

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 23.03.2010
% *Judgment Delivered on: 26.03.2010*

+ **CS(OS) No.2195/2000**

1. Sh.Ashok Chopra
2. Sh.Davinder Chopra &
3. Sh.Rakesh Chopra

.....Plaintiffs
Through: Mr.Raman Kapur, Mr.Dheeraj
Sachdeva & Mr.Honey Taneja,
Advocate.

Versus

Syndicate Bank & Anr. Defendants
Through: Mr.Ajant Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. Plaintiffs have filed this suit for recovery of Rs.53,04329/-. Plaintiff had vide registered lease deed dated 13.7.1993 leased out an area of 4010 sq. ft. on the first and second floor of the property no.1377, Kashmere Gate, Delhi at a monthly rent of Rs.33,684/- to the defendant bank. This lease was to commence from 1.4.1989 and was to expire on 31.3.1994. On 14.12.1993 plaintiffs informed the defendants that since the lease was to expire on 31.3.1994 in case the defendant was interested in renewal he would have to pay the market rate. This was reiterated in the letter dated 6.1.1994; plaintiff had offered to renew the lease at Rs.27 per sq. ft. per month. On 9.3.1994, plaintiff had informed the defendant not to

credit the rent in their account from 1.4.1994 till the renewal of the lease as is mutually decided between the parties. On 21.4.1994 in the inter se negotiations between the parties defendant agreed to increase the rent by 50% over the previous rent of Rs.8.40 paise per sq. ft. per month. This was not agreeable to the plaintiff who demanded a rent of Rs.27/- per sq.ft. per month. Plaintiffs agreed to scale down this demand to a monthly rent of Rs.18 per sq. ft. per month. On 12.12.1997 defendants agreed to renew the lease at 23/- per sq.ft. per month. On 20.3.1998, defendants informed the plaintiff that they were fully agreeable to revise the rent at Rs.22/- per sq.ft. per month with effect from 1.4.1998 or from the date of a fresh lease agreement. Plaintiff had wanted revised rent to be paid with effect from 1.4.1994. Matter was not settled. On 7.1.2000 the defendant bank informed the plaintiff that they would be vacating the premises by 30.4.2000 and would pay the enhanced rent at 25% with effect from 1.4.1994 till the surrender of the premises. The premises were surrendered back to the plaintiff on 30.6.2000.

2. Present suit has been filed on 20.9.2000 by the plaintiff claiming damages/mesne profit for unauthorized use and occupation of the premises by the defendants. Claim for damages at the rate of Rs.27/- per sq. ft. with effect from 1.4.1994 till 30.6.2000 when the vacant possession of the suit property was handed over to the plaintiff has been made. In the written statement, it is submitted that the plaintiff is not entitled to any amounts as his claims are beyond the period of three years from the date of filing of the suit i.e. 11.9.1994 and thus barred by limitation. It is submitted that the plaintiffs are estopped, by their

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conduct, from claiming damages; on 30.6.2000/1.7.2000, the defendant while vacating the suit property had paid differences of arrears of rent at the enhanced rate of 25% which had been duly credited to the account of the plaintiff. Plaintiff cannot now claim damages/mesne profits as this agreed amount was accepted by the plaintiff. Claim of the plaintiff stands satisfied. It is not in dispute that inter se communications between the parties had taken place but it is denied that any case is made out by the plaintiff for claiming damages at rate of Rs.27/- per sq.ft per month from the date as claimed by him; plaintiff had in fact consented to the continuance of the defendant in the suit property.

3. Replication has been filed reiterating submissions made in the plaint and denying the defence as set up in the written statement.

