

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

COMMERCIAL APPEAL NO. 226 OF 2025

BETWEEN:

1. SURE WAVES MEDIA TECH PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
WE WORK SALARPURIA MAGNIFICIA
13TH FLOOR, NO.78, NEXT TO KR PURAM
TIN FACTORY, OLD MADRAS ROAD
MAHADEVAPURA, BANGALORE - 560 016
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. ANANT KANSAL

...APPELLANT

(BY SRI GURU PRASANNA S., ADVOCATE)

AND:

MR. FATHIRAJ
SON OF LATE BALASWAMY
AGED ABOUT 73 YEARS (DECEASED)
SINCE REPRESENTED BY LR

1. MRS. KALA
WIFE OF LATE MR. FATHIRAJ
AGED ABOUT 69 YEARS
RESIDING AT NO. 36, ST BED
CHANDRA REDDY LAYOUT



VIVEKNAGAR POST
BANGALORE - 560 047

...RESPONDENT

(BY SRI PRASAD N., ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURT ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 17.02.2025 IN COM. O.S. NO.668/2021 PASSED BY THE HON'BLE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (COMMERCIAL COURT NO.88), AND DECREE THE PLAINTIFF'S CLAIMS IN THEIR ENTIRETY AND DISMISS THE COUNTER-CLAIM OF THE DEFENDANT IN ITS ENTIRETY & 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

C.A.V. JUDGMENT

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

1. The appellant has filed the present appeal impugning a judgment and decree dated 17.02.2025 [**impugned order**] passed in Com.OS.No.668/2021 by the LXXXVII Additional City Civil and

Sessions Judge, Bengaluru [**Commercial Court**] captioned 'Sure Waves Media Tech Pvt. Ltd. v. Mr. Fathiraj and another.

2. The appellant [**the lessee**] filed the aforementioned suit, *inter alia*, praying for a decree declaring that the leave and licence agreement dated 21.10.2019 [**the lease agreement**] was cancelled and terminated with effect from 01.07.2020 or, alternatively, on 26.02.2021. The appellant also sought a decree for the recovery of ₹12,86,941/- (Rupees Twelve Lakhs Eighty Six Thousand Nine Hundred and Forty One only) as a refund of rent and security deposit. Additionally, the appellant claimed damages amounting to ₹45,00,000/- (Rupees Forty Five Lakhs only) as compensation for loss of data, financial losses and computer services rendered unusable from 25.06.2020 to 24.09.2021. The appellant also requested interest on these amounts.

3. The original Defendant No.1, Sri B. Fathiraj, passed away during the pendency of the suit and was represented by his legal representative, Ms Kala (wife of the deceased), who was brought on record as Defendant No.1(a). Ms Kala is also arrayed as Defendant No.2 in her individual capacity.

4. The respondents [**the lessors**] raised a counter claim, *inter alia*, praying for a decree of declaration that the lease agreement stood terminated as on 15.11.2021; for recovery of an amount of ₹81,27,111/- (Rupees Eighty One Lakh Twenty Seven Thousand One Hundred and Eleven only) towards arrears of rent after deducting security deposit of ₹30,00,000/- (Rupees Thirty Lakhs only); for interest at the rate of 18% per annum on the aforesaid amount from the date of default till realisation; for recovery of a sum of ₹6,15,001/- (Rupees Six Lakhs Fifteen Thousand and One only) as electricity and maintenance charges; for a sum of ₹4,03,700/- (Rupees Four Lakhs Three Thousand and Seven Hundred only) on account of painting and maintenance of office furniture; and legal costs.

5. The learned Commercial Court rejected the suit. However, it partly allowed the counter claim of the defendants. The Court held that the leave and licence agreement dated 21.10.2019 was terminated with effect from 15.11.2021 and awarded a sum of ₹81,27,111/- (Rupees Eighty One Lakhs Twenty Seven Thousand One Hundred and Eleven only) towards arrears of rent after deducting the security deposit of ₹30,00,000/- (Rupees Thirty Lakhs only), along with interest at the rate of 12% per annum from

the date of the suit till realisation. Further, the Commercial Court also directed the plaintiff to pay an amount of ₹6,15,001/- (Rupees Six Lakhs Fifteen Thousand and One only) as electricity and maintenance charges within a period of three (03) months from the said date.

