

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

+ RSA No. 85/2006

Date of Decision: August 13, 2010

R.K.CHAUDHARY ALIAS RAJAN & ANR. Appellants

Through: Ms.Madhu Tewatia,
Advocate.

Versus

PROF. RAM PRAKASH Respondent

Through: Respondent in person.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper 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 |

J U D G M E N T

ARUNA SURESH, J.

1. Respondent/Cross-Objector had filed a suit for possession as well as *mesne* profits against the appellants, who were inducted by him as tenants in the property bearing No B-48, Ground

and Basement, South Extension, Part-I, New Delhi after the lease of the property in suit had expired. Decree of the Trial Court was challenged in appeal by the appellants. Respondent filed his cross-objections questioning the rate and quantum of *mesne* profits awarded to him by the Trial Court. Appellate Court vide impugned judgment and decree dated 17th December, 2005 dismissed the appeal as well as the cross-objections. Hence, second appeal was filed by the appellants, wherein respondent has filed his cross-objections.

2. Regular Second Appeal was dismissed by this Court on 20th March, 2007. Cross-objections were dismissed by this Court vide a detailed judgment dated 7th January, 2008. Thereafter respondent filed an application seeking review of the order dated 7th January, 2008. The said application was allowed by this Court on 7th November, 2008 and the order dated 7th January, 2008 was recalled.

3. Following question of law need to be answered with respect to the cross-objections:-

“Whether the Courts below were justified in ignoring the rents reflected in Ex.PW-1/28 to Ex.PW-1/30 and additionally were the Courts justified in not awarding damages payable, if lessee continued to occupy the leased premises

beyond the period of lease, at 6 times the agreed rent?”

4. It is submitted by the respondent, who appeared in person that while awarding *mesne* profits to him, courts below had misconstrued the prevalent market rent of the premises ignoring the principles of law laid down in various authorities. The courts below should have awarded *mesne* profits equivalent to market rent prevalent at the relevant time. The Appellate Court granted *mesne* profits/damages at the rate of Rs.7.20 per square feet per month w.e.f. 1st May, 1997 to 30th June, 2005 and Rs.9.60 from 1st July, 2005 till vacation of the premises for 2084 square feet area of suit premises against the monthly rent @ Rs.5.30 being then paid by the tenant whereas he was entitled to six times the agreed rate of rent. He further submitted that the courts below went wrong in holding that *mesne* profits claimed by the respondent six time the rent was penal and should not be awarded. He has submitted that he is entitled to *mesne* profits at the rate of Rs.60,000/- per month for use and occupation of the property by the appellants w.e.f.1st May, 1997 till he received the vacant possession of the suit premises from the appellants.

5. It is also argued by the respondent that premises were

let out apparently for residential purposes but effectively for commercial purposes and therefore, the courts below were not justified in ignoring the rents reflected in Ex. PW-1/28 to Ex. PW - 1/30. He has referred to ***“Sohan Singh Anand & Ors. Vs. State Bank of Patiala, 2003 (66) DRJ 191 ‘Marshall Sons & Co. Vs. Sahi Oretrans & Anr.’, 1999 (2) SCC 325 ‘Cement Corp of India Vs. Purya etc.’, 2005 RLR 14 (SC) ‘Land Acquisition Officer and Mandal Revenue Officer Vs. Narasaiah’, AIR 2001 SC 1117 ‘P.S.Bedi Vs. The Project and Equipment Corporation of India Ltd.’, ‘Anderson Wright & Co. Vs. Amar Nath Roy & Ors.’, AIR 2005 SC 2457 ‘Nina International Pvt. Ltd. Vs. Saraswati Industrial Syndicate Ltd.’, 1999 II AD (Delhi) 201, and ‘Anusuyaben Kantilal Bhatt Vs. Rashiklal Manilal Shah & Anr.’, (1997) 5 SCC 457.***

6. Ms.Madhu Tewatia, counsel appearing on behalf of the appellants while refuting the submissions made by the respondent has argued that the courts below rightly did not consider the Lease Deeds Ex.PW-1/28 to Ex. PW-1/30 as the said Lease Deeds relate to commercial user of the property, whereas the property in suit was let out for residential purposes only. Respondent has not produced any evidence on record to prove the prevalent market rate of rent for

residential premises in the vicinity of the suit property and therefore, she has submitted that both the courts below were right in awarding maintenance by assessing the market rent at a reasonable rate and therefore, respondent is not entitled to *mesne* profits as claimed by him which is exorbitant and is penal in nature.