4. On 18.8.2003, following issues are framed:

1. *Whether the plaintiff is entitled to damages as prayed in the suit? OPP*
2. *Whether the claim of the plaintiff is within time?*
3. *Whether the plaintiff is entitled to a sum of Rs. 2 lacs as damages on the grounds mentioned in para 10 of the plaint? OPP*
4. *Whether the plaintiff is not entitled to claim damages up to 30th June, 2000 on the grounds mentioned in preliminary objection No. 2 of Written Statement? OPD*
5. *Whether the plaintiff is estopped from claiming damages on the grounds mentioned in preliminary objection no. 3 of the Written Statement? OPD*
6. *Whether the plaintiff is entitled to interest? If so, on what amount, at what rate and for what period? OPP*

5. **ISSUE NO.2**

Plaintiff had claimed damages with effect from 1.4.1994. Suit has been filed on 20.9.2000. His contention is that he is entitled to his damages/mesne profits with effect from 1.4.1994 as on the date of the vacation of the suit property i.e. 30.6.2000 the

defendant had paid 25% increase of the earlier agreed rental right from 1.4.1994 in a cumulative sum; this amount from 1.4.1994 having been paid cumulatively on 30.6.2000 claim of the plaintiff survives for this entire intervening period. This position is disputed by the learned counsel for the defendant. His defence is that entire claim is barred by limitation. There is no fresh cause of action which has accrued in this intervening period; cause of action had arisen on 1.4.1994 and the suit filed on 20.9.2000 is barred by time.

6. Under article 113 of the Limitation Act, 1963 which is the residuary article, applicable, a period of three years has to be computed from the date when the right to sue accrues. The right to sue had accrued in favour of the plaintiff only on 30.6.2000 on which date the 25% increase of the earlier rent that was being paid was in a lump sum amount paid to the plaintiff; it was only after 30.6.2000 that the right to claim damages/mesne profits arose in favour of the plaintiff to claim the unpaid amounts at the rates as claimed by him; this cause of action arose only on 30.6.2000. Suit has been filed on 20.9.2000. It is within time. Plaintiff would be entitled to stake his claim for this entire period from 1.4.1994.

7. Issue no.2 is accordingly decided in favour of the plaintiff and against the defendants.

8. **ISSUE NO.3**

This issue has not been pressed. Plaintiff has not pressed his claim for damages. Issue no.3 accordingly calls for no decision.

9. **ISSUE NO.1, 4 & 5**

Aforenoted issues are overlapping; they rest on the right of plaintiff to claim damages and the defence of the defendant that

the plaintiff is estopped from claiming the same in view of the fact that he by his conduct both express and implied accepted the defendant as a tenant; defendant was a tenant 'holding over' and at the will of the plaintiff. In these circumstances, plaintiff is not entitled to these claims.

10. Vide Ex.P-18 dated 14.12.1993 the plaintiff informed the defendant that in case they were interested in renewing the lease after the said period they must pay at the market rate. This was reiterated in Ex.P-19 dated 6.1.1994 and again on 9.3.1994 vide Ex.P-20. In Ex.P-19 plaintiff had informed the defendant that he was ready to accept a rental of Rs.27/- per sq.ft. per month; in Ex.P-20 plaintiff had informed the defendant that since the lease had expired and terms of renewal were yet pending between the parties, the defendant should not credit the account of the plaintiff with the earlier rent. Meeting of 21.4.1994 inter se between the parties negotiating the rate of rent is not disputed. On 17.6.1997 defendant vide Ex.P-8 informed the plaintiff that they are agreeable to enhance the rent to Rs.27/- per sq.ft per month with effect from 1.4.1994; this offer was not acceptable to the bank. On 10.12.1997 vide Ex.PW-1/1 defendant had agreed to renew the lease at the rate of Rs.23/- per sq.ft. per month; on 20.3.1998 vide Ex.P-13 defendant agreed to revise the rent at rate of Rs.22/- per sq.ft. per month with effect from 1.4.1998 which was not agreeable to the plaintiff as he wanted the revision of the rent with effect from 1.4.1994; on 7.1.2000 vide Ex.P-16 defendant informed the plaintiff that they are vacating the premises by 30.4.2000 and they are agreeable to enhance the rent by 25 % from the earlier rent and this enhancement would be with effect from 1994.

