countering the plaintiffs' response to the termination notice dated 16.09.2021 and denied the assertions made in the said notice. The defendant disputed that it was liable to pay the rents. It reiterated that it would hand over possession of

the demised premises on the plaintiffs' paying the amount as demanded in the termination notice. The defendant claimed that it was entitled to hold the demised premises rent free till the time of the security deposit and the amounts paid by it were refunded.

17. In the aforesaid context, the plaintiffs filed the suit in question, Com.O.S.No.124/2023, which was disposed of by the impugned judgment.

Impugned Judgment

18. The learned Commercial Court based on the rival pleadings framed the following issues for its consideration:

"1. Whether the plaintiffs prove that the termination of tenancy of the defendant is in accordance with law?

2. Whether the lease agreement entered into between plaintiffs and defendant is terminated?

3. Whether the plaintiffs prove that they are entitled to get Rs.1,76,20,040.25 towards arrears of rent and damages for unauthorised occupation?

4. Whether the plaintiffs prove that the defendant is liable to pay electricity charges and water charges as per clause 4(a) of the Lease agreement dated 01.12.2019?

5. Whether the plaintiffs are entitled for possession of the suit schedule property from the defendant?

6. Whether the plaintiffs are entitled for interest at the rate of 18% per annum from 16.11.2021?
 7. Whether the plaintiffs are entitled for the decree as sought for?
 8. What order or decree?"
-
19. During the course of the proceedings before the learned Commercial Court, plaintiff No.3, Mr. D.R.Ravikumar (PW1), filed an affidavit in lieu of examination-in-chief. He was cross examined by the defendant's counsel. The defendant's Managing Director, Mr Aby Tom Nicholson (DW1), filed his affidavit in lieu of examination-in-chief and was cross examined by the learned counsel for the plaintiffs.
 20. The learned Commercial Court rightly noted that the affidavits filed by PW1 and DW1 effectively reiterate the averments made in the plaint and in the written statement.
 21. The learned commercial court noted that plaintiffs were entitled to terminate the lease agreement if the rent was not paid for three consecutive months. However, the plaintiffs had not terminated the tenancy and had permitted the defendant to continue in the occupation in the demised premises. The defendant had terminated the lease

agreement by issuing the termination notice. On the basis of the said observation, the learned Commercial Court held that the "plaintiff lost his rights to claim arrears of rent and damages since he did not terminated the tenancy as per Exhibit P1 immediately when defendant became default in paying rent". In view of the said conclusion, the learned Commercial Court held that the plaintiffs were not entitled to claim any arrears of rent or damages.

22. Undisputedly, the plaintiffs had received an aggregate amount of ₹17,24,100/- from the defendant. However, the parties dispute the nature of the said payments. Whereas the plaintiffs claimed that the said amount was received as part rent due in respect to the demised premises; the defendant claimed that part of the said amount had been paid for assisting the plaintiffs as they had requested for the funds on account of the ill health of their brother.

23. The learned Commercial Court found that none of the parties had produced any documents which would establish their contention. However, the Court held that since the plaintiffs had not terminated the lease, the defendant "would have

made the said payments, not for rent but for some other reason".

24. On the aforesaid reasoning, the learned Commercial Court rejected the plaintiffs' claim for arrears of rent or damages. However, directed that the defendant shall hand over the demised premises against receipt of the security deposit. Thus, in effect, the defendant prevailed in the suit.
25. It is relevant to note that the defendant had also filed a counter claim on account of the alleged losses suffered, including loss of ₹9,00,000/- on account of interest on the security deposit and a further loss of ₹8,76,280/- on account of the same not being returned.
26. The defendant did not succeed in its counter-claims.

Submissions

27. Mr. H.P. Leeladhar, the learned counsel for the appellants had relied on the terms of the lease agreement and the documents as produced. On the strength of the same, he contended that the plaintiffs were not only entitled for the rent prior to termination of the lease agreement but also further

damages for withholding possession of the demised premises.

28. Mr. C.K.Nandakumar, the learned Senior Counsel appearing for the respondent submitted that the defendant had terminated the lease on the basis of Clause 17 and Clause 23 of the lease agreement. He referred to the letter dated 16.11.2021 sent on behalf of the plaintiffs in response to the termination notice and emphasized that the plaintiffs had accepted the termination of the lease. He submitted that the termination was on both Clause 17 and Clause 23 of the lease agreement and in terms of clause 23(b), no rentals were payable. He contended that the lease agreement, expressly provided that the defendant could withhold possession of the premises without paying any rent if the plaintiffs failed to refund the security amount. He submitted that since the plaintiffs had not refunded the security deposit after termination of the lease agreement, therefore, the defendant was not obliged to hand over possession of the demised premises.

