

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

+

%

18th May, 2011

1. RFA No. 210/2011

M/s BHARAT SANCHAR NIGAM LTD

..... Appellant

Through: Mr. Sharat Kapoor and Mr. Noor Alam,
Advocates.

VERSUS

CINERAMA PRIVATE LTD.

..... Respondent

Through: Mr. Naveen Kr. Chaudhary and Mr. Shiv
B. Chetry, Advocates.

2. RFA No. 212/2011

M/s BHARAT SANCHAR NIGAM LTD

..... Appellant

Through: Mr. Sharat Kapoor and Mr. Noor Alam,
Advocates.

VERSUS

CINERAMA PRIVATE LTD.

..... Respondent

Through: Mr. Naveen Kr. Chaudhary and Mr. Shiv
B. Chetry, Advocates.

3. RFA No. 213/2011

M/s BHARAT SANCHAR NIGAM LTD

..... Appellant

Through: Mr. Sharat Kapoