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IN THE HIGH COURT OF DELHI

Judgment reserved on : September 20, 2008

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Judgment delivered on : November 5, 2008

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RFA 73/2008

SYNDICATE BANK Appellant

Through: Mr. V.K.Dhar, Advocate

VERSUS

KEWAL KRISHAN CHOPRA & ORS. Respondents

Through: Mr. Ravi Gupta, Advocate

RFA 75/2008

SYNDICATE BANK Appellant

Through: Mr. V.K.Dhar, Advocate

VERSUS

KEWAL KRISHAN CHOPRA & ORS. Respondents

Through: Mr. Ravi Gupta, Advocate

RFA 77/2008

SYNDICATE BANK Appellant

Through: Mr. V.K.Dhar, Advocate

VERSUS

KEWAL KRISHAN CHOPRA & ORS. Respondents

Through: Mr. Ravi Gupta, Advocate

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

Hon'ble Mr.Justice J.R. Midha

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Vide three separate lease deeds executed by the respondents in favour of the appellant entire second floor and two portions on the third floor of property bearing Municipal No.66, Swami Shardanand Marg, Delhi were leased to the appellant for a period of 5 years with effect from 1.5.1981 to 30.4.1986.

2. Property leased on the second floor ad-measured 1855 sq.ft. The two portions leased on the 3rd floor ad-measured 1085 sq.ft. and 770 sq.ft. respectively. The rent for the second floor portion was Rs.12,985 per month. For the portion ad-measuring 1085 sq.ft. on the 3rd floor the monthly rent was Rs.7,595/-. For the portion ad-measuring 770 sq.ft. on the 3rd floor the monthly rent was Rs.10,000/-.

3. For each portion let out, a monthly maintenance charge towards lift and water pump was also payable. Said amounts are not being noted by us for the reason the instant appeal relates only to the question of determination of mesne profits for the period 1.10.1992 to 31.7.1999.

4. After expiry of the lease period on 30.4.1986, with effect from 1.5.1986 till 30.4.1991, all leases were extended with rent enhanced by 40%.

5. The respondents were prepared to further extend the lease period by a period of 5 years with effect from

1.5.1991 but demanded further 40% increase in rent. The bank did not accept the same.

6. Alleging that appellants had lost the right to occupy the three portions as the lease period had expired by efflux of time and additionally pleading that by way of abundant precaution the leases were determined, respondents sought ejectment of the appellants and claimed mesne profits @ Rs.40/- per sq. foot per month with effect from 1.10.1992. The respondents also claimed additional money for the amenities provided.

7. The appellant vacated the three tenanted premises on 31.7.1999. Vide impugned decrees dated 29.9.2007, the three suits stand disposed of determining mesne profits @ Rs.23/- per sq. foot per month with effect from 1.10.1992 till 30.7.1999. Additionally, the respondents have been entitled to receive Rs.2,000/- per month for the amenities of life provided by them and Rs.400/- per month for water pump charges.

8. The learned Trial Judge has determined fair market rent of the subject property at Rs.23/- per sq. foot per month with reference to property bearing Municipal No.39, G.B.Road, Delhi which was let out vide lease deed Ex.PW-2/2 at a monthly rent of Rs.23/- per sq. foot with effect from 21.6.1996.

9. With respect to property No.39, G.B.Road, Delhi the issue of comparison was urged by the appellant on two counts. Firstly, that the said property was situationally and locationally

in an advantageous position being closer to Ajmeri Gate Chowk and that the suit premises was 400 meters further down the road and away from Ajmeri Gate Chowk having many brothel houses in between. Thus, appellant urged before the learned Trial Judge that due to being further away from Ajmeri Gate Chowk and having brothel houses in between the rent of the subject property was less. Second contention urged was that the lease deed Ex.PW-2/2 is dated 21.6.1996 and hence the same cannot be a good measure of fair market rental as of 1.10.1992.

10. Both contentions have been negated by the learned Trial Judge holding that the distance from Ajmeri Gate Chowk and brothel houses in between made no difference to the rent of the suit premises.

11. We find no reasons given by the learned Trial Judge as to why the rental evidenced by Ex.PW-2/2 dated 21.6.1996 should form the basis to fix the rent with effect from 1.10.1992.

12. The only issue which required to be adjudicated is whether property No.39, G.B.Road, Delhi is comparable with property No.66, G.B.Road, Delhi and whether Ex.PW-2/2 would be good evidence of rental as of 1.10.1992.

13. Pertaining to the question of situational advantageous location of property No.39, G.B. Road, Delhi, we may note that as per the testimony of the witnesses of the

appellants the said property is little away from Ajmeri Gate Chowk. The suit property bearing No.66, Shardanand Marg, Delhi is 400 meters down the road. It is not in dispute that between the two properties a number of brothel houses are operating.