7. Property in question is the basement and ground floor of house No. B-48, which was let out to the appellants by a Registered Lease Deed Ex. PW-1/1 for a period of five years. The rate of rent agreed for first three years was Rs.9,500/- per month for the period from 1st May, 1992 to 30th April, 1995 and thereafter at the enhanced rate of Rs.10,925/- per month w.e.f. 1st May, 1995 till 30th April, 1997. Admittedly, clause 7 clearly stipulates that the demised property has been let out for a residential use according to conditions prescribed by DDA and that the lessee shall abide by the terms of the Lease.

8. Trial Court as well as the Appellate Court did take into consideration the three leases pertaining to the adjoining property No. B-50, South Extension, Part-I, New Delhi, which are Ex.PW-1/28 to Ex. PW-1/30. These three leases are between different owners of different portions of the said property but the lessee is the

same. All the three leases were executed on 18th June, 1997. These three leases relate to three different portions on the second floor of the said building. Clause 4 (d) of the three leases is common and is relevant for the reason, it shows that three portions on the second floor were let out for a commercial purpose. It reads as under:-

“Not to make any structural alteration of a permanent nature in the Premises as would permanently damage or destroy the Demised Premises except those which are necessary for the Lessee to make in order to carry on its business as however not to cause any damage to any other portion of the said building. But the Lessee can erect and remove temporary/partition walls.”

9. Case of the respondent throughout has been that he had let out the premises for residential purposes only and the premises were being misused by the appellants for commercial purposes. He has tried to submit that the Lease Deed was for commercial purpose but it was given a face of a residential deed and therefore, the prevalent rate of rent for commercial premises as per the Lease Deeds Ex. PW-1/28 to Ex.PW-1/30 should be the basis for fixation of *mesne* profits of the suit premises payable by the appellants. Respondent cannot be allowed to raise this plea at the stage of appeal. Respondent is estopped from his own act and admissions as

he has filed a suit against the appellants being Suit No.297/96 (new No.168/02) prior to filing of the instant eviction suit, seeking mandatory injunction against the commercial use and also additional property tax liability incurred by him due to appellants' unauthorised commercial use of the suit property. The said suit is still pending adjudication. Thus, it is clear that not only in words but in spirit Lease Deed Ex.PW-1/1 was executed *inter se* the parties for residential purposes only.

10. Under the circumstances, the courts below rightly ignored the rent stipulated in the Lease Deeds Ex.PW-1/28 to Ex.PW-1/30 for the reason, an adjoining property, letting was for a commercial purpose. Respondent did not place any evidence on record either documentary or oral to prove that the rent for the adjoining properties for commercial purpose as well as for residential purpose prevalent in the market at the relevant time was comparable. Trial Court did consider in evidence the three leases Ex. PW-1/28 to Ex.PW-1/30 accepting them as proved documents. These leases were not ignored for the reason that they were certified copies of the registered documents and not the originals. ***Cement Corporation's*** case (*supra*) and ***Land Acquisition Officer's*** case (*supra*) have been considered to the facts and circumstances of the case. The courts

below took into consideration the said lease deeds while delivering the judgment and they were not discarded on the ground that they have been refuted by the appellants or being certified copies that the respondent (plaintiff) has not been able to prove them. The Court had, while not taking the rent agreements into account, gave reasons that the rent agreements although pertained to the other buildings similarly placed, but were let out for business purposes, whereas the suit property in the present case had been let out for residential purposes.

11. Respondent has submitted that appellant No.1 in his evidence-in-chief Ex.D-1 has stated that the rate of rent in or around the suit property in building of identical age and location is not more than Rs.10-11 per square feet but, the courts below ignored the admission made by him in his affidavit in evidence while fixing the *mesne* profits of the suit premises. I do not find much force in his submissions. Statement contained in the affidavit in evidence cannot *ipso facto* be considered as an admission made by the appellant regarding market rate of rent of residential houses in the vicinity of the premises in suit. Perusal of his statement clearly indicate that he has fixed the maximum limit of rent at Rs.10-11 per square feet. Appellant has further deposed in the affidavit that the

building being residential in nature could not fetch a good rent as risk of action by local authorities for misuse was always in the offing and respondent could not have fetched a better rent than were being paid by M/s CMCS i.e. Rs.10,925/- per month. Therefore, the rate of rent as suggested by appellant No.1 in his affidavit in evidence cannot be considered as an unequivocal, unambiguous and voluntary admission on his part of rate of rent as Rs.10-11 per square feet prevalent in the market at the relevant time.