Reasons and conclusion:

29. As is apparent from the above, both the parties substantially rely on the terms of the lease agreement and the correspondence relating to the termination of the lease agreement, in support of their respective contentions.

30. The learned Senior Counsel appearing for the respondent relies on Clause 17 and Clause 23 of the lease agreement in support of his contention that the lease was validly terminated and the defendant has no obligation to pay rent.

31. It is relevant to refer to Clause 17 and Clause 23 of the lease agreement. The same are set out below:

"17. Notwithstanding anything contained herein, if the LESSEE is unable to use, hold or enjoy the Demised Premises or any part thereof for its business or other purposes, as a result of any legal or other proceedings or action in respect of the Demised Premises by reason of any law, regulations, rules, bye- laws in force in India or otherwise or any reason whatsoever, the LESSEE shall have the right exercisable at the sole and exclusive option of the LESSEE, to determine this lease by giving 3 (Three) months notice forthwith by a notice in writing to the LESSORS. It being the intention of the parties that upon such determination of the lease the amounts of the entire security deposit shall be refundable simultaneously with the handing over the possession of the demised premises by the LESSEE. It is expressly agreed that the LESSEE shall be entitled to withhold and retain possession of the demised

premises, without any further rent or compensation whatsoever, until the LESSORS refunds the amounts due on account of the security deposit. Further the LESSORS shall be liable to pay on the security deposit from the date of termination of lease till payment at 12% p.a. till the settlement of the same after the completion of 2 years lock in period. The LESSEE alternatively entitled to recover the said security deposit through appropriate legal process. Such withholding and retention of possession of the demised premises by the LESSEE shall not in any way constitute renewal or extension of the lease and shall not have the effect of imposing on the LESSEE any obligations under this lease."

**

**

**

**

"23. Provided and it is hereby agreed by and between parties as follows:

(a) It is agreed by and between the parties hereto that upon the occurrences of any event beyond the control of the parties including fire accident, riots, flood, earthquake, storm, or any other natural calamity, terrorist activities, war, insurgency activities, any government or municipal action, prohibition or restriction which in any way adversely affects the right of the LESSEE to peacefully enjoy or use the Demised Premises (hereinbefore and hereinafter referred to as "Force Majeure"), the payment of Rent shall stand suspended during the subsistence of such Force Majeure. The term shall automatically stand extended during the operation, occurrence or continuance of the Force Majeure. The LESSEE as party affected by the Force Majeure, may notify he LESSORS in writing. The LESSORS shall be bound forthwith to make such repairs and restoration so as to restore the Demised Premises in the same condition in which it was first let to the LESSEE under this Lease. If the LESSORS fails to start the repairs or restoration of the Demised Premises within 15 days after notification by the

LESSEE or if the repair / restoration activity is not completed within 60 days on receipt of the notification, the Lease may be continued or terminated at the sole option of the LESSEE and if the LESSEE exercises its option to terminate the Lease, the LESSORS shall without any delay or demur refund the Security Deposit in whole to the LESSEE.

(b) Notwithstanding anything herein contained, if the LESSEE is dispossessed and or is unable to carry out its business activities from the Demised Premises as a result of any legal or other proceedings or action against the in respect of the demised Premises by reason of any law, regulations, rules, bye- laws in force in India or otherwise for any reason whatsoever, this deed shall stand terminated from the date of inability to carry out its business activities from the Demise Premises in consequences of initiation of such legal or other action / proceedings against the LESSORS or from the date of dispossession of the LESSEE consequent thereto, whichever is earlier, at the sole option of the LESSEE. All amounts due any payable, including the Security Deposit in whole, to the LESSEE on such date in terms hereof together with the full Rent for the month of such legal action or disposition, shall be forthwith paid to the LESSEE by the LESSORS without delay, demur or protest and such payment shall be without prejudice to any all rights of the LESSEE in accordance with the terms hereof but not limited to the rights to get indemnified as created supra as also any other right or remedy of LESSEE against the LESSORS. Any delay in refunding the security deposit or other amounts due to the LESSEE by the LESSORS shall render the LESSORS liable for interest on the same at the prevailing bank rate for the period of such delay. The LESSOR shall also be liable to compensate the LESSEE for the Lessee's investments in immovable fixtures in the demised premises. For this purpose, the value of such immovable fixtures shall be deemed to be purchase or installation cost thereof less

depreciation thereon at the rate of twenty percent per annum.