14. Inherent in every comparative analysis of two properties is an element of guesswork for the reason no two properties can be identically situate. There are bound to be minor variations in the locational advantages and disadvantages of two properties. Thus, there can be no straitjacket formula in matters of notional determination of rents.

15. Certainly, a property abutting a crossing i.e. a chowk and in particular if the same happens to be a commercial property would be situated locationally advantageous vis-a-vis a property down the lane and away from the crossing (chowk).

16. G.B.Road commences at Ajmeri Gate and leads up to Lahori Gate. The road is in the wall city. Buses plying on Asaf Ali Road, Pahar Ganj Road, New Delhi Railway Station and Hauz Qazi cross Ajmeri Gate Chowk and to reach buildings at G.B.Road one has to either walk down or take on cycle rickshaw. G.B.Road is an over-crowded road with traffic moving very slowly. Thus, a property on G.B.Road nearer Ajmeri Gate Chowk would certainly be situated in a locational

advantageous position viz-a-viz a property further down said road.

17. We are not too sure whether existence of brothel houses would diminish the rental value of the commercial property on G.B.Road and more so when the user is for banking purposes, for the reason, activities at the brothel house usually commence in the secrecy of darkness and banking transactions took place in sunlight meaning thereby, during banking business hours the activities in a brothel house would be in a slumber, being nocturnal in nature.

18. Thus, while comparing the rent of property No.39, G.B.Road, Delhi with the suit property some discount in the rental value has to be accounted for on account of the locational advantage of the former.

19. Inherently, a rent fetched as of 21.6.1996 cannot be treated as a fair rental as of 1.10.1992.

20. In the instant case there is intrinsic evidence that the rental of the suit premises had not risen to Rs.23/- per sq. foot per month in the year 1992. The said intrinsic evidence is the offer by the landlords to renew the lease(s) with effect from 1.5.1991 at a rent increased by 40% of the last paid rent.

21. To understand the impact thereof, qua the second floor portion, the rent demanded by the landlords was Rs.25,450.60 per month.

22. As noted above, the second floor property let out ad-measured 1855 sq. foot. Thus, the monthly rent per month demanded by the landlords comes to $25450 \div 1855 =$ Rs.13.72 per sq. foot per month. Now, it can reasonably be presumed that the landlords had evaluated the market while making the offer to renew the lease for a further period of 5 years provided the tenant pays the rent enhanced by 40% i.e. increase the same from Rs.18179/- per month to Rs.25450.60 per month for the second floor portion. Similar would be the position for the portions on the 3rd floor. We thus hold that the intrinsic evidence on record requires it to be held that as of 1.5.1991 the fair market rent for the property would be Rs.14 per sq. foot per month.

23. The past history of the property shows that the landlords were agreeing to continue with the lease, with the rent increasing by 40% every 5 years. Thus rent at Rs.14 per sq. foot per month as of 1.5.1991 enhanced by 40% comes to Rs.19.50 per sq. foot per month with effect from 1.5.1996.

24. Property No.39, G.B.Road has been let out on 21.6.1996 at a monthly rent of Rs.23/- per sq. foot. We have already held that the said property is situated in an advantageous position due to its location and hence would fetch a better rent qua the suit property.

25. What better proof we can find of the said conclusion of fact other than the fact that increasing the rent of the

subject property by 40% every 5 years, its rent as of 1.5.1996 comes to Rs.19.50/- per sq. foot per month.

26. Since the mesne profits have to be awarded with effect from 1.10.1992 to 31.7.1999 we deem it appropriate to determine the fair market rent of the subject property as of the two dates and award mesne profits on the weighted average basis.

27. Taking Rs.19.50 per sq. foot per month as the fair market rent as of 1.5.1996 and suitably enhancing the same over the next 3 years i.e. by 30% thereof and rounding off the figures, the fair market rent as of 31.7.1999 comes to Rs.25.50 per sq. foot per month. The weighted mean average comes to Rs.19.75 per sq. foot per month.

28. We thus dispose of the 3 appeals modifying the impugned judgment and decree dated 29.9.2007 by determining the mesne profits for the 3 properties from 1.10.1992 to 31.7.1999 @ Rs.19.75/- per sq. foot per month. We maintain the directions in the impugned decree pertaining to other charges.

29. We further hold that the respondents would be entitled to interest on the mesne profits awarded by us with effect from the date rent was to be paid each month, of course, while calculating the interest the last agreed rent which was tendered by the bank and received by the respondents without prejudice to their rights would be adjusted. Similarly, while

quantifying the decretal amount the amount paid each month would be adjusted. The interest payable by the appellant to the respondents would be @6% per annum.

30. We note that the appellant has deposited 50% of the decretal amount in this Court pursuant to order dated 13.5.2008 passed in each appeal. Since the respondent would be entitled to more than 50% decretal amount even as per the modified decree passed by us, we direct the Registry to pay over the amount deposited by the appellant to the respondents.

31. No costs.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

November 5, 2008
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