11. All these communications/documents are admitted. They are duly proved.

12. Counsel for the defendant has relied upon Kanwar Sain vs. Dau Dayal etc. RLR (NOTES) 211 to substantiate his submission where a landlord accepts the rent it is an implied consent on his part and amounts to an acceptance of the defendant as a tenant at will. For the same proposition reliance has been placed upon Sudhir Saran vs. Gopi Kirshan Verma & Ors. 115 (2004) DLT 476, Chotu Mia vs. Mt.Sundri AIR (32) 1945 Patna 260, Banathoor Krishnan Nambudripad vs. Kunkan Nair AIR 1925 Madras 914. It is submitted that the Federal Court in Kai Khushroo Capadia vs. Bai Jerbai Hrijibhoy Warden and Anr. AIR (36) 1949 Federal Court 124 had held that where the landlord had first refused the rent but thereafter accepted it, it was a clear case of a monthly tenancy. For the same proposition reliance has been placed upon B.K.Thapar and Ors. vs. Sudhir Kumar and Ors. AIR 1966 J & K 18. It is submitted that in Nandalal Das vs. Monmatha Nath Ghose & Ors. AIR 1962 Calcutta 597 it has been held that such a tenant whose rent has been accepted by the landlord without any demur or protest is a tenant holding over and it amounts to a renewal of the earlier lease with all its conditions. For this proposition, reliance has been placed upon Lalman vs. Mt.Mullo AIR 1925 OUDH 173 (1).

13. The question which arises for determination is as to whether the plaintiff/landlord had by acceptance of the rent after 1.4.1994 either expressly or impliedly accepted the defendant as his tenant and the defendant had become a tenant 'holding over' thus

disentitling and estopping the plaintiff by his conduct to make any claim against the defendant.

14. In Smt.Shanti Devi vs. Amal Kumar Banerjee AIR 1981 SCC 1550 it has been held that where a lease is for a definite term and expired by efflux of time by reason of Section 111 (a) of the Transfer of Property Act (hereinafter referred to as T.P.A.), service of a notice under Section 106 is not necessary for the determination of the lease.

15. Evidence adduced has established that a registered lease deed dated 13.7.1993 Ex.P-23 had been entered into between the plaintiff and the defendant with effect from 1.4.1989 to 31.3.1994; monthly rental was Rs.33684/-; area leased out to the defendant was 4010 sq.ft. on the first floor and second floor of the property bearing no.1377, Kashmere Gate, Delhi; tenancy expired by efflux of time by 31.3.1994. No notice of termination was required. Vide Ex.P-18 dated 14.12.1993 plaintiff had categorically intimated the defendant that in case he was interested in renewing the lease deed after the period of 31.3.1994 he must pay the market rent. Plaintiff after this expiry of the lease was seeking enhancement of the rent at the market rate but somehow or the other a final agreement could not be arrived at. Plaintiff had in fact prior to the expiry of the lease on 14.12.1993 warned the defendant bank that if he wished to renew the lease he must pay the rent at the market rate or else leave the property; intention of the plaintiff was clear all along; he was not ready and willing to accept the earlier rate of rent. He had specifically notified the defendants that they must not credit his accounts with the earlier rate of rent. Communications

dated 6.1.1994 Ex.P-19 and the subsequent communication dated 9.3.1994 Ex.P-20 are clear and categorical in this regard.

16. In Bhawanji Lakhamshi and Ors. vs. Himatlal Jamnadas Dani and Ors. 1972 SC 819, while interpreting the provisions of Section 116 of T.P.A. it has been held:

“9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the terms with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplated is that on one side there should be an offer of taking a new lease evidence by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or expressed by acceptance of rent or otherwise..... that the tenancy which is created by the “holding over” of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it..... Section 116 of the Transfer of Property Act and that is evident from the following observations:

“Turning now to the main point, it will be seen that the section postulates the lessee remaining in possession after the determination of the lease which is conduct indicative, in ordinary circumstances of his desire to continue as a tenant under the lessor and implies a tacit offer to take a new tenancy from the expiration of the old on the same terms so far as they are applicable to the new situation and when the lessor assents to the lessee so continuing in possession, he tacitly accepts the latter’s offer and a fresh tenancy results by the implied agreement of the parties. When, further, the lessee in that situation tenders rent and the lessor accepts it, their conduct raises more readily and clearly the implication of an agreement between the parties to create a fresh tenancy.”