(c) That if the LESSORS at any time during the Term of this lease sell and/or transfer, assign, convey, mortgage, create any charge or are dispossessed from or in respect of the Demised Premises as a whole or in any part or parts thereof to any one person or more than one person, then in the event the LESSEE shall attorn to such transfers on same terms and conditions as are contained herein. However a letter shall be issued by the prospective new LESSORS in favour of the LESSEE confirming that the terms herein agreed shall be binding on the new LESSORS and such party or parties shall also acknowledge the security deposits advanced and other unadjusted monies paid by the LESSEE to the LESSORS whose benefit shall be transferred to the new LESSORS and all adjustments shall be in accordance with the terms of this lease.

(d) The LESSORS shall be liable to bear all costs such as stamp duty, registration charges and other expenses to be borne by the LESSEE as a result of being required to enter into a new lease deed pursuant to sale or transfer of the demised premises by the LESSORS during the terms of this Deed or any extension hereof.

(e) All notices required to be served by either of the parties hereto upon the other shall be deemed to have been duly and effectually served if delivered by hand or addressed by Registered A.D. post at the addresses mentioned hereinabove and such services shall be deemed to have been effected in the case of delivery by hand, on the date on which it is so delivered, and in the case of delivery by Registered A.D. post on the date the Registered A.D. notice is served to the addressee.

(f) That the LESSORS shall to the satisfaction of the LESSEE keep the said building in good and tenantable

condition such that the quiet and peaceful use and possession thereof by the LESSEE is not affected.

(g) The term of this Deed shall not be altered or added to nor shall anything be omitted there from except by means of a Supplementary Deed in writing duly signed by the Parties hereto.

(h) If any one or more provision of this Deed shall be invalid, illegal or unenforceable in any respect of the validity, legality and enforceability of the remaining provision contained herein shall not in way be affected or impaired.

(i) Both parties hereby represent that they are authorized to execute and register these present. Each party has furnished to the other the requisite corporate resolution obtained for the purpose of executing these presents and performing their respective obligations hereunder.

(j) Any delay in enforcement of any of the provisions of this Deed by either party shall not be construed as waiver thereof.

(k) In these present, save as otherwise expressly provided, a reference to the masculine gender shall include the feminine and vice versa and reference to the singular shall include the plural and vice versa.

(l) This deed will be duly registered with the Registrar / Sub-Registrar of concerned. The stamp and the registration charges shall be borne by LESSEE shall keep the duplicate thereof. The LESSORS shall make available all the documents as many be required for the registration of this Deed."

32. It is clear from the plain language of Clause 17 of the lease agreement that it entitles the lessee (defendant) to determine the lease by giving three months notice in writing to the

lessor (plaintiffs), if the lessee is unable to use, hold or enjoy the demised premises on account of the following:

- i) by reason of any legal or other proceedings;
- ii) an action in respect of the demised premises on account of any law, regulations, rules, by-laws in force in India;
- iii) or otherwise "*for any reason whatsoever*"

33. Clause 17 also provides that in the event of determination of the lease of the demised premises, the security deposit would be refundable, "simultaneously with handing over the possession of the demised premises".

34. As noted above, there is no dispute that the defendant had terminated the lease by its notice dated 16.09.2021. It was contended on behalf of the defendant that the termination of the lease under Clause 17 of the lease agreement was accepted by the plaintiffs. In terms of Clause 23(a) of the lease agreement, the lessee's obligation to pay rent would stand suspended during the subsistence of such force majeure, which includes any government or municipal action, prohibition or restriction that adversely affects the right of the lessee to peacefully enjoy or use the demised premises.

35. During the course of the arguments, the learned Senior Counsel appearing for the defendant had also referred to Clause 23(b). However, the reliance placed on Clause 23(b) of the lease agreement is misplaced for two reasons. First, that the subject of the termination notice expressly refers to Clause 17 and Clause 23(a) of the lease agreement. The body of the language also clearly states that the lease is terminated in terms of Clause 17. The defendant refers to Clause 23 of the lease agreement only in the context of suspension of its liability to pay rent during the pandemic period. The relevant extract of the termination notice is set out below:

"Sub: Termination of Registered Lease Agreement dated 01.12.2019 in terms of Clause 17 read with Clause 23(a)"

1. Please refer to the captioned matter. Wherefore we have entered into a registered lease agreement dated 01.12.2019, wherein rents were payable from 01.02.2020 onwards. For the period of February 2020 the full rent was paid in terms of the Lease Agreement. However, due to COVID-19 pandemic and subsequent national / state lockdowns, governmental orders / actions, restrictions, curfew and such like our business is seriously affected and continues to be so affected.

2. The terms of the Lease Agreement having been negotiated prior to the COVID-19 pandemic, it is no longer commercially viable for the business to continue on account of the COVID-19 pandemic, the first wave, second wave and now possibly a this wave. That as on

date the provisions of the National Disaster Management A continue to be in force as also Epidemic Diseases Act prescribing/mandating various restrictions on timings, movement of persons and curfews. The aspects relating restrictions on business and commerce are a matter of public record.

