

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 29.03.2011
Judgment Pronounced on: 30.03.2011

+ **CS(OS) 1982/2003**

KIRTI PRASHAR AND ANR.

.....Plaintiffs

- versus -

SBI

.....Defendant

AND

+ **CS(OS) 1983/2003**

MEDHA GUJRAL JALOTA

.....Plaintiff

- versus -

SBI

.....Defendant

AND

+ **CS(OS) 1991/2003**

EEDA GUJRAL CHOPRA

.....Plaintiff

- versus -

SBI

.....Defendant

AND

+ CS(OS) 1992/2003

VIMLA VIJAYA GUJRAL

.....Plaintiff

- versus -

SBI

.....Defendant

Advocates who appeared in this case:

For the Plaintiffs: Mr. Akshay Makhija and Ms. Amisha Gupta, Advs.

For the Defendant: Mr. S.N.Relan, Adv.

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? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

V.K. JAIN, J

1. By this common judgment, I propose to dispose of all the four suits referred above.

CS(OS) 1982/2003 has been filed by Ms. Kirti Parasher and M/s. Vinny Construction Pvt. Ltd. for recovery of possession as well as mesne profits. Vide lease deed dated 15.06.1999, the defendant was inducted as a tenant in respect of the fourth floor of Vijaya Building at 17,

Barakhamba Road, New Delhi, at the rent of Rs.25/- per sq.ft. per month initially for a period of five years to be computed from 01.05.1989. The lease provided for two extensions, the first for a period of five years and the second for a period of one year and eleven months. The rent was agreed to be increased by 25% after first year which was to be followed by an increase of 5% every year after the first ten years of the tenancy. The lease was extended for five years with effect from 1.5.1994, vide agreement dated 21.01.1994. It was further extended from 01.05.999 to 31.03.2001 vide lease deed dated 17.01.2000. No fresh lease deed was entered into between the parties after 31.03.2001. The defendant, however, continued to occupy the tenancy premises even after 31.03.2001 though it agreed to increase by 5% per annum with effect from 01.04.2001.

2. It is alleged that vide letter dated 30.09.2002, the defendant gave three months notice to the plaintiffs vacate the premises and terminated the tenancy with the month ending 31.12.2002. The tenancy premises was, however, not vacated even on 31.12.2002. The plaintiff issued a notice dated 03.02.2003 to the defendant bringing it to its

notice that it had not vacated the premises on 31.12.2002 and demanded damages for use and occupation at the rate of Rs.100 per sq. ft. with effect from 01.01.2003. They also made clear that any payment accepted by them shall not be treated as an extension of the lease. Consequent to plaintiffs' notice dated 03.02.2003, the defendant increased the rent to Rs.36.17 per sq. ft. with effect from 01.04.2001 and Rs.37.98 per sq. ft. with effect from 01.04.2002. The defendant has been paying rent at the rate of Rs.37.98 per sq.ft. per month with effect from 1st January, 2003 to 31st March, 2003 and at the rate of Rs.39.88 per sq.ft. per month with effect from 1st April, 2003 onwards. Besides seeking possession of the tenancy premises, the plaintiffs have claimed a sum of Rs.4668798.96 towards difference in damages for use and occupation with effect from 01.01.2003 to 31.07.2003. The aforesaid amount has been arrived at by taking the damages for use and occupation at the rate of Rs.100/- per sq. ft. and deducting therefrom the amount paid by the defendant for the period with effect from 01.01.2003 to 31.07.2003.

3. CS(OS) 1983/2003 has been filed by Ms. Medha Gujral Jalota, in respect of the fifth floor of the Vijaya

Building at 17, Barakhamba Road, New Delhi. The facts stated in this suit are identical to the facts stated in CS(OS) 1982/2003, the difference being that a sum of Rs.5274808.56 has been claimed as difference in damages for use and occupation for the period from 01.01.2003 to 31.07.2003 comes to Rs.49,17,515.40.

4. CS(OS) 1991/2003 has been filed by EEDA Gujral Chopra in respect of two portions one on the fourth floor and one on the sixth floor of Vijaya Building. The amount claimed in this suit towards damages for use and occupation for the period from 01.01.2003 to 31.07.2003.

5. CS(OS)1992/2003 has been filed by Ms.Vimla Vijaya Gujral in respect of the portion measuring 6000 sq. ft. on the ground floor. State Bank of India has been impleaded as defendant No.1 in this suit whereas Gujral Enterprises Limited has been impleaded as defendant No.2 on the ground that it is a proper party to this suit. Defendant No.1 – State Bank of India was inducted as a tenant for the period of five years at the rent of Rs.39.50 per sq. ft. vide lease deed dated 16.06.1989 and the tenancy period was to be computed from 01.05.1989. In this case also, the lease provided for to extension, the first being for a

period of five years and the second being for a period of one year and 11 months. It also provided for increase in rent by 25% after first five years and by 5% each year after the first ten years. In this case also, the first extension for five years was granted with effect from 01.05.1994 vide lease deed dated 09.10.1996 whereas the second extension was granted for the period from 01.05.1999 to 31.03.2001 vide lease deed dated 20.01.2000. In terms of the lease deed dated 20.01.2000, defendant No.1 was paying agreeing rent at the rate of Rs.59.26 paise per sq. ft. Other facts stated in this suit are identical except that the plaintiff is claiming the damages for use and occupation at the rate of Rs.200/- per sq. ft. for the period 01.01.2003 to 31.07.2003. Defendant No.1 had increased the rent to Rs.62.23 per sq. ft. with effect from 01.04.2001 and to Rs.65.60 per sq. ft. with effect from 01.04.2002 after receiving the notice dated 03.02.2003 from the plaintiffs. The defendant bank has paid rent in respect of the ground floor at the rate of Rs.65.60 per sq.ft. per month from 1st January, 2003 to 31st March, 2003 and at the rate of Rs.68.60 per sq.ft. per month with effect from 1st April, 2003. The plaintiff in the suit has claimed a sum of Rs.55,18,800/- towards difference in the amount of charges

for use and occupation and the rent/damages paid by the bank.

6. Defendant- State Bank of India has contested all the four suits.

7. The defendant Bank has admitted letting out of the tenanted premises as also the agreed rent. It has also not been disputed that no fresh lease deed was executed in respect of the tenancy premises after 31.03.2001. The defendant Bank has admitted having sent the letter dated 30.09.2002 to the plaintiff. It has, however, been claimed that the bank did not vacate the premises despite sending the aforesaid letter as the plaintiffs themselves requested it to continue possession of the premises after increasing the rent by 5% each year. The receipt of notice dated 03.02.2003 from the plaintiffs has also been admitted by the Bank. It is also alleged that the prevalent rent of the tenanted premises was less than what the defendant Bank was paying to the plaintiff. According to the defendant, tenanted premises were in a very dilapidated and inhabitable condition.

The possession of tenancy premises subject matter of CS(OS) No. 1992/2003 has been delivered to the plaintiff

in the suit on 30.04.2004 whereas the possession of the tenancy premises subject matter of CS(OS) Nos. 1982/2003, 1983/2003, 1991/2003 has been delivered on 03.10.2003.

8. The following issues are framed on the pleadings of the parties:-

1. Whether the plaintiff is entitled to its claim of damages/mense profits from the defendant on account of use and occupation charges of the suit property from 1st January 2003 till 3rd October 2003? If so, at what rate?
2. Whether the plaintiff is entitled to interest If so at what rate and from which date?
3. Whether the suit has been properly valued for the purpose of court fee and jurisdiction?
4. Relief.

ISSUE NO.3

9. The plaintiffs have paid *ad valorem* court fee in respect of the amount claimed as difference of damages for use and occupation/mesne profit, for the period from 01.01.2003 to 31.07.2003. These suits were filed on 01.09.2003. Damages for use and occupation for the period from 01.08.2003 to 31.08.2003 had also become due and payable by that time. The plaintiffs ought to have paid court fee on the amount claimed as difference of damages for use and occupation for the month of August, 2003. To

this extent, the plaintiffs have not paid adequate Court fee. The plaintiffs are directed to file the deficient Court fee accordingly within four weeks failing which the plaint shall stand rejected.