17. It is clear that the tenancy had come to an end by a efflux of time. Admittedly, there was no document executed between the parties renewing the lease. Tenancy having expired by efflux of time; no notice was required to terminate the lease; intention of the plaintiff was clear. There was no consent, express or implied by the lessor to continue the tenancy on the same terms; the exchange of

correspondence as aforementioned as also the fact that the plaintiff had given specific instructions to the defendant not to credit his account with the rent reflects his unequivocal intention not to continue with the tenancy. Documents have established that the plaintiff was not willing that the defendant should continue to remain as tenant in the suit property unless he enhanced the rent; inter se negotiations had not fructified; so much so that the plaintiff had notified the defendant not to credit his account with the earlier rent being paid by him unless he agreed to the enhancement; defendant in the alternate of not quitting the property would have to pay damages for unauthorized use and occupation at the prevailing market rent; he was not entitled to the protection of a tenant holding over; he had become a tenant at sufferance.

18. Defendants have thus become liable to pay damages/mesne profits to the plaintiff with effect from 1.4.1994 i.e. after the expiry of the lease period.

19. Next question to be answered is the rate at which the plaintiff is entitled for his claim of damages/mesne profits.

20. Plaintiff in support of this claim has examined five witnesses i.e. Ashok Chopra PW-1 (plaintiff no.1), Chiranji Lal PW-2, Badam Singh PW-3, Bhupinder Kumar PW-4 and Naresh Goel PW-5.

21. PW-1 has further deposed that on enquiry in the relevant year i.e. 1994 and onwards it had been revealed that similar premises had been leased out at monthly rent of Rs.25/- per sq.ft. per month. This was the prevailing market rate in the locality. Instances of Canara Bank, 2772, Lothian Road, Kashmere Gate, Delhi, Central Bank of India, 1367, Kashmere Gate, Delhi, Union Bank of India, 1368, Bara Bazar, Kashmere Gate, Delhi and Indian

Bank, 1376, Bara Bazar, Kashmere Gate, Delhi have been cited in para 18 of the affidavit by way of evidence. In his cross-examination plaintiff has admitted that the defendant was paying rent to the plaintiff by crediting his account which was with the defendant bank and even after the letters Ex.P-18 to P-22 defendant bank was paying rent in the account of the plaintiff; however PW-1 has stated that after July, 1994 rent was not withdrawn by them. It has been reiterated that the aforementioned properties as mentioned by PW1 in his affidavit are on the same road as the suit property located about half a kilometer away from the suit property. PW-1 has categorically stated that the said banks are not better located than the suit premises.

22. Mr.Chiranjilal, Manager of Canara Bank, Kashmere Gate has come into the witness box as PW-2. He has deposed that Laxmi Commercial Bank Ltd. was a tenant in an area of 2858 sq.ft. located at 2772, Lothian Road, Bhatnagar Building, Kashmere Gate, Delhi. Rent from 16.11.1998 to 15.1.2000 was Rs.68615/- per month i.e. at the rate of Rs.24/- per sq.ft. per month. He had produced the photocopy Ex.PW-2/1 of the rent paid register with respect to the suit property. In his cross-examination he has stated that there are five landlords in the said premises; he denied the suggestion that Ex.Pw-2/1 does not pertain to the present premises.

23. PW-3 Badam Singh was the Assistant Manager in Union Bank of India. He has produced lease deed Ex.PW-3/1 executed between the landlord and the bank for premises 1366-68, Kashmere Gate, Delhi. He has deposed that rent was increased to Rs.36,820.30 with effect from August, 1997; rent receipts have

been proved as Ex.PW-3/2 to Ex.PW3/7. In cross-examination, he has admitted that the condition of the building of the bank is good; their bank is situated on the first floor as also a portion on the back side on the ground floor and the mezzanine floor.

24. PW-4 Bhupinder Kumar clerk in the Indian Bank, 1376, Lothian Road, Kashmere Gate has proved the lease deed executed between the bank and its landlord dated 5.11.2001 as Ex.PW4/2. He has deposed that the area in occupation of the bank is 2672 sq. ft. and from 1.6.2000 to 31.5.2005 the rent is Rs.67200/- per month. In his cross-examination he has deposed that the premises in which their bank is located is in good condition; he cannot say whether the defendant bank is in dilapidated condition.

25. PW-5 Naresh Goel was employed in Central Bank, Kashmere Gate branch. He has produced the certificate Ex.PW-5/1 given by his Senior Manager, which shows that the Central Bank of India, Kashmere Gate branch is paying a rental of Rs.70500/- per month for a carpet area of 2351 sq.ft. with effect from April 1996.