3. That in terms of Clause 17 of the Lease Agreement we are herewith giving notice to vacate the scheduled premises on account of the fact that due to COVID-19 pandemic as also governmental orders / actions, it is no longer possible for the Lessee to continue its business in the scheduled premises.

4. That in terms of Clause 23 of the Lease Agreement, no rents are payable during the pandemic on account of governmental action / regulations / restrictions / curfew / Amounts were credited to your designated account on mutual lockdowns etc. consultations and without reference to the amounts stipulated in terms of the lease agreement to meet exigencies communicated to us as being medical in nature as also financial hardship. Such payments made do not constitute waiver of our rights in terms of the lease agreement. We reserve our right to reclaim all amounts paid for the period covered by clause 23 of the Lease Agreement. That no rents are due to be paid for the period from March 2020 - September 2021 (both months inclusive), including for the notice period under Clause 17 and invoked by us."

[emphasis in bold added]

36. The second reason as to why reference to Clause 23(b) of the lease agreement is misplaced is because the plain reading of Clause 23(b) of the lease agreement provides that "the deed shall stand terminated from the date of inability to carry out its business activities from the Demise Premises in

consequences of initiation of such legal or other action / proceedings against the LESSORS or from the date of dispossession of the LESSEE consequent thereto, whichever is earlier, at the sole option of the LESSEE.”. Thus the lease agreement would stand terminated only if defendant could not use the demised premises in consequences of initiation of legal or other action or proceedings against the Plaintiff or on account of the defendant being dispossessed. In the present case, no action or proceeding was instituted against the plaintiffs and the defendant was not dispossessed of the demised premises.

37. The termination notice does not refer to the date with effect from which the lease was terminated. However, termination notice expressly states that it is in terms of Clause 17 of the lease agreement. The said clause refers to a period of three months. Therefore, the termination of the lease would take effect after three months from the date of receipt of the termination notice dated 16.09.2021. Assuming that the same was received on the same date, the lease of the demised premises would stand terminated with effect from 15.12.2021.

38. As noted above, in terms of the letter dated 16.11.2021, the plaintiffs accepted the termination of the lease and called upon the defendant to vacate the said premises and pay arrears of rent as quantified by them. It is also material to note that although the plaintiffs had accepted the termination of the lease agreement, they expressly disputed that Clause 17 and Clause 23 of the lease agreement were applicable. They denied that there could be waiver of payment of monthly rents.
39. In the aforesaid context, the principal question to be addressed are whether the defendant was liable to pay any rent prior to the termination of the lease (which as stated above would necessarily take effect on 15.12.2021). And, whether it was permissible for the defendant to withhold possession of the demised premises.
40. A plain reading of Clause 23(a) of the lease agreement indicates that in case of force majeure, the obligations for payment of rent would be suspended. As noted above, the force majeure event includes any government or municipal action, prohibition or restriction, which may adversely affect

the right of the lessee to peacefully enjoy the demised premises.

41. This Court had called upon the parties to give the precise details of the number of days during which restrictions had been imposed on account of COVID-19.
42. According to the parties, the restrictions were in force for a period of 170 days during the year 2020 and 79 days during the year 2021. Thus, the total number of days during which the COVID restrictions continued were 249 days. However, there was a minor controversy in this regard as according to the defendant, number of days during which restrictions on account of COVID 19 subsisted, were 252 days. However, it is not necessary to examine this controversy during the course of proceedings the learned counsel for the appellant had agreed to the stipulation that the number of days during which COVID-19 restrictions continued could be assumed as 252 days. This was noted by this Court in the order dated 29.10.2025.
43. We may also note that during the course of submissions, the Court had called upon the parties to submit their calculation of the amount, which according to them would be payable.

44. The learned counsel for the plaintiffs had filed a memo dated 29.10.2025 setting out a calculation of the amount computed to ₹2,21,75,704.08/- which according to them was payable by the defendant after deducting an amount of ₹28,97,500/- as a rental payable during the COVID-19 period when a lockdown was enforced.
45. The learned counsel for the defendant had also handed over a memo of calculation dated 29.10.2024 which reflected that a sum of ₹28,88,236/- was payable to the defendant.
46. These calculations were also made on the basis that rent for the period of 252 days was not payable on account of a restrictions placed on account of the pandemic.
47. It cannot be disputed that the nationwide lockdown imposed on account of the outbreak of COVID-19 pandemic adversely affected the ability of the lessee to use the demised premises. However, it is arguable that the restrictions did not affect the right of the defendant to use the premises. The lock downs imposed on account of the outbreak of Covid, suspended all non-essential activities. The defendant could