12. In *Marshal Sons'* case (*supra*), the Apex Court observed:-

“reasonable mesne profits which may be equivalent to the market rent should be awarded to prevent parties in wrongful possession from taking advantage of lengthy delays in proceedings and execution.”

13. Respondent has cited *Nina International's* case (*supra*) to support his submissions that an admission has been made by the appellant in the affidavit regarding prevalent rate of rent in the market. In the said case, owner claimed damages at the rate of Rs.1,80,000/- per month. It was observed that Court had the authority to fix damages for use and occupation more than that was

claimed by the owner, on the basis of admission by person in possession of the property on the date of the suit. However, as discussed above, evidence available on record is regarding the prevalent rate of rent in the locality relate to commercial leases and not to residential lease. It is not a case where the tenant has made an admission of the rent at much more than the rate claimed by the owner in the suit. Therefore, this judgment has no bearing on the present case. The courts below have awarded *mesne* profits to the respondent, after taking into consideration the evidence available on record in fair and just manner.

14. In '***Bakshi Sachdev (D) Vs. Concord (I)***', 1993 RLR 563, it has been held by this Court that the damages and *mesne* profits can be granted at higher rate than the agreed rate of rent after the expiry of tenancy and after taking judicial notice of the fact of phenomenal rise in rents in Delhi and particularly in posh colonies like where the property in suit is located, higher rate of damages/*mesne* profits could be awarded by the Court.

15. In '***Sohan Singh's*** case (*supra*) while awarding damages/*mesne* profits, the Court had awarded damages as had been

claimed by the owner although they were higher to the prevalent market rent but at the same time no interest was awarded on such damages/*mesne* profits owing to the grant of damages at a rate higher to the market rent.

16. Similarly in ***P.S. Bedi's*** case (*supra*), it was observed that after the expiration of the tenancy and inspite of legal notice having been served on the tenant, he fails to vacate the premises, he is liable to pay the market rent as damages/*mesne* profits for use and occupation of the demised premises. In the said case, the court decided the market rent on the basis of the oral evidence available on record in the absence of any documentary evidence and accordingly awarded damages.

17. Similar are the observations in ***Anderson Wright's*** case (*supra*). It is noted that the property in suit in the said case was leased out for commercial purposes.

18. ***Anusuyaben's*** case (*supra*) relate to standard rent vis-a-vis the contractual rent and the Apex Court upheld that the standard rent was much less then the contractual rent and the landlady was entitled to claim rent as per the contractual rent.

19. Trial Court while deciding issue N.4 analyzed the oral evidence of the parties viz-a-viz the lease documents Ex.PW-1/28 to Ex.PW-1/30 to conclude that it was appropriate to award use and occupation charges/damages at the rate of Rs.15,000/- from 1st May, 1997 and at the rate of Rs.20,000/- thereafter till vacation of the premises and did not find any ground to award interest on the amount of damages. The Appellate Court vide impugned judgment and decree dated 17th December, 2005 considered all the citations relied upon by the respondent while concurring with the findings of the Trial Court on award of *mesne* profits/damages for use and occupation.

20. I do not find any reason to interfere in the findings of the courts below. It is pertinent that after receipt of vacant possession, the respondent has again leased out the suit premises for residential purposes only to M/S. Bengali Sweet Centre on 1st August, 2007 on a monthly rent of Rs.30,000/- with periodic annual increase of 15% after every two years. Thus, it is clear that market rate of rent for residential premises could not have been Rs.60,000/- per month, as claimed by the respondent. In the absence of evidence oral or documentary, courts below rightly assessed the *mesne* profits

at the rate of Rs.20,000/- per month.

21. Under these circumstances, claim of the respondent for *mesne* profits being exorbitant is penal and unconscionable in nature.

22. In '*L. Bhagwan Das Mengi Vs. Union of India*', AIR 1961 J&K 39, it was held that where a tenant does not vacate the premises after the expiry of lease and remains in occupation of the same despite service of notice on him to vacate, liability to pay the amount claimed in the notice is on him provided it is not penal and unconscionable. The courts below, therefore, rightly held that claim of the respondent for *mesne* profits at the rate of Rs.60,000/- per month was penal in nature.

23. Under these circumstances, I do not find any merits in the cross-objections and the same are accordingly dismissed. Parties are left to bear their own costs.

**ARUNA SURESH
(JUDGE)**

**AUGUST 13, 2010
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