ISSUE NO.1

10. The plaintiffs have examined three witnesses whereas the defendant has examined one witness in each case.

As stated earlier, it is an admitted position that State Bank of India was inducted as a tenant in respect of various portions of Vijaya Building at 17, Barakhamba Road, New Delhi, which are subject matter of these four suits. It is an admitted case that initial rent in respect of the ground floor was agreed at Rs.39.50 per sq. ft. whereas the rent in respect of the upper floors was initially agreed at Rs.25/- per sq. ft. It is also an admitted case of the parties that the initially agreed rent was increased by 25% after the first five years in terms of the lease deed executed between the parties and was thereafter increased by 5% each year after the first ten years of tenancy. It is also an admitted case that as on 31.12.2002, the Bank was paying rent at the rate of Rs.65.50 per sq. ft. in respect of the ground floor

and at the rate of Rs.37.89 per sq. ft. in respect of the upper floors. It is further admitted position that the bank paid rent/damages for use and occupation at the rate of Rs.37.98 per sq. ft. for the period from 01.01.2003 to 31.03.2003 and at the rate of Rs.39.88 per sq. ft. for the period from 01.04.2003 onwards in respect of the upper floors and at the rate of Rs.65.60 per sq. ft. for the period from 01.01.2003 to 31.03.2003 and at the rate of Rs.68.60 per sq. ft. with effect from 01.04.2003 in respect of the ground floor. It is an admitted case that no fresh lease deed was entered into between the parties after 31st March, 2001.

11. Section 116 of Transfer of Property Act, to the extent it is relevant, provides that if a lessee remains in possession of the tenanted premises after the determination of the lease granted to him, and the lessor or his legal representative accepts rent from the lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106. Section 106 of Transfer of Property Act, to the extent it is

relevant, provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for other than agricultural or manufacturing purposes shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice. Therefore, since the plaintiffs allowed the defendant bank to continue in possession of the tenancy premises and also accepted rent from it, even after the term of the lease had expired by efflux of time, the lease came to be renewed from month to month being a lease for commercial purpose, which could be terminated either by the plaintiffs or by the defendant bank, by giving 15 days notice.

12. Vide letter dated 30th September, 1992 the bank wrote to the plaintiffs informing them that since the parties could not arrive at a mutually agreed settlement with respect to future rent, maintenance and facilities, they had no alternative but to go for a change of premises and accordingly they were given three months' notice of their intention to vacate the premises. The month to month tenancy, which came to be created with effect from 1st April, 2001, on account of the defendant bank continuing in possession and acceptance of rent from it by the plaintiffs,

therefore stood terminated with effect from 31st December, 2002.

13. It is also an admitted case that the defendant Bank did not vacate the premises despite terminating the tenancy with effect from 31.12.2002. The case of the Bank is that it had continued in possession on the request made by the plaintiffs who had agreed to their continuing to occupy the tenanted premises on the bank increasing the rent by 5%. There is no written agreement between the parties permitting the bank to continue in possession after 31.12.2002, on enhancement of rent by 5%. In fact there is no evidence of the plaintiffs having consented to the defendant Bank continuing in possession after 31.12.2002. Even the bank officials produced by the defendant, did not say so in their affidavit by way of evidence. It is an admitted case that a notice dated 03.02.2003 was sent by the plaintiffs to the defendant through counsel. It was specifically denied in this notice that the plaintiffs had requested the bank to stay till June, 2003. It was specifically stated that there was no offer by the plaintiffs to the defendant to continue till June, 2003 and that occupation of the bank beyond 31.12.2003 was illegal and

unauthorized, for which it would have to pay occupation charges on the prevailing market rate of rent. It was made clear in this notice that any payment accepted the plaintiffs shall not be treated as extension of the lease, the same having been done without prejudice to the rights of the plaintiffs and may be adjusted towards occupation charges for the illegal and unauthorized occupation of the tenancy premises. In the face of this letter, it is not open to the defendant Bank to say that the plaintiffs had consented to its continuing to occupy the tenancy premises after 31.12.2002.

14. A perusal of the letter dated 20th November, 2002 (Exhibit DW1/1) in CS(OS) No. 1992/2003 written to the defendant bank would show that hoping that the bank would abide by the verbal and written assurances given to them regarding rental of Rs.45/- per sq.ft. with effect from 1st April, 2001, the plaintiffs, under duress, agreed to let the bank continue on 5% increase in rent and reimbursement of house tax over and above 12% by the bank as per the lease agreement. The bank was requested to confirm the above in writing so that they could ensure speedy payment of monthly arrears and house tax reimbursement. The bank

was further requested to send individual letters to each landlady of Gujaral family from the concerned departmental Head. If the plaintiffs were under duress while agreeing to let the bank continue to occupy the tenanted premises, as is alleged in this letter, it would not constitute a valid agreement of tenancy. In any case, there is no material on record to show that the bank had confirmed the terms contained in the letter dated 20th November, 2002 in writing as was stipulated in this letter and had written individual letters of confirmation to each landlady of Gujaral family in this regard. Therefore, this letter to my mind does not amount to condonation of termination notice dated 30th September, 2002 sent by the bank to the plaintiff, terminating the tenancy with effect from 31st December, 2002.