continue to occupy and use the premises but it could carry on retail trade during the period of lockdowns. However, it is not necessary to examine this aspect in detail as the learned counsel for the appellants fairly stated that the restrictions imposed by the Disaster Management Authority and other authorities on account of the outbreak of COVID-19 be considered as force majeure. As noted earlier, both the parties have agreed that the said force majeure subsisted for a period of 252 days during the years 2020 and 2021. Thus, the obligation of the defendant to pay rent for an aggregate period of 252 days was suspended. And, the defendant would be absolved from paying rent for an aggregate period of 252 days. However, it would be liable to pay the rent for the balance period that is, from 01.02.2020 to 15.12.2021 (less 252 days being 170 days in the year 2020 and 82 days in the year 2021).

48. It is the defendant's case that it was not liable to pay any rental on account of an oral understanding whereby, the plaintiffs had agreed to accept 1/3rd rent for the period during which the pandemic lasted.

49. We are unable to accept that the evidence led by the defendant establishes that the parties had entered into any such oral agreement. In our view, it is not open for the defendant to set up a case of novation of a written agreement on the basis of any oral understanding, which is disputed. There is no document on record which refers to any such oral understanding. Although, the defendant claims that there was an agreement between the parties for reduction of rent by 1/3rd, there is no evidence as to who are the individuals who had orally agreed to such reduction; the dates on which such oral understanding was arrived; or the manner in which the oral agreement was entered into – was it face to face or on telephone.

50. The Defendant (DW.1) in his affidavit furnished in lieu of examination-in-chief affirmed that, there is no document to show that during COVID-19 pandemic, it was agreed between the parties that 1/3rd rent would be payable during the time when the restrictions are in place prohibiting the unhindered business of the defendant. He was cross examined by the learned counsel for the plaintiffs. He was specifically asked whether there was any document, which

would indicate that he and the plaintiffs had agreed that 1/3rd rent would be payable during the COVID-19. He acknowledged that there was no such document. However, DW-1 stated that it was an oral agreement between our company and the plaintiffs. DW.1 did not reveal any further details as to this alleged oral understanding.

51. It is also material to note that plaintiff No.3 (P.W.1) had expressly affirmed in his affidavit – which was furnished in lieu of examination-in-chief – that the defendant was in arrears of rent and had made part payments of rent irregularly on different dates and for different sums without furnishing proper details as to the deduction of TDS. The said testimony remained unchallenged and no question was put to him regarding any oral understanding between the plaintiffs and the defendant.
52. We also note that the stand of the defendant as regards to payment of 1/3rd rent is somewhat inconsistent with the contents of the termination notice.
53. The defendant's stand in the termination notice was not that there was any oral agreement whereby, 1/3rd rental was

payable during the period when the restrictions on account of COVID-19 were in force. On the contrary, the defendant's stand was that the amounts were credited to the designated account of the plaintiffs "on mutual consultations and without reference to the amounts stipulated in terms of the lease agreement to meet exigencies communicated to us as being medical in nature as also financial hardships." The defendant claimed that no rent whatsoever was payable during March 2020 to September 2021 (both months inclusive) including the notice period under Clause 17.

54. In any view of the matter, we cannot accept that the terms of the written registered lease agreement were altered by any such oral understanding.

55. In view of the above, except for the period of 170 (one hundred and seventy) days in the year 2020 and 82 (eighty-two) days in the year 2021, aggregating a total of 252 (two hundred and fifty two) days; the defendant would be liable to pay the rent for the demised premises till termination, that is, till 15.12.2021. Admittedly, no rental were required to be paid during the fit-out period, that is for first 60 days, in the term of the lease agreement. There is also no dispute that the

defendant had paid the rent for the month of February, 2020. Thus, the defendant was liable to pay the rental for the balance period from 01.03.2020 to 15.12.2021, less the rent payable for the period of 252 (two hundred and fifty-two) days. The defendant would also be entitled to adjustment of the aggregate amount of ₹17,24,100/-, which is admittedly paid by the defendant.

56. The learned Commercial Court's conclusion, that an assumption that the amount of ₹17,24,100/- paid by the defendant was not on account of rent but other purposes, could be drawn from the fact that the plaintiffs had not terminated the tenancy is fundamentally flawed. No such inference could be drawn by the learned Commercial Court.
57. A memo has been filed by the learned counsel for the appellants, indicating that TDS of ₹35,688/- had been deposited by the defendant for the financial year 2020-2021 and ₹31,900/- was deposited for the financial year 2021-2022. Thus, TDS has been deducted under Section 194-I of the Income Tax Act, 1961, which mandates deduction of TDS on payment of rent. The Annual Information Statement

(AIS) generated from the website of Income Tax Department establishes the same.