26. In defence, DW1 Prabhat Kumar Rastogi has filed his affidavit by way of evidence. He has reiterated his defence; he has stated that upto date rent has been paid. In his cross-examination he has stated that defendant was depositing the rent in the account of the plaintiff; he cannot say whether the consent of the plaintiff had been obtained for the said purpose. He gave evasive replies to the specific query as to whether plaintiff had consented that he should deposit the rent in the aforementioned manner; to the specific query put to him that the prevailing market rent of similar properties located in the adjoining areas was between Rs.27 to 30

per sq. ft per month during the period 1.4.1994 till June 2000, he has again given evasive answers and stated that he cannot say.

27. PW-1 has deposed that the prevailing market rate of rent at the relevant time was Rs.27/- per sq.ft. per month. Nothing has been elicited in his cross examination to dislodge this averment. Positive evidence has been produced by PW2 to PW5. PW-2 has produced rent paid register Ex.PW-2/1 of the Canara Bank 16.11.1998 to 15.1.2000. Rate of rent was Rs.25/- per sq. ft. per month at the relevant time; PW-3 has also produced lease deed of property no.1366-68, Kashmere Gate, Delhi with Union Bank of India Ex.PW-3/1 whereby rate of rent for the mezzanine portion and the back portion of the ground floor at the relevant time was about Rs.15/- per sq.ft. per month; judicial notice is taken on the fact that the mezzanine and back portion would fetch a lower rate of rent. PW-4 has proved the lease deed Ex.PW-4/2 of 1376, Lothian Road, Kashmere Gate, Delhi whereby rate of rent at the relevant time was about Rs.21/- per sq. ft. per month. Ex.PW-5/2 which is a certificate evidencing the rate of interest at approximately Rs.30/- per sq.ft. per month is the rent being paid by the Central Bank to its landlord for the adjoining property.

28. This documentary evidence has to be read in supercession and over and above the oral testimony of a witness. The well-established law being that a document cannot lie. Sections 91 & 92 of the Evidence Act, 1872 has given statutory recognition to this principle. Even otherwise this documentary evidence has not been dislodged. DW-1 has not produced any evidence to counter these versions of the witnesses of the plaintiff.

29. In these circumstances, in view of the evidence placed on record, it can well be said that the prevailing rate of rent i.e. market rate for the adjoining properties between 1.4.1994 upto 1997 can be approximated to Rs.16/- per sq.ft. per month and from 1.1.1998 upto 30.6.2000 at a rate of Rs.22/- per sq.ft. per month which are the amounts to which the plaintiff is entitled as damages/mesne profits.

30. This entitlement of the plaintiff would be minus the amounts already paid by the defendant.

31. Issue no.1, 4 & 5 are decided accordingly.

32. **ISSUE NO.6**

Interest is the entitlement of a party to whom an amount is due. This is commercial transaction. In Mahant Narayana Dasjee Varu and Ors. (In C.A.Nos.106 and 107 of 62); 2.The Board of Trustees, the Tirumalai Tirupathi, Devasthanam (In C.A.Nos.108 and 109 of 62) vs. Board of Trustees, the Tirumalai Tirupathi Devasthanam (In C.A.Nos.106 and 107 of 62); 2. Mahant Narayana Dasjee Varu and others (In C.A.Nos.108 and 109 of 62) AIR 1965 SC 1231 it had been held that under Section 2 (12) of the CPC the definition of 'mesne profits' integrally includes interest which has to be allowed in the computation of the mesne profits. The defendant is thus liable to pay interest on the aforestated amounts. Interest at the rate of 12% would be fair and equitable.

33. Suit is decreed in the sum of Rs.55,33,800/- minus the amounts already paid by the defendant i.e. Rs.31,24,191/- (as mentioned in para 15 of the plaint) as also the 'rentals' upto 30.6.2000 when the suit property was vacated. Decretal amount will carry interest at the rate of 12% from the date of filing of the

suit till realization on the plaintiff depositing the additional court fee. Decree sheet be drawn. File be consigned to Record Room.

(INDERMEET KAUR)
JUDGE

MARCH 26, 2010
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