

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 15.09.2011

+ CS(OS) 1221/1998

SHRI RADHA KISHAN AGGARWAL & ORS. Plaintiffs

Through: Mr. Om Prakash Gupta, Adv.

versus

M/s. NETWORK LTD. & ORS. Defendants

Through: Mr. Naveen Sharma, Adv. for
D-1.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

V.K. JAIN, J. (ORAL)

1. Initially this suit was filed for recovery of Rs.42,58,768/- as also for recovery of possession of the premises comprising basement, mezzanine floor , first floor and second floor and mumty of property No.D-2, Local Shopping Centre-II, Vasant Vihar, New Delhi. The abovereferred property was let out by the plaintiffs and late Shri Sitaram Agarwal to the defendant No.1 for a period of nine years, vide registered lease deed dated 02.05.1989.

The lease commenced from 01.05.1989 and expired on 30.04.1998. The initial agreed rent stipulated in the lease deed was Rs.60,000/- per month which was to be increased by 15% after every three years. On account of the aforesaid increase, the agreed rent was Rs.79,350/- per month when the lease expired by efflux of time on 30.04.1998. In the suit, the plaintiffs had claimed a sum of Rs.28,56,600/- towards arrears of rent for the period from 01.05.1995 to 30.04.1998, Rs.7,52,168/- towards interest on arrears of rent, calculated at the rate of 18% per month and Rs.6,55,000/- towards damages for use and occupation for the period from 01.05.1998 to 30.08.1998. The plaintiffs have also claimed future damages for use and occupation at the rate of Rs.6,50,000/- per month from the date of filing of the suit till recovery of possession of the suit premises from defendant No.1.

2. Admittedly, the possession of the suit premises has been delivered to the landlords during pendency of this suit, on 31.10.1998 and the arrears of rent for the period ending 30.04.1998 were deposited in CS(OS) No.735/1997 which was a partition suit amongst the owners of the suit premises. It is also an admitted case that the defendant

deposited rent/damages for use and occupation at the rate of Rs.7,52,168/- for the period from 01.05.1998 to 31.10.1998 as well and the same has been withdrawn.

3. The following issues were framed on the pleadings of the parties:-

- (i) Whether the defendant is liable to the plaintiffs for any arrears of rent? If so, the extent thereof? OPP.*
- (ii) Whether the plaintiffs are entitled to any damages for the period post expiry of lease? If so, the extent thereof? OPP.*
- (iii) Whether the plaintiffs are entitled to any interest? If so, on what amount, for which period and at what rate? OPP*
- (iv) Relief.*

4. **Issue No.1:-** Since the arrears of rent stand paid, the plaintiffs are not entitled to recover any amount from defendant No.1 towards arrears of rent. The issue is decided accordingly.

5. **Issue No.3:-** Admittedly, there is no agreement between the parties for payment of interest in case the rent was not paid in time. No usage or custom with respect to payment of interest has been pleaded or proved. Admittedly, no notice of the nature envisaged in Section 3 of Interest Act, 1978 was given by the plaintiffs to defendant No.1 at any point of time. Hence, interest cannot

be awarded to the plaintiffs under the provisions of Interest Act, 1978. I, therefore, hold that the plaintiffs are not entitled to any interest on the arrears of rent.

6. **Issue No.2:-** Since the lease admittedly expired by efflux of time on 30.04.1998, defendant No.1 became liable to pay damages for use and occupation for the period from 01.05.1998 to 31.10.1998. Defendant No.1 is liable to pay damages for use and occupation at the rate which the suit premises, if let-out during the period from 01.05.1998 to 31.10.1998 would have fetched in the market. No documentary evidence has been filed either by the plaintiffs or by defendant No.1 to prove the rents prevailing in the locality during the period from 01.05.1998 to 31.10.1998. No property dealer has been examined by either party to prove the market rent during this period. In para 9 of his affidavit by way of evidence, Mr.Surinder Aggarwal, the attorney of the plaintiffs has stated as under:-

9. After the expiry of lease defendant No.1, M/s. Network Limited, did not vacate the suit premises on 1998 as a result of which plaintiffs instituted the present suit on 12.6.1998. The said defendant vacated the premises on 31.10.1998, as such the defendant become liable to pay damages for use and occupation of the suit premises @

Rs.6,50,000/- (Rupees Six lacs and fifty thousand only) per month. The said damages have been claimed in para 17 of the plaint in accordance with the prevailing rent of same and similar commercial premises in Vasant Vihar locality at that time. The suit premises are located in Vasant Vihar, New Delhi.”