15. If it is assumed that this letter resulted in the plaintiffs' tendering the termination notice dated 30th September, 2002 and consequently, tenancy of the defendant bank did not stand terminated with effect from 31st December, 2002, the notice dated 3rd February, 2003, which the plaintiffs admittedly sent to the defendant bank through counsel amounts to a valid notice of termination of

tenancy with effect from one month from the date on which the notice was received by the bank. Vide this notice, the defendant bank was specifically called upon to vacate the premises with immediate effect, and pay damages for use and occupation at the prevailing market rent. In this regard, it would be useful to refer to the provisions of sub-Section 3 of Section 106 of the Transfer of Property Act, which provides that a notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

In ***Bhagabandas Agarwalla v. Bhagwandas Kanu and others, (1977) 2 SCC 646***, Supreme Court held that a notice to quit must be constructed not with a desire to find faults in it, which would render it defective, but it must be construed *ut res magis valeat quam pereat* and not with a desire to find faults in it. It was further observed that the notice should not be read in a hyper-critical manner but must be constructed in a common sense way.

The purpose of giving notice of termination by a landlord to the tenant is to make it known to him that he

does not want him to continue in possession of the tenanted premises so that the tenant is not taken by surprise and gets adequate time to look for another premises during the notice period. Notice dated 3rd February, 2003 conveys, to the defendant bank an unequivocal declaration from the plaintiffs that they do not want the bank to continue in the tenanted premises. Though the notice does not specifically give one month's time to the bank to vacate the tenanted premises, that by itself would not invalidate the notice in view of the provisions contained in sub-Section 3 of Section 106 of the Transfer of Property Act and it would terminate the tenancy at the end of fifteen days from the date of receipt of the notice by the bank.

16. If I proceed on the basis that the tenancy of the defendant bank stood terminated with effect from 31st December, 2002 in terms of the bank's notice dated 30th September, 2002 and that notice was not condoned on account of the letter dated 20th November, 2002 sent to the bank, the defendant would be liable to pay damages for use and occupation with effect from 1st January, 2003. On the other hand, if I proceed on the basis that the notice dated 30th September, 2002 was condoned by the plaintiffs and

they had agreed to the bank continuing to occupy the tenanted premises even thereafter, subject to enhancement of rent by 5%, the tenancy of the bank stood terminated with effect from fifteen days after receipt of notice dated 3rd February, 2003 from the plaintiffs. Since, I have held that the notice dated 30th September, 2002 was not condoned by the plaintiffs nor was there a valid agreement of tenancy in terms of the letter dated 20th November, 2002, the defendant bank is liable to pay damages for use and occupation with effect from 1st January, 2003.

17. The plaintiffs have claimed damages for use and occupation at the rate of Rs.100/- per sq.ft. per month in respect of the upper floors and at the rate of Rs.200/- per sq.ft. per month in respect of ground floor. It is an admitted case that the possession of upper floors was delivered to the plaintiffs on 3rd October, 2003 whereas the possession of the ground floor was delivered on 30th April, 2004. Therefore, the defendant bank is required to pay damages for use and occupation for the period from 1st January, 2003 to 2nd October, 2003 in respect of the upper floors and for the period from 1st January, 2003 to 29th April, 2004 in respect of the ground floor portions of Vijaya Building, 17,

Barakhamba Road, New Delhi.

In order to ascertain the rate of rent on which damages for use and occupation are required to be paid by the defendant bank to the plaintiffs, the Court needs to find out what was the prevailing rent during this period, in respect of similar premises, in the locality in which this building is situated or in a locality which can be said to be comparable in terms of market rent.

18. The plaintiffs have examined three witnesses namely, PW-1 Mr. I.N. Tiwari, PW-2 Mr. Vinay Kumar Mehta and PW-3 Mr. Anikant Gupta. The defendant bank has examined two bank officials namely, Mr. Praveen Kumar and Mr. Om Prakash Khatri.