PREFATORY FACTS

6. The lessors [respondents in the present appeal and the defendants in the suit] owned a building named 'Ashok Chambers', located at No. 25, 6th Cross, Koramangala, Srinivagalu, near Ejipura Junction, 25th Intermediate Ring Road, Bengaluru - 560047. The lessee, being engaged in the business of providing advanced technology-based media solutions, had approached the lessors for hiring the commercial space on the third floor of the said building [**demised premises**]. The parties executed the leave and license agreement dated 27.06.2013 [**1st agreement**]. The term of the said leave and license agreement was three (03) years, with effect from 01.09.2013 to 31.08.2016. In terms of the said agreement, the monthly rent was fixed at ₹3,00,000/- (Rupees Three Lakhs only) for the first year, ₹3,15,000/- (Rupees Three Lakhs Fifteen Thousand only) for the second year, and ₹3,30,750/- (Rupees Three Lakhs Thirty Thousand Seven Hundred and Fifty only) for

the third year. The lessee had paid a sum of ₹30,00,000/- (Rupees Thirty Lakhs only) as a security deposit.

7. After the expiry of the 1st agreement, the parties executed another leave and license agreement dated 29.08.2016 [**2nd agreement**], under which the demised premises were leased to the appellant at a higher rental. The 2nd agreement expired in the year 2019.

8. The parties renewed the lease of the demised premises by executing another leave and license agreement dated 21.10.2019 [**the lease agreement**], which was registered with the office of the Sub-Registrar of Bommanahalli (Jayanagara) bearing Reg.No. BMH-1-06575-2019-20, stored in Book No.1 and CD No.BMHD 1021. The lease agreement was for a term of thirty six (36) months, commencing 01.09.2019 to 31.08.2022. The parties had agreed that the rental for the first twelve (12) months would be ₹4,63,050/- (Rupees Four Lakhs Sixty Three Thousand and Fifty only) per month (01.09.2019 to 31.08.2020), which would be increased to ₹4,86,202/- (Rupees Four Lakhs Eighty Six Thousand Two Hundred and Two only) per month for the next twelve (12) months (01.09.2021 to 31.08.2021) and would be further enhanced to

₹5,10,512/- (Rupees Five Lakhs Ten Thousand Five Hundred and Twelve only) for the remaining 12 months (01.09.2021 to 31.08.2022). Additionally, the lessee agreed to pay the service tax as applicable from time to time.

9. There is no controversy between the parties regarding the liability to pay rent upto February 2020. Admittedly, the lessee paid the agreed lease rent till February 2020. However, it stopped paying the rent of the demised premises thereafter.

10. In the year 2020, on account of the outbreak of COVID-19, a nationwide lockdown was imposed by the Government of India with effect from 24.03.2020. The lockdown continued in various phases till 31.05.2020, and in Karnataka, it was extended till the end of June 2020, with a further lockdown from 14.07.2020 to 22.07.2020. The lessee claims that due to the pandemic, it shifted its entire operations to a "work from home" model from 12.03.2020 onwards and did not use the demised premises during this period.

11. Admittedly, the lessee did not pay any rent from March 2020 onwards. The first written communication between the parties after the imposition of the lockdown was an email dated 17.06.2020 sent by an authorised representative of the lessee, to the lessors. In this

email, the lessee requested complete waiver of rent for the lockdown months of April and May 2020, and a reduction of rent by 50% for the subsequent months till December 2020, citing financial difficulties arising from the pandemic.

12. The original lessors (original Defendant No. 1 – Sri B. Fathiraj) responded by email dated 22.06.2020, agreeing to reduce the rent by 30% for the lockdown period of April and May 2020, however requesting, that the rent for the remaining months be paid in full as per the terms of the lease agreement. The lessee however, did not pay the rent as specified, but instead sent another email dated 24.06.2020 reiterating its earlier request for a complete waiver of rent for the lockdown period and a 50% reduction for the subsequent months till December 2020, expressing its financial difficulties.

13. The lessee followed up with another email dated 27.07.2020 addressed to the lessors. In this communication, the lessee alleged, that the defendants had disconnected the power supply to the demised premises approximately one month prior, which was adversely affecting its business operations. The lessee once again requested waiver of rent for the period of "statutory breakdown" and a reduction of rent to 50% for the remaining period till

December 2020. The lessors did not immediately respond to the said communication. However, the lessee continued to withhold payment of rental charges.