58. The learned Commercial Court had also gravely erred in concluding that the plaintiffs had lost the right to claim arrears of rent and damages as they had not terminated the tenancy. This conclusion rests on Clause 14 of the lease agreement, which entitles the lessor to terminate lease, if the lessee fails to pay the agreed rent for the three consecutive months.

59. Clause 14 of the lease agreement is reproduced below.

"14] TERMINATION:-

a. In the event, the LESSEE fail to pay the agreed rent hereby reserved for 3 (Three) consecutive months or on the LESSEE committing a breach of any of the other terms and conditions of this Lease, the LESSORS shall call upon the LESSEE in writing, under acknowledgement, to remedy / rectify such defect/failure and if within 30 (Thirty) days, if despite the Notice, the LESSEE fail to remedy or rectify the said defect, then and in such an event, the LESSORS shall be entitled to terminate this Lease. The termination and re-delivery shall however be by due process of law."

60. A plain reading of the aforesaid clause indicates that the same enables the lessor to terminate the lease, if the lessee fails to pay the rents for three consecutive months and to remedy the failure within a period of thirty days of the notice

calling upon the lessee to do so. The said Clause 14 cannot be construed to mean that it is necessary for the lessor to issue a notice and take steps for termination of the lease in the event of failure on the part of the lessee to pay rents failing which all other remedies are foreclosed.

61. The fact that the plaintiffs had not issued any such notice, could not lead to the conclusion that they had lost their rights to claim rent or damages.
62. Next question to be considered is whether the defendant was entitled to withhold possession of the demised premises on termination of the lease agreement in terms of the termination notice.
63. The defendant relies on Clause 16 of the lease agreement in support of its claim that it was entitled to withhold possession of the demised premises without any liability to pay rent, till refund of the security deposit. It is also relevant to refer to Clause 3 of the lease agreement, in terms of which the defendant had deposited a sum of ₹30,00,000/- as interest free security deposit.
64. Clause 3 of the lease agreement is set out below:

"3) The LESSEE shall deposit a sum of Rs.30, 00,000/- (Rupees Thirty Lakh only) to the LESSORS towards interest free **security deposit for the performance of the terms and the covenants contained herein** (hereinafter referred to as "Security Deposit") and the same shall be refunded to the LESSEE at the time of the LESSEE surrendering the demised premises to the LESSORS after the expiration of 9 years. The LESSEE has already paid a sum of Rs.30,00,000/- (Rupees Thirty Lakh only) by way of cheque bearing No.000972, drawn on People's Urban Co-operative Bank Ltd, Arakunnam Branch, dated 16-12-2019 in favour of the joint account of the LESSORS maintained at The Karnataka State Co-op. Apex Bank Ltd, Jayanagar, Bangalore towards the aforesaid security deposit and the LESSORS hereby acknowledges the receipt of the same."

[emphasis added]

65. As is apparent from the plain language of Clause 3 of the lease agreement, the defendant was required to pay a sum of ₹30,00,000/- as security deposit for performance of the terms and conditions of the lease agreement. The plaintiffs were required to refund the said amount to the defendant at the time of the defendant surrendering the demised premises after expiry of nine years. It is obvious that since the security deposit was furnished for due performance of the obligations, it would be refundable only if the lessee had fully performed its obligations under the lease agreement. This includes the performance of its obligations to pay rent.
66. The plaintiffs were not obliged to return the security deposit in case the defendant was in arrears of rent and other

charges. In such eventuality, the plaintiffs would be well within their right to adjust the security deposit for making good the deficiency in payment obligations.

67. We may also examine Clause 16 of the lease agreement.

The same is set out below:

"16) Notwithstanding anything contained herein, in the event the LESSORS fails to refund/ pay the Security Deposit to the LESSEE at the time of vacation of the demised premises by the LESSEE, the LESSEE shall be entitled to withhold possession of the Demised Premises **by way of security for the unpaid amount of the Security Deposit**. Such withholding of possession shall not constitute unauthorized occupation by the LESSEE and the LESSEE shall not during such period be liable in any manner whatsoever in respect of the demised premises."

[emphasis added]

68. In terms of Clause 16 of the lease agreement, in the event, the plaintiffs failed to refund or pay the security deposit to the defendant "at the time of vacation of the demised premises", the defendant would be entitled to withhold possession as security for the unpaid amount of security deposit.