19. As far as Mr. I.N. Tiwari is concerned, he has no personal knowledge about the rents prevailing in the locality but he has admitted during his cross-examination that upper floors of the premises, which were occupied by the defendant bank in Vijaya Building at 17 Barakhamba Road, New Delhi were let out to Reliance at the rate of Rs.32/- per sq.ft. per month 1-½ years after they were vacated by the defendant. Mr. Vinay Kumar Mehta is Deputy General Manager of M/s Mitsubishi Corporation India Pvt. Ltd.. He

has stated that space measuring 7588 sq.ft. on the second floor of the Vijaya Building was taken on rent by M/s Mitsubishi Corporation India Pvt. Ltd. at the monthly rent of Rs.8,87,796/- vide lease dated 19th March, 1997. PW-3 Mr. Anil Kant Gupta is the Manager of Vijaya Bank and he has stated that Vijaya Bank had taken on rent the space measuring 6000 sq.ft. on the ground floor of Vijaya Building at the monthly rate of Rs.125/- per sq.ft. However, in his cross-examination, he admitted that the premises taken by them on rent is centrally air conditioned and that some floors of the building are occupied by M/s Reliance Communications.

20. In rebuttal, Mr. Praveen Kumar, Assistant Manager of the State Bank of India has stated that the Vijaya Building, which the bank has taken on rent, was not healthy and habitable on account of continuous seepages and damages in the walls etc. According to him, even the floors were damaged and were not repaired. He also claimed that the staircases were also damaged and were not got repaired and the air-conditioning plant was not functional since 1999-2000. He has further stated that M/s Mitsubishi Corporation India Pvt. Ltd., which had taken

second floor of the building on rent, found the rent to be exorbitant and vacated the premises even before completing the term of the lease dated 19th March, 1997 and shifted to another premises. He also stated that the rent of Rs.125/- per sq.ft. per month being paid by Vijaya Bank was inclusive of house tax and all other taxes and also had separate air-conditioning system with 100% power back up facility. Mr. Om Prakash Khatri has corroborated the testimony of Mr. Praveen Kumar as regards condition of the premises, which the defendant bank had taken on rent from the plaintiffs. He has also corroborated the testimony of Mr. Praveen Kumar regarding M/s Mitsubishi Corporation India Pvt. Ltd. vacating the premises, which it had taken on rent. In his cross-examination also, he maintained that there were seepages in different portions of the premises including the portion where cash used to be kept and they had to take several air-conditioners on rent. According to him, the rent of the premises, which the bank had taken on rent had gone down because of three reasons viz. (i) because the premises were not of good condition; (ii) because the rent in areas like Noida and Gurgaon were much lower and (iii) because construction of metro project was going on which started in

the year 2000-01 and continued till the year 2004.

21. As far as the upper floors are concerned, the only evidence produced by the bank is the lease deed of the premises which M/s Mitsubishi Corporation India Pvt. Ltd. had taken on rent on 19th March, 1997 from Gujral Estate Pvt. Ltd. on the second floor of Vijaya Building. The case of the defendant bank is that the rents for the commercial properties had gone down on account of a number of factors including the metro project, which started in the year 2000-01 and continued till the year 2004. PW-1 Shri I.N. Tiwari, who claims to be attorney of the plaintiffs, has admitted that the tenanted premises were let out to M/s Reliance Communications at the rate of Rs.32/- per sq.ft. per month about 1-½ years after the same were vacated by the defendant bank. The very fact that the premises were to be let out at a reduced rent, indicates that the rent prevailing in the year 2003 in respect of the upper floors could not have been Rs.100/- per sq.ft. per month as is claimed by the plaintiffs. It has come in the evidence that M/s Mitsubishi Corporation India Pvt. Ltd. had shifted to another building in the same locality and this, according to the defendant bank officials was done as M/s Mitsubishi

Corporation India Pvt. Ltd. found that the rent, which it was paying for the second floor premises in Vijaya Building was exorbitant. More importantly, the tenancy in favour of M/s Mitsubishi Corporation India Pvt. Ltd. was created on 19th March, 1997 and if the rents in the locality had gone down from the years 2000-01 onwards, the lease in terms of this company would not give a true picture of the rent prevailing in the locality in the year 2003. No lease deed entered into in or around the year 2003-04 has been produced by the plaintiffs to prove the rent prevailing at that time. No one, who may have taken any premises in this locality on rent in the year 2003-04, has been produced in the witness box. No person, who may have let out commercial premises in this locality in the year 2003-04, has been produced in the witness box. I, therefore, hold that the plaintiffs have failed to prove that the prevailing market rent in respect of the upper floors was about Rs.100/- per sq.ft. per month in the year 2003. It has, however, come in evidence that officials of the defendant bank had agreed to pay rent of Rs.45/- per sq.ft. per month for the upper floors. Though it was contended by the learned counsel for the defendant that the rent of Rs.45/- offered by the bank was inclusive of house

tax, this is not borne out from the documents filed by the parties. The correspondence available on record indicates that rent at the rate of Rs.45/- per sq.ft. per month offered by the defendant could not have been inclusive of house tax because renewal was offered on the same terms as were contained in the original lease deed and admittedly the original lease deed provided for payment of house tax by the defendant. I am, therefore, of the view that the defendant bank should pay damages for use and occupation in respect of the upper floors of Vijay Building, 17 Barakhamba Road, New Delhi at the rate of Rs.45/- per sq.ft. per month.