14. It appears from the record that discussions were held between the authorised representatives of the parties in the months of January and February 2021 with a view to arriving at an amicable settlement. A meeting was admittedly held at the office of the lessors on 24.02.2021. Subsequently, Defendant No.1 sent an email dated 25.02.2021 to the lessee, setting out the terms allegedly agreed upon during the meeting. The lessee responded by email dated 26.02.2021, acknowledging receipt of the email dated 25.02.2021. However, the lessee set out different terms, which were at variance with those proposed by the lessors. The lessee also informed that it intended to vacate the demised premises with immediate effect and requested the lessors to provide unhindered access to enable it to remove its belongings and hand over possession after a joint inspection. The terms proposed by the lessee were evidently unacceptable to the lessors. The settlement discussions did not fructify into any agreement.

15. The lessors issued a legal notice dated 20.04.2021 to the lessee stating that although discussions had been held between the parties regarding waiver of rents, those discussions had failed, and none of the terms mentioned in the documents exchanged were binding. The lessors expressly withdrew all offers made during the settlement discussions. The lessors called upon the lessee to pay a sum of ₹74,08,654/- (Rupees Seventy Four Lakhs Eight Thousand Six Hundred and Fifty Four only) towards rent payable for occupation of the demised premises. The lessors also disputed the allegation that they had disconnected the electricity, stating that the connection was disconnected by BESCO due to non-payment of bills by the lessee.

16. The lessee responded to the said legal notice by a reply notice dated 18.06.2021. In this reply, the lessee alleged that the lessors had cut off the electrical power to its office without warning, resulting in serious damage to its operations. It claimed that in terms of Clause 40 of the lease agreement, the defendants were obligated to maintain the premises in good and tenantable condition, which they had failed to do. The lessee asserted that it had informed the defendants on 24.02.2021 that it had terminated the lease agreement in terms of Clauses 17, 28 and 39 of the lease

agreement and would be vacating the demised premises owing to the "unprofessional behaviour" of the lessors and the "inconvenience and hardships faced as a result of the same". The lessee claimed that although the lease agreement had been terminated on 24.02.2021 with immediate effect, it was prevented from accessing the demised premises and removing its belongings. The lessee set out its claim for refund of security deposit to the extent of ₹12,86,941/- (after adjustments for rent allegedly due), compensation of ₹30,00,000/- (Rupees Thirty Lakhs only) for computer servers rendered unusable, ₹5,00,000/- (Rupees Five Lakhs only) for loss of data, and ₹10,00,000/- (Rupees Ten Lakhs only) for financial losses, aggregating to ₹57,86,941/- (Rupees Fifty Seven Lakhs Eighty Six Thousand Nine Hundred and Forty One only).

17. The lessors responded through a rejoinder notice dated 01.07.2021, denying all the allegations made by the lessee and refuting the claim that the lease agreement had been terminated. The lessors reiterated their claim for arrears of rent. Being aggrieved by the same, the lessee filed the suit in Com.O.S.No.668/2021 before the learned Commercial Court on 08.10.2021, praying for the reliefs as set out above. The lessors

filed their written statement denying the allegations made by the lessee and also raised the counter-claim as stated above. During the pendency of the suit, the defendants filed a memo dated 12.11.2021 before the learned Commercial Court, stating that the defendants had no objection to the lessee removing its belongings from the demised premises. Pursuant thereto, the lessee vacated the demised premises on 15.11.2021 and handed over possession to the lessors.

IMPUGNED ORDER

18. The learned Commercial Court framed the following issues for consideration:

- " 1. Whether the plaintiff proves that the lease agreement was terminated on 15.7.2021 or 24.2.2021?
2. Whether the plaintiff further proves that the defendant has violated the terms of the leave and license agreement dated 21.10.2019 and thereby committed breach of the agreement and if they suffered losses and damages owing to it ?
3. Whether the plaintiff further proves that they are entitled for the refund of rental security deposit of ₹12,86,941/-?
4. Whether the plaintiff further proves that the defendants are liable to pay compensation of ₹45,00,000/- with interest at 18% p.a., towards loss of data and financial losses from September 2016 to June 2020 ?
5. Whether the defendants proves that they are entitled for a sum of ₹81,27,111/- towards arrears of rent after

deducting the security deposit of ₹30,00,000/-, which was paid by the plaintiff under first agreement ?

6. Whether the plaintiff is entitled the relief as sought under the plaint ?
7. Whether the defendant is entitled the relief as sought under the written statement ?
8. What Order or decree?"

19. The Court observed that there was no dispute that the parties had executed the lease agreement [Ex.P.3].

20. The lessee examined its authorized signatory Mr. Rajendra Khare [PW.1] in support of its claims and tendered his affidavit in lieu of his examination-in-chief. The defendants examined Mr. Ashok Kumar Rout (DW.1), the Special Power of Attorney holder. The learned Commercial Court answered Issues 1 to 4 and 6 in the "Negative", Issue 5 in the "Affirmative", Issue 7 "Partly in the Affirmative", and passed the decree accordingly.