69. In the present case, the defendant was in arrears of rent. Mr. C.K.Nandakumar, learned Senior Counsel appearing for the defendant, did not dispute that if the defendant is found liable to pay rental for the entire period prior to termination of the lease, less the period of two hundred and fifty two days

during which COVID-19 restrictions subsisted, the amount payable would far exceed the sum of security deposit.

70. Thus, as held earlier, the defendant was liable to pay the rent for the period prior to termination of the lease; that is for the period from 01.03.2020 till 15.12.2021 less rent for two hundred and fifty two days. Thus, it was not open for the defendant to withhold the possession of the demised premises on account of non-refund of security deposit. This is because the same was not refundable in view of the default on the part of the defendant for fulfilling its obligations under the lease agreement.

71. We may also note that demand for refund of security deposit made by the defendant was also not at the time of handing over of the demised premises. A plain reading of the termination notice indicates that no date was fixed for handing over of the demised premises. It is also relevant to note that PW-1, in his cross-examination disputed that the defendant had vacated the demised premises on termination of the lease agreement. He has stated in unequivocal terms that the defendant's items continued to remain inside the shop. Thus, the defendant had not vacated the demised

premises before calling upon the plaintiffs to refund the security deposit. This oral evidence remains uncontroverted. There is no evidence on record to indicate that the defendant had vacated the demised premises prior to 15.12.2021. The affidavit of evidence filed by DW-1 also does not mention the date on which the defendant had vacated the premises.

72. It is also necessary to note that in terms of the termination notice the defendant had called upon the plaintiffs to pay a sum of ₹47,48,500/- which comprised of ₹30,00,000/- of security deposit and an amount of ₹17,48,500/- paid period prior to the issuance of the termination notice. The defendant also provided the details of its bank accounts, where the amounts were to be remitted. The defendant stated that it would hand over the possession of the property only on confirmation of the receipt of payments. The relevant extract of the termination notice is set out below:

"6. Upon expiry of the notice period, commencing from the date of receipt of this notice, we request you to release our security deposit of Rs. 30,00,000/- (Rupees Thirty Lakhs Only); as also the amount of Rs. 17,48,500/- being amounts covered by Clause 23 of the Agreement. The total payable by the Lessor would be an amount of Rs. 47,48,500/- (Rupees Forty Seven Lakhs Forty-eight Thousand Five Hundred Only)

7. *** **

8. Upon confirmation of receipt of the payments due to us in terms of the present notice, we will handover possession of the property;"

73. The lease agreement did not require the plaintiffs to remit the security deposit in advance before the date of handing over the possession. We also note from the language of the termination notice that the defendant had withheld the premises not only for seeking refund of security deposit but also the additional sum of ₹17,48,500/- paid to the plaintiffs. The said demand is clearly beyond the scope of Clause 16 of the lease agreement. The lease agreement did not permit the defendant to withhold possession on account of demands other than the security deposit.

74. It is also relevant to refer to Section 108 of the Transfer of Property Act, 1882 [**TP Act**]. The said Section sets out the rights and liabilities of lessor and lessee. In terms of clause (q) of Section 108 of the TP Act, a lessee is bound to put the lessor into possession on determination of the lease. The said clause is set out below.

"108. Rights and liabilities of lessor and lessee. -

*** *** ***

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

75. It is also settled law that a tenant cannot withhold possession of the subject property till the security deposit is refunded. The remedy available to the tenant is to sue the landlord for refund of the security deposit after handing over possession.

76. In **H.S.Bedi v. National Highway Authority of India (2015) SCC Online 9524**, the Delhi High Court has referred to various decisions and summarised the law as under:

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

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

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

10.3. Duty of tenant to restore the tenanted premises - The tenant is bound to restore the

tenanted premises in the same condition in which it was taken.[Section 108(B)(m)].

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

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

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

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

10.8. Remedy of tenant in case of non-refund of security deposit by the landlord— The tenant cannot refuse to hand over the possession till the security deposit is refunded. In the event of nonrefund of security deposit by the landlord, the remedy of the tenant is to sue the landlord for

refund of security deposit after handing over the possession.

77. It is material to note that the parties have filed a memo informing the Court that the keys of the demised premises were handed over to the plaintiffs on 04.09.2025 before the Execution Court in the execution proceedings (being Com.Ex.Pet.No.183/2025).
78. We may now refer to the computations of the amounts payable as handed over by the parties.
79. The learned counsel for the appellants has handed over the memo dated 29.10.2025 setting out the tabular statement:

AMOUNT DUE FROM RESPONDENT AS ON DATE

Particulars	Amount paid	Total amount
From 01.12.2019 to 30.11.2020 @ Rs.3,50,000/-	Rs.42,00,000/-	
Deduction for sit out period of two months @ Rs.3,50,000/-per month for less two months	-Rs.7,00,000/-	
From 01.12.2020 to 30.11.2021 @ Rs.3,75,000/-	+Rs.45,00,000/-	Rs.80,00,000/-