Thus, according to this witness prevailing of similarly situated accommodation in Vasant Vihar at the relevant time was about Rs.6,50,000/- per month. During cross-examination of Mr.Surinder Aggarwal, no suggestion was given to him that the prevailing rent in Vasant Vihar at the relevant time was less than Rs.6,50,000/- per month. The only suggestion given to him in this regard was that the plaintiffs were not entitled to claim use and occupation charges at the rate of Rs.6.5 lakhs per month. This suggestion is altogether different from suggesting that the market rent of similar premises in Vasant Vihar at the relevant time was not Rs.6.5 lakhs per month. In fact, if the case of defendant No.1 was that the market rent of similarly situated premises was less than Rs.6.5 lakhs per month, it ought to have suggested to the witness what according to it the prevailing market rent was at the relevant time. That, however, was not done. If a witness deposes a particular

fact and no suggestion to the contrary is given to him in his cross-examination, the party against whom the deposition is made is deemed to have accepted that part of the deposition which thereby remains unchallenged in the cross-examination. In **JS Bhalla vs. G.J. Bhawnani** 23 (1983) DLT 125, the owner of the property had appeared in the Court and deposed that he was the owner and lease deed was executed in his favour. He, while in the witness box, was not cross examined about the ownership of the property in question. It was observed that in the absence of cross-examination it must be held that the appellant had admitted the facts deposed by the respondent. In **Mahant Mela Ram Chela Mahant Inder Dass vs. Shiromani Gurudwara Parbandhak Committee, Amritsar** AIR 1992 Punjab & Haryana 252, it was observed that a party should put to each of its opponents witnesses so much of his case as concerns that particular witness and if no such questions are put, the court presumes that the witness account has been accepted.

Defendant No.1 has examined only one Mr.Ashok Sharma, Manager, who is the authorized attorney of defendant No.1 Company. In his affidavit by way of

evidence, Mr. Ashok Sharma has not even dealt with the issue of rent which the suit premises would have fetched, had it been let out during the period from 01.05.1998 to 31.10.1998. In his cross-examination, Mr. Ashok Sharma clearly stated that he could not say whether at the time of termination of the tenancy the prevalent rent in the market of the similar property was Rs.6,50,000/- per month. Thus, this witness did not even deny the claim of the plaintiffs with respect to the market rent of similar properties at the relevant time. In the absence of any evidence at all from defendant No.1 in this regard, the otherwise unchallenged testimony of Mr. Surinder Aggarwal with respect to the rent prevailing in the market at the relevant time remains absolutely un rebutted. I see no reason to reject the un rebutted testimony of Mr. Surinder Aggarwal in this regard and consequently, hold that had the suit premises been let out, it would have fetched rent of Rs.6,50,000/- p.m. during the period from 01.05.1998 to 31.10.1998.

7. The amount payable to the plaintiffs towards damages for use and occupation for the period from 01.05.1998 to 31.10.1998 after giving benefit of the payment made by defendant No.1 for this period at the rate

of Rs.79,350/- per month comes to Rs 34,23,900/- Shri Om Prakash Gupta, learned counsel for the plaintiffs, very fairly stated during the course of arguments that an excess deposit of Rs.44,400/- was made by defendant No.1 in CS(OS) No.735/1997 which amount was withdrawn by the plaintiffs and defendant No.1 is entitled to adjustment of that amount. After giving adjustment for the aforesaid amount of Rs.44,400/-, the balance amount payable to the plaintiffs comes to Rs 33,79,500/- The issues are decided accordingly.

ORDER

8. In view of the above findings of the issues, a decree of Rs 33,79,500/- with interest at the rate of 6% per annum with effect from 01.11.1998 till realization is passed in favour of the plaintiffs and against defendant No.1. The plaintiffs are directed to pay requisite court fee on the amount of Rs 33,79,500/- after adjusting the court fee already paid by them on the amount of Rs 6.5 lacs claimed as damages for use and occupation for May, 1998, within four weeks failing which the plaint shall stand rejected.

In the facts and circumstances of the case, there shall be no order as to costs.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

SEPTEMBER 15, 2011
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