21. The learned Commercial Court found that the lease agreement was terminated on 15.11.2021. It also found that the lessee was obliged to pay the lease rent for the period prior to the termination of the lease agreement. The learned Commercial Court rejected the lessee's claim that the lessors had breached the terms of the lease agreement. Consequently, the Court also held that the

lessee was not entitled to any damages. The Court found that the plaintiff had failed to establish that it had suffered any losses as claimed. Accordingly, the lessee's claims were rejected, and the counter-claim was partly allowed.

SUBMISSIONS

22. It is contended on behalf of the learned counsel for the appellant/lessee that the findings of the learned Commercial Court that the lease agreement had been terminated and cancelled on 15.11.2021, lack any supporting material or evidence. He also argued that there was no dispute regarding the date of the termination of the lease agreement. He pointed out that the only issue framed was whether the lease agreement was terminated as of 15.07.2021 or 24.02.2021. Therefore, the learned Commercial Court could not have concluded that the lease agreement was terminated on 15.11.2021.

23. Secondly, he submitted that the learned Commercial Court erred in failing to appreciate that the lessors had breached the terms of the lease by disconnecting the electricity to the demised premises, thereby effectively preventing the lessee from using the same. Additionally, he submitted that the lessors had prevented the

lessee from accessing the demised premises and therefore, they were not entitled to claim any lease rents. Further, he referred to the audio recording transcripts and submitted that it clearly indicates that the employees of the lessee were not permitted to enter the demised premises. On the strength of the same, he contended that the evidence on record established that the lessee was denied access to the demised premises.

24. The contentions advanced by the learned counsel for the lessee was countered by the learned counsel for the lessors. He supported the impugned judgment.

REASONS AND CONCLUSION

25. There is no dispute that the lessee occupied the demised premises under the lease agreement and was therefore liable to pay the lease rentals as agreed. However, it is the lessee's case that it was not obliged to pay any lease rent on essentially three grounds. **First**, it claimed that on account of the outbreak of COVID-19 it did not use the demised premises after March, 2020. **Second**, it claimed that the lessors had disconnected the electricity to the demised premises in June 2020, rendering it unusable. According to the lessee, this constituted a breach of clause 40 of

the lease agreement and, therefore, absolved it of its obligation to pay lease rentals. And ***third***, that the lessors had prevented the lessee from accessing the demised premises and therefore were not entitled to claim any rental. However, it is not disputed that the appellant vacated the demised premises in November 2021. A memo to this effect was filed before the learned Commercial Court.

26. As noted above, the lessee raised a claim for damages arising from the disconnection of computer servers and loss of data. However, there is no material on record to establish that the lessee had suffered any loss or the quantum of loss suffered. Thus, the lessee's claim for damages is required to be rejected, irrespective of whether the plaintiff had established breach of the lease agreement or not.

27. In view of the above, the essential question that fell for consideration in this appeal is whether the lessee is obligated to pay the lease rentals until the date of vacation of the demised premises.

28. Plainly, the lessee's contention that it is not obligated to pay the rent because it has not used the premises is unmerited. Since

the lessee had leased the demised premises, it was liable to pay the agreed rent, regardless of the extent of its use.

29. The lessee claims that its operations shifted to 'work from home' from March 2020 onwards. However, the lessee had neither terminated the lease at the material time nor handed over possession of the same to the lessors. We may at this stage, refer to Clause 39 of the lease agreement [Ex.P.3], which reads as under:

"39. That if due to any accident, fire and or Act of God or due to any Government/Local Authorities initiating action for violation of building construction By-Laws, or Lessor committing breach its obligation etc. the Demised Premises are rendered unserviceable, the Lessee may at its own option terminate this agreement immediately, and the balance of advance rent, if any and refundable security deposit, after deduction of undisputed dues on any account in terms of this Deed, shall be refunded back to the Lessee by the Lessor simultaneously on handing over the Demised Premises."

30. It is apparent from the above that in terms of the lease agreement, the lessee was entitled to terminate the lease agreement, if the demised premises were rendered unserviceable on account of any accident, fire or act of God or due to any Government or local authority initiating action for violation of building construction by-laws, or by the lessors committing breach of their obligations. It is not the lessee's case that the demised

premises were rendered unserviceable on any of the aforesaid grounds. However, notwithstanding the same, even if it is assumed (for which we find no grounds) that there was a *force majeure* event on the ground of which Clause 39 of the lease agreement could be invoked, it was incumbent on the lessee to have taken steps to terminate the lease agreement. However, no such steps were taken at the material time.