Amount paid on different dates	-Rs.17,24,100/-	Rs.62,75,900/-
TDS paid by lessee for the financial year 2020-21	-Rs.35,688/-	
TDS paid by lessee for the financial year 2021-22	-Rs.31,900/-	Rs.62,08,312/-
01.12.2021 to 30.11.2022 @ Rs.3,93,750/-	+Rs.47,25,000/-	
From 01.12.2022 to 30.11.2023 @ Rs.4,13,437.50/-	+Rs.49,61,250/-	
From 01.12.2023 to 30.11.2024 @ Rs.4,34,109.37/-	+Rs.52,09,312.44/-	
From 01.12.2024 to 04.09.2025 @ Rs.4,55,814.33/-	+Rs.36,46,514.64/-	
Electricity charges paid by applicant	+Rs.3,22,815/-	Rs.2,50,73,204.08
Deduction of Covid-19 lockdown for 252 days	-Rs.28,97,500/-	
	Total amount due till the date of deposit of keys on 04.09.2025	Rs.2,21,75,704.08/-

80. The learned Senior Counsel appearing for the defendant had examined the same and had stated on instructions, that there is no error in computation of the said amount if it is held that the plaintiffs were entitled to the rent and damages for the period till the date of handing over of the possession of the demised premises.
81. The learned counsel for the defendant has also filed memo of calculations. According to the defendant, ₹28,88,236/- is refundable by the plaintiffs to the defendant. The said memo of calculation is reproduced below:

Total days of contract up to effect of termination	745
Fit-out period (no rent period as per contract)	60
Exclusion of period for which rent paid prior to force majeure	28
No. of 'force majeure' days	252
Balance number of days	405
Rent paid / payable as per oral contract after first lockdown (monthly)	1,16,667.00
Rent paid / payable as per oral contract after first lockdown (daily)	3,835.61
Rent payable for force majeure free period	15,53,422.05
TDS returns filed and accounted	67,558.00
Amount Paid as rent (as per oral agreement post first lockdown)	13,74,100.00
Balance Amount payable	1,11,764
Security deposit	30,00,000.00
Amount payable to Respondents	28,88,236.00

82. It is clear from the above, that the defendant has calculated the rent payable as ₹15,53,422.05/- for the period excluding the period during which force majeure event subsisted. The

said rent is calculated on the basis of an alleged oral contract reducing the rent to 1/3rd. We have rejected the defendant's claim that any oral agreement existed between the parties, whereby the terms of the lease agreement were altered.

83. In terms of the calculations stated above, the plaintiffs would be entitled to an amount of ₹64,55,812/- as rent till 15.12.2021 after accounting for the TDS of ₹67,588/- (35,688/- + 31,900/-). From the aforesaid amount, the rental payable for 252 days during which restrictions imposed on account of COVID-19 existed are required to be deducted. This amount is computed at ₹28,97,500/-. After adjusting the said amount a net of amount of ₹35,58,312/- was payable as on 15.12.2021. Although the security deposit was required to be adjusted on the date of handing over of possession, it would be apposite to allow adjustment of the said amount from the aforesaid amount as payable on 15.12.2021. Thus, an amount of ₹35,58,312/- less ₹30,00,000/- is held as payable to the plaintiffs as on the date as on 15.12.2021.

84. The defendant is also liable to pay interest on the said amount. Clause 17 of the lease agreement provides for

payment of interest at the rate of 12% if the refund of security deposit is delayed. Thus, we consider the said rate of interest as a reasonable rate in respect of amounts payable by the defendant. Thus, in addition to the arrears of rent, the defendant would also pay interest at the rate of 12% per annum on the said amount from 15.12.2021 till the date of payment.

85. In addition, the defendant is also liable to pay damages for withholding possession of the demised premises till its surrender on 04.09.2025. Since the parties had already agreed to the lease rentals as contemplated in the lease agreement, the same are an apposite measure for damages/mesne profits.

86. The said amount of ₹5,58,312/- and the mesne profits till 04.09.2025 shall be paid by the defendant along with interest at the rate of 12% p.a. The interest on ₹5,58,312/- shall be payable from 15.12.2021 till realisation and the interest at the rate of 12% shall be payable on mesne profits from 04.09.2025 till realisation. The plaintiffs have already

recovered possession of the demised premises, therefore, no orders are required to be made in this regard.

87. The impugned judgment is set aside. The suit is decreed in the aforesaid terms.
88. The Appeal is accordingly allowed with costs.
89. Pending applications stand disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

KPS