22. As regards ground floor portion, the only evidence produced by the plaintiffs is the lease granted by the Gujral Estate Pvt. Ltd. to Vijaya Bank. The Vijaya Bank was paying rent at the rate of Rs.125/- per sq.ft. per month, inclusive of all taxes. It has also come in the testimony of PW-3 Mr. Anil Kant Gupta, Manager, Vijaya Bank that the premises, which the Vijaya Bank taken on rent was centrally air-condition. It has come in the testimony of bank officials that the air-conditioning system of the tenanted premises was not functional after 1999-2000. It has also stated by the bank officials that 100% power back

up was provided by the landlord of the premises, which Vijaya Bank had taken on rent. Therefore, the rent which Vijaya Bank was paying to Gujral Estate Pvt. Ltd. does not reflect the true market rent, which the ground floor premises, which the defendant bank had taken on rent, would have fetched in the years 2003-04. It has, however, come in evidence that the defendant bank had offered a rent of Rs.85/- per sq.ft. per month in respect of the ground floor without air-conditioning system and rate of Rs.90/- per sq.ft. per month with air-conditioning system. Taking into consideration all the facts and circumstances of the case, I am of the considered view that the defendant bank should pay damages for use and occupation in respect of the ground floor portion of Vijaya Building at the rate of Rs.95/- per sq.ft. per month. The issue is decided accordingly.

ISSUE NO.2

23. The plaintiffs have not claimed any interest for the pre-suit period. In view of the provisions contained in Section 34 of the Code of Civil Procedure Code pendente lite and future interest is in the discretion of the Court. In the facts and circumstances of the case, I am of the view that interest should be awarded to the plaintiffs at the rate of 6%

per annum.

ISSUE NO.4

24. In view of my findings on the issues, the concerned plaintiff(s) is/are entitled to recover, from the defendant, the amount of Rs.5,78,234.08 in respect of 4th floor of Vijaya Bank subject matter of CS(OS) No.1982/2003, Rs.6,09,037.78 in respect of 6th floor and 4th floor of Vijaya Bank subject matter of CS(OS) No.1991/2003, Rs.16,12,891.84 in respect of 5th floor of Vijaya Building subject matter of CS(OS) No.1983/2003 being the difference between damages for use and occupation at the rate of Rs.45/- per sq.ft. per month and rent/damages paid by the bank at the rate of Rs.37.98 per sq.ft. per month for the period from 1st January, 2003 to 31st March, 2003 and at the rate of Rs.39.88 per sq.ft. per month for the period from 1st April,, 2003 to 2nd October, 2003 in respect of the upper floors. The plaintiff in CS(OS) No.1992/2003 is also entitled to recover from the defendant an amount of Rs.25,83,120/- in respect of ground floor of Vijaya Building, which is the subject matter of this suit, being the difference between damages for use and occupation at the rate of Rs.95/- per sq.ft. per month and rent/damages paid by the bank at the

rate of Rs.65.60 per sq.ft. per month for the period from 1st March, 2003 to 31st March, 2003 and at the rate of Rs.68.60 per sq.ft. per month for the period from 1st April, 2003 to 29th April, 2004 in respect of the ground floor. This is subject to the plaintiffs paying prescribed court fee on the aforesaid amounts within four weeks from the date of this order.

ORDER

A decree for recovery of Rs.5,78,234.08, in CS(OS) No.1982/2003, Rs.6,09,037.78 in CS(OS) No.1991/2003, Rs.16,12,891.84 in CS(OS) No. 1983/2003 and Rs.25,83,120/- in CS(OS) No.1992/2003 with proportionate costs is hereby passed in favour of the plaintiff(s) in the suit and against the defendant State Bank of India with pendente lite and future interest at the rate of 6% per annum. The plaintiffs are directed to pay the deficient court fee within four weeks from the date of this judgment.

(V.K. JAIN)
JUDGE

MARCH 30, 2011
‘sn/vkm’