31. We may also refer to the terms of the lease agreement which entitled the parties to terminate the lease. The lease agreement expressly provided that the lessor (defendants) was not entitled to terminate the lease during its term. However, the lessee (plaintiff) could do so after giving three (03) months' written notice. The Clauses 4 and 17 of the lease agreement are relevant and are set out below:

"4. It is agreed between the Parties that Lessor shall not be entitled to terminate the agreement for the term of thirty six (36) months from the Agreement Commencement Date. In case Lessee wants to vacate the deemed premises during the agreement period, they can do so after giving 3 months written notice to Lessor.

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17. The Lessor shall be entitled to terminate this agreement only if there is a breach on the part of Lessee and the same is not rectified within ninety (90) days of receipt of the written notice from the Lessor to the Lessee

to rectify the breach. The Lessee shall be entitled to terminate this agreement anytime by giving 3 months advance written notice to the Lessor."

32. In terms of Clause 17 of the lease agreement, the lessor could terminate the lease only if there was a breach of the lease agreement by the lessee (the plaintiff), and the breach was not rectified within ninety (90) days of receipt of written notice.

33. Thus, in the event the lessee desired to terminate the lease, it was necessary for the lessee to provide a three (03) months' prior written notice under Clause 17. However, the lessee would also be entitled to terminate the lease agreement immediately if there was any material breach of the terms of the lease agreement on the part of the lessors that rendered the demised premises unserviceable, in terms of Clause 39.

34. Admittedly, there were no disputes between the parties till March 2020. However, the lessee failed to pay lease rentals after February 2020. It is apparent that at the material time the lessee desired that the lease rents for the demised premises be reduced. The lessee sent an email dated 17.06.2020 (Ex.P.4) – which is the first written communication between the parties after the imposition of the nationwide lockdown in March, 2020 – requesting the lessors

to waive the rent payable for the lockdown period and reduce the rental to 50% of the agreed amount for the next six (06) months.

35. Original Defendant No.1 (Sri. B. Fathiraj) responded to the said email by an email dated 22.06.2020 (Ex.P5). He stated that he was a senior citizen and depended on the rental income for his survival. However, considering the unprecedented circumstances of the COVID-19 pandemic, he with great difficulty, would agree to reduce the rent by 30% for the lockdown period of April and May, 2020. He requested that the rent for the remaining period be paid in terms of the lease agreement.

36. However, the lessee did not pay the lease rent as required. Sri. Sudheer Kumar Pobbati of the lessee sent an email dated 24.06.2020 (Ex. P.6) once again, requesting that its earlier request as set out in the email dated 17.06.2020 be considered. The lessee expressed that it was facing financial difficulty.

37. The lessee followed up the aforesaid communication with an email communication dated 27.07.2020 (Ex. P.7), *inter alia*, alleging that the defendants had disconnected the power to the demise premises a month ago, which was adversely affecting its business. The lessee once again requested waiver of rent for the

period of statutory breakdown and reduction of rent to the extent of 50% for the remaining period till December 2020.

38. The lessors did not immediately respond to the said communication. However, the lessee did not pay any rental thereafter.

39. Admittedly, certain discussions were held between the parties. There is no dispute that a meeting was held at the office of the lessors on 24.02.2021. Both the parties stated that they had discussed the terms of the settlement. The lessors claim that defendant No. 1 sent an email dated 25.02.2021 (Ex.D1) enclosing therewith a soft copy of a letter, setting out the terms allegedly agreed upon, which is set out below:

"To

M/s. Surewaves Media Tech Pvt.Ltd,
Represented by its authorized Signatory Mr.AnantKansal,
Off at, 3rdFloor, Ashok Chambers,
6thCross, Koramangala, Srinivagalu,
Near Eijipura Junction,
25thIntermediate Ring Road,
Bangalore-560047.

Sub: Regarding the vacating of the schedule office
premises and payment of arrears of rent
payable by you.

Sir/Madam,

As per our mutual discussion held on 24/02/2021 in the schedule premises, we both have long discussion on the payment of the arrears of rent which is payable by you to us and

further on vacating of the schedule premises occupied by you as per the lease agreement dated:

As per the discussion you are due for the rent from the month of Feb2020 to Feb 2021 and further you are due for the electricity charges of the schedule premises to be paid to the concerned authority.

Further we both have arrived at the settlement figure of 40% should be waived off from the rent payable by you and the same has been agreed by us.

