

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

% *Date of Judgment: 14.03.2011*

+ **RSA No. 45/2011 & CM Appl Nos. 4768/2011 & 4769/2011**

SH. RAM DEV

.....Appellant

Through: Mr. G.S. Sharma, Advocate

Versus

SH. LEKH RAJ

.....Respondent

Through: None.

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)

1. This appeal has impugned the judgment and decree dated 22.11.2010 which has endorsed the finding of the trial judge dated 18.09.2010 whereby the suit filed by the plaintiff, Lekh Raj, for recovery of possession and damages/ mesne profits and permanent qua the suit property bearing no. A-2/19, (ground floor), Khajoori Khas, Delhi- 110094 had been decreed in his favour. Along with the decree of possession, decree for damages at the rate of ₹ 8,000/- per month had also been granted.

2. This is a second appeal. Possession of the suit property has since been handed over to the respondent. This appeal has only impugned the finding of the courts below wherein damages have been awarded at the rate of ₹ 8000/- per month. It has been

pointed out that the rent of the suit premises was ₹ 3850/- as has been held by the two fact finding courts; damages at the exorbitant rate of ₹ 8000/- per month was un-called for. It is submitted out that this has raised the substantial question of law.

3. Record shows otherwise. Issues had been framed. Relevant issue on damages had been framed as Issue no. 3. It reads as follows:-

“(iii) Whether the plaintiff is entitled for decree of damamges/mesne profits @ ₹ 8000/- per month as prayed in the suit? OPP”

4. The findings of the trial judge noting the testimony of PW -1 and PW-2 as also the cross-examination of DW-1 had been adverted to.

The said finding reads as follows:-

“Now coming to issue no.3, the plaintiff has stated in the plaint that after the termination of the tenancy of the defendant by way of a notice dt. 29.03.09 proved on record as Ex. PW 1/8 by the plaintiff, the status of the defendant was that of a trespasser only and he was holding the suit property thereafter, unauthorizedly and illegally and as such the defendant is liable to pay damages for use and occupation @ ₹ 8000/- per month which is the prevailing market rate of rent w.e.f. 1st of May 2009.

Whereas on the other hand, Ld. Counsel for the defendant in the written final arguments has stated in so many words that the present suit is barred by Section 50 of the DRC Act and the tenancy of the defendant was not terminated by the plaintiff at all. It has been further argued by Ld. Counsel for the defendant that the plaintiff has stated in his cross-examination that the defendant Ram Dev is still the tenant in the tenanted premises and as such the suit is liable to be dismissed on this ground alone. It has been further argued that the plaintiff in the cross-examination has further stated that the legal notice dt. 29.03.09 was sent to the defendant only to initiate the legal proceedings of the present case and nothing more. It has been further argued that the said notice does not amount to termination of the tenancy of the defendant.

Ld. counsel for the plaintiff in the written

final arguments has argued that the damages/mesne profits @ ₹ 8000/- per month are claimed by the plaintiff and PW 1 has deposed to this effect in his examination-in-chief and the same goes unrebutted. It has been further argued that the plaintiff has been able to prove that the damages/mesne profits of the suit property are more than ₹ 8000/- per month at present and the same may be granted w.e.f. 01.05.2009.

It has to be seen that in para no. 11 of his affidavit Ex. P1, PW1 i.e. the plaintiff has clearly stated that the defendant 1 is liable to pay damages for use and occupation w.e.f 01.05.2009 @ Rs. 8000/- per month which is the prevailing market rent. The above said examination-in-chief of PW 1 has not been rebutted in the cross examination at all. Not even a single suggestion has been put to this witness who is the plaintiff himself during the entire cross-examination carried on by Ld. Counsel for the defendant. The settled law is that if a part of the examination-in-chief is not challenged during the cross examination, then the same stand admitted. Otherwise also PW2 has stated in his cross examination that the present market rent of a shop similar to his shop is Rs. 3500/-. The defendant in his own cross examination has admitted it to be correct that the area of the shop is more than double as compared to the adjoining shop in the said property.

In the light of the above said discussion. I am of the opinion that the plaintiff has been able to prove on record that he is entitled for decree of damages/mesne profits @ Rs. 8000/- per month w.e.f. 01.05.2009 as prayed for by the plaintiff in the plaint and accordingly issue no. 3 is also decided in favour of the plaintiff and against the defendant.

5. This finding of the trial judge has been endorsed by the first appellate court. The finding returned is as follows:

"On rest of the issues no arguments have been advanced in appeal because they arise out of the decision of issue no. 1. It is pertinent to noted that Ld. Civil Judge awarded arrears of rent at the rate of Rs.3500/- per month w.e.f. 1.5.2007 till 30.9.2007 and further at the rate of Rs. 3850/- per month w.e.f. 1.5.2007 till 30.9.2007. He further awarded damages at the rate of Rs. 8000/- per month w.e.f. 1.5.2009 till the date of handing over the suit premises to the respondent/plaintiff by the appellant/defendant. I find no infirmity in these findings. The damages awarded to the respondent/plaintiff are not at all excessive keeping in view the present scenario of high rentals in Delhi. Hence the findings of the trial court on all the issues are upheld."

6. Even in the grounds of appeal before the first appellate court, in the entire body of the appeal, damages awarded at the rate of ₹ 8000/- per month by the trial judge had not been assailed. Today, before this court a certified copy of the testimony of DW-3 has been placed on record. This version of DW-3 i.e. Sh. Jai Singh does not in any manner deal with the damages, it has only spoken about the rate of rent of the said premises. Testimony of PW1 and PW 2 wherein both had testified that damages at the rate of ₹8000/- per month as per the prevailing market rate had been appreciated. DW-1 had also admitted that shop premises are double the area of a shop which was fetching a market rent of ₹3,500/- per month. These fact findings are in no manner perverse; they call for no interference.

7. No substantial question of law having been arisen, the appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

**MARCH 14, 2011
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