

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment : 28th September, 2010

+ RSA No.389/2006 CM No.16362/2006 , 16363/2006 & 7884/2007

SH.SUBHASH CHANDER VOHRA

.....Appellant
Through: Mr.S.C.Singhal, Advocate for
the appellant.

Versus

SH. HANS RAJ & ORS.

.....Respondents
Through: Mr.S.K.Bhalla, Advocate for the
respondent.

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? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.(Oral)

CM No.16362/2006 (for exemption)

Allowed subject to just exceptions.

R.S.A.No.389/2006 & CM No.16363/2006 (for stay) & 7884/2007(u/S 151 CPC for modification)

1. This second appeal has impugned the judgment and decree dated 7.11.2006 which had endorsed the finding of the Trial Judge dated 29.1.2003 whereby while deciding issue no.5, plaintiff had been granted damages/mesne profits @ Rs.5000/- per month.

2. Contention before this Court is that this was an arbitrary exercise of the power by the two Courts below based on surmises and conjectures with no evidence before the said Courts. It is

pointed out by learned counsel for the appellant that the judgment

relied upon in the impugned judgment as noted in para 10 would not apply to the facts of the instant case. It is pointed out that in this case the rental of the suit property was Rs.160/- per month whereas damages had been awarded in the sum of Rs.5000/- per month; even if the ratio of the judgment in the said case i.e. the case of S.Kumar Vs. G.R. Kathpalia 1999 (1) RCR 305 is applied in its correct perspective the finding on this score is a perverse finding. In that case rental of the suit property was Rs.4000/- and damages had been awarded at six times the said amount i.e. at the rate of Rs.25,000/- per month. In this case damages awarded @ Rs.5000/- per month are exorbitant keeping in view the fact that the rental was Rs.160/- per month; this being a case of no evidence interference is called for by the second appellant Court. This has raised a substantial question of law.

3. Admittedly the possession of the suit property has been handed back to the plaintiff.

4. Issue no.5 is relevant for the disposal of this appeal which reads as follows:

“Whether the plttf is entitled to a decree for damages, if so, at what rate and for which period? OPP

5. The finding on this issue reads as follows:

“15. ISSUE NO.5:

The onus to prove this issue was upon the plttf. It was stated by the plttf in his defence that if the property is rent out it can fetch a rent of Rs.5000/- per month. Apart from plttf Shri Ram Nath also deposed in favour of plttf and confirmed that the property can fetch rent @ Rs.5000/- per month.

16. The witness was cross-examined and he stated that he has let out the property No.179, West Patel Nagar @ Rs.2600/-. The witness has denied to have any knowledge of L & D.O. Rates. It is stated that he let out the property around 7 years ago and the suggestion that property can fetch rent not more than Rs.500/- to Rs.1000/- was denied. In the cross-examination of deft the witness

denied for the want of knowledge that rate of rent in West Patel Nagar is around Rs.5000/- though he admitted that rate of rent in West Patel Nagar is very high. There was no contradiction to this effect in the examination of deft and in the absence of any effective rebuttal on this examination I hold that plttf in preponderance of probabilities has established that the rate of rent is around Rs.5000/- per month. Accordingly the plttf is entitled to the relief of damages as prayed for.”

6. Trial Judge had relied upon the testimony of the plaintiff as also of the second witness Ram Nath; defendant had also in his cross-examination admitted that the rate of rent in the vicinity i.e. in the West Patel Nagar is very high.

7. The first Appellate Court had dealt with this aspect in paras 10,11, and 12.

8. There is no dispute to the proposition that the Court can take judicial notice of prevailing rent in the market to arrive at a finding about the mesne profits to be awarded to the concerned person. It is also a matter of common knowledge of which judicial notice can be taken that the rental values have increased over the years and the escalation in property prices has been manifold. Two witnesses had come into witness box on behalf of the plaintiff to adduce evidence on this score. Suit property had been let out in the year 1977; i.e. the property bearing no.U-61-62, West Patel Nagar on the first floor at an initial rental of Rs.160/- per month. The impugned judgment had considered and rejected the arguments of the appellant that as per the price index the rental could only be enhanced to Rs.593/-; impugned judgment had noted the unrebutted evidence of the plaintiff balanced with no evidence on the part of the defendant coupled with the judicial notice of the rise in the price of properties, also keeping in view the fact that

this property was located in a prima commercial locality i.e. Patel Nagar which has a high commercial value; the damages awarded at Rs.5000/- per month was fair and equitable. These findings are based on fair and a judicious exercise of discretion of both the Courts below. No question of law much less any substantial question of law has arisen. The appeal as also the pending applications are dismissed.

INDERMEET KAUR, J.

SEPTEMBER 28, 2010
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