The rent payable by after waiver of 40% of rent is ₹45,24,186/-(Rupees Forty Five Lakh Twenty Four Thousand One Hundred Eighty Six Only), further you have paid an advance amount of ₹30,00,000/-(Rupees Thirty Lakh Only) and after deduction of advance security deposit amount, you have to pay a sum of ₹15,24,186/-(Rupees Fifteen Lakh Twenty Four Thousand One Hundred Eighty Six only).

Further you have to pay the electricity charge along with maintenance charges of ₹4,14,746/-(Rupees Four Lakh Fourteen Thousand Seven Hundred Forty Six Only).

Further we have also agreed to inspect the schedule premises for the painting charges and damages which is payable by you. Further we both agreed to accommodate a civil engineer for the damages and painting charges of the schedule premises and as per his report you have to pay the charges according to the same.

As per or discussion you will settle the matter within six days from this day i.e., 25/02/2021.

Regards,"

40. The lessee sent an email dated 26.02.2021 (Ex. P.9/Ex. D.2) acknowledging receipt of the email dated 25.02.2021 and also setting out the terms which were apparently agreed upon between the parties. It is material to note that the said terms were at variance with the terms as set out in Ex.D1.The lessee called upon

the lessors to confirm the acceptance of the said terms. The lessee claimed that no rent was payable from November 2020 onwards because access to its employees was blocked by the building security. However, it agreed that the rents for the months of July to October 2020 would be paid, albeit with a discount of 40%. The lessee called upon the lessors to instruct the building security to provide unhindered, free access to the demised premises, enabling them to vacate the premises and hand over possession of the same to the lessors after a joint inspection.

41. Clearly, the terms set out by the lessee were unacceptable to the lessors. The lessors thereafter sent a legal notice dated 20.04.2021 (Ex.P.11). The lessors stated that although discussions had been held between the parties regarding the waiver of rents, those discussions had failed, and none of the terms mentioned in the documents were binding. The lessors claimed that, since the lessee had not accepted their offer, they had withdrawn all offers. The lessors called upon the lessee to pay a sum of ₹74,08,654/- (Rupees Seventy Four Lakhs Eight Thousand Six Hundred and Fifty Four only) towards the rent payable for occupation of the demised premises.

42. It is clear from the above that neither party terminated the lease agreement. Although the plaintiff had sent communications seeking a waiver of rent and alleging interruption of utilities and denial of access to the demised premises, it had not issued any letter terminating the lease agreement. And, admittedly, it continued to be in possession of the demised premises.

43. The lessee responded to the legal notice (Ex.P11) by a letter dated 18.06.2021 sent by its advocate (Ex.P12). It alleged that the lessors had cut off the electrical power to the lessee's office without warning, resulting in serious damage to its operations. It also claimed that in terms of Clause 40 of the lease agreement, the defendants were obligated to maintain the premises in good and tenantable condition, which they had failed to do.

44. It is material to note that it was also asserted in the said letter that the lessee had informed the defendant on 24.02.2021 that it had terminated the lease agreement in terms of Clauses 17, 28 and 39 and therefore would be vacating the demised premises on account of "unprofessional behaviour" and "inconvenience faced as a result of the same". The lessee alleged that although the lease agreement had been terminated on 24.02.2021 with immediate effect, it was prevented from accessing the demised premises and

removing its belongings. The said letter also set out the claim for a refund of the security deposit to the extent of ₹12,86,941/- (after adjustments for rent, which, according to the plaintiff, was admittedly payable), and damages quantified at ₹39,00,000/- (Rupees Thirty Nine Lakhs only). Additionally, the lessee sought compensation for extra rents allegedly charged between September 2016 till June 2020, along with tax. The lessors responded, disputing the contents of the communication.

45. As noted above, the lessee had relied on Clauses 17, 28 and 39 of the lease agreement, claiming that it had terminated the lease with immediate effect on 24.02.2021. Clause 28 of the lease agreement states that upon termination of the lease, the lessee is entitled to remove its belongings from the premises. It does not provide for termination of the lease agreement. As noted above, Clause 17 of the lease agreement entitled the plaintiff to terminate the lease, albeit with three (03) months' prior written notice. It did not entitle the lessee to terminate the lease with immediate effect. Clause 39 of the agreement entitled the lessee to terminate the agreement immediately only if the demised premises had been rendered unserviceable for the reasons set out therein.

46. If the lessee's case is accepted that the lessors had, in breach of the terms of the lease agreement, disconnected the electricity and rendered the demised premises unserviceable, the lessee's claim may have some merit. However, none of the other conditions of Clause 39 are relevant in the given facts.

47. The lessee's case that it is not obligated to pay any lease rentals essentially rests on its claim that the lessors had disconnected the electricity.

48. It is material to note that the lease agreement expressly provides that the lessee would pay all charges based on consumption of electricity (power and light) and water bills directly to the authority concerned. Clause 12 of the lease agreement is relevant and is reproduced below for ready reference:

"12. That the Lessee shall pay all charges based on consumption, for electricity (power & light), and water bills directly to the authority concerned. Lessor has installed and provided a separate 3-phase standard electric meter for the said portion of the office on the 3rd floor of the building. The charges for common facilities like security staff, cleaning/lighting of common area shall be shared with other occupants/residents in the building by the Lessee."

49. It is the lessor's case that they had not disconnected the electricity, and the same was done by BESCO as the lessee had not paid the utility bills. Although there is much debate as to whether the lessors had disconnected the electricity connection, there is no material on record that the lessee had paid any of the electricity bills after February 2020. The lessors have placed on record the bills raised, *inter alia*, indicating the monthly electricity charges for the third floor from March, 2020 to November 2021 [Ex.D.6 to Ex.D.6(21)]. The lessee has also sought to rely on the said bills insofar as they record the meter readings. The bills also clearly state that power will be disconnected if they are not paid by the due date (15 days after the bill date). Each of the bills is dated on the first of the calendar month, and the due date is stipulated as the 15th of the said calendar month.

50. The lessee has not placed on record any material to establish that it had paid the utility bills. As noted above, in terms of Clause 12 of the lease agreement, it was required to pay the electricity bills directly to the authority concerned.

51. Clearly, the lessee cannot complain of the disconnection of electricity if it has failed to clear the utility bills.

52. The lessee has also filed an application in these proceedings for producing additional evidence, *inter alia*, to establish that BESCOM had not disconnected the electricity connection in the name of the lessors in respect of the building in question, of which the demised premises are a part. The lessee had also relied upon the meter readings as set out in Ex.D6, in support of its contention that it had not used the demised premises in question but its servers located in the demised premises were operational and therefore had consumed electricity during the months of March 2020 to June 2020. The lessee claims that power consumption dropped to zero units from July 2020 to October 2021, which, according to it, proves that the defendants disconnected the power supply.

53. In view of the above, it is clear that there is no dispute that the demised premises was serviced by a separate electric meter installed by the lessors. Since there is no material to establish that the plaintiff had made any payments for electricity after March 2020, its contention that disconnection of electricity by the defendant (if at all) was in breach of the terms of the lease agreement, is required to be rejected.

54. In view of our aforesaid finding, it is not relevant to examine in detail whether, in fact, the electricity to the demised premises in question had been disconnected and for which period. However, we note that it is not the lessee's case that the electricity was permanently disconnected. It had mainly claimed that there was an interruption in the power supply. Whereas, in its email dated 27.07.2020 (Ex. P.7), it claims that the power had been disconnected one month prior to the said date. However, the other documents indicate that there is only an interruption.

55. DW1, who is also the Building Manager, denied that the lessors had disconnected the electricity. He had claimed that, because there was a delay in payment of the electricity bill, the utility disconnected the connection. However, since the lessor had paid the electricity bill, the connection was restored on 30.07.2020.

56. The lessee also claimed that it was denied access to the demised premises. However, the evidence in this regard does not establish this conclusively. The plaintiff relied on the transcript of a telephone conversation. A plain reading of the transcript indicates that the lessors did not accept that the security guard had prevented the lessee's employees into the premises. The conversation indicates that some of the lessee's employees had

come to the demised premises a few times and had issues with the guard. However, the conversation clearly indicates that the same was not at the instance of the lessors. It also indicates that some of the lessee's personnel had access to the site and removed items such as files, chairs, and other items. Clearly, if the lessors had denied the lessee access to its office, the lessee would have escalated the issue at that time. It is also difficult to accept that its servers, which it claims were operational from March to June 2020, continued to function for such a long period without any human intervention or maintenance.

57. In view of the above, we concur with the learned Commercial Court that the lessee had failed to establish that the lessors had breached the lease agreement as claimed.

58. The lessee's case that it orally terminated the lease agreement on 24.02.2021 is plainly, unsustainable. The lessee's response to the legal notice dated 18.06.2021 (Ex.P.12), whereby it claimed that the lease agreement stood terminated, also cannot be considered as a valid termination of the lease agreement as it purportedly relied on Clauses 17, 28 and 39 of the lease agreement. However, there could be no termination under Clause 39 of the lease agreement in the absence of any breach by the

lessors that rendered the demised premises unserviceable. On the contrary, the lessee breached the terms of the lease agreement by failing to pay the rent and electricity dues. We also note that the plaintiff had not paid the electricity dues, as admitted by PW.1 during cross-examination. PW.1 had stated that the plaintiffs had not paid the electricity charges because the defendant had violated the lease agreement. He was cross-examined as to which term of the lease agreement had been violated by the lessors on 01.06.2020, and he claimed that the electricity connection had been disconnected. However, in its email dated 27.07.2020 (Ex.P7), the lessee had claimed that the electricity connection had been disconnected approximately a month prior. Thus, even according to the lessee, there could be no breach on the part of the lessors on 01.06.2020.

59. Although the lessee could have terminated the lease by issuance of three (03) months prior notice under Clause 17, it had not issued any such notice. Admittedly, the lessee had handed over vacant possession of the demised premises in November 2021. In the given circumstances, we conclude that the lease in question could be construed as terminated only on the date of the

lessee handing over possession and the defendants accepting the same and not earlier.

60. In view of the above, the lessee is liable to pay interest computed in accordance with the terms of the lease from March 2020 till the date of handing over of possession of the demised premises, in terms of Clause 6 of the lease agreement.

61. Insofar as the rents for the months of April and May 2020 are concerned, the lessors had agreed to reduce the rent by 30%. In our view, the lessors must be held bound to the said concession, which was communicated by email dated 22.06.2020 (Ex. P.5). However, in so far as the concessions offered to them during the discussions held on 24.02.2021 – the reference of which are found in the email communications dated 25.02.2021 and 26.02.2021 (Ex. D1 and Ex. P.9/ Ex.D.2) – are concerned, it is apparent that there was no consensus between the parties and the email dated 25.02.2021 also recorded that the payments were required to be made within a period of six (06) days, which admittedly were not paid. The offer of settlement, which had not fructified, was withdrawn expressly by the legal notice dated 20.04.2021 (Ex. P.11). Thus, the lessors cannot be bound down to any concession

offered during the discussions held on 24.02.2021, which did not fructify into a binding agreement.

62. The lessors have produced the invoices generated on account of electricity bills, setting out the meter readings (Ex. D6 series). We find there is no serious dispute regarding the contents of the said bills. Thus, the same must be accepted.

63. We also note that the lease agreement provided that any delay in payment of the amounts as per the lease agreement would carry an interest at the rate of 18% per annum, as per Clause 6 of the lease agreement. Therefore, the defendants would be entitled to interest at 18% per annum. However, the lessors have not challenged the decree that restricts the interest rate on the amounts due to 12% per annum. Since the lessors have accepted the same, we do not consider it apposite to interfere with the impugned order in this respect.

64. In view of the above, the judgment and decree is modified to the limited extent that the arrears of rental payable from March, 2020 to 15.11.2021, are recomputed at ₹96,11,174/- (Rupees Ninety Six Lakhs Eleven Thousand One hundred and Seventy Four only). The amount is determined after accounting for the discount

of 30% on the monthly rent of ₹4,63,050/- for April and May 2020 (₹1,38,915/- per month, resulting in a reduced rent of ₹3,24,135/- per month for those two months.)

TABLE FOR REFERENCE

Period	Monthly Rent (Rs.)	Months	Amount (Rs.)
March 2020	4,63,050	1	4,63,050
April 2020 (30% discount)	3,24,135	1	3,24,135
May 2020 (30% discount)	3,24,135	1	3,24,135
June 2020 – August 2020	4,63,050	3	13,89,150
September 2020 – August 2021	4,86,202	12	58,34,424
September 2021 – 15.11.2021	5,10,512	2.5 (approx.)	12,76,280
Total Rent Payable			96,11,174
Less: Security Deposit			30,00,000
Net Arrears of Rent			66,11,174

65. The lessors are entitled to an amount of ₹66,11,174/- (after deducting of security deposit of ₹30,00,000/-) towards arrears of rent, along with interest at the rate of 12% per annum from the date of the suit till realisation. Additionally, the defendants are also entitled to electricity charges of ₹6,15,001/- (Rupees Six Lakhs Fifteen Thousand and One only) (as per Ex.D.6 series).

66. The impugned judgment and decree is modified to the aforesaid extent.

67. The appeal is partly allowed in the aforesaid terms. Modified decree to be drawn accordingly.

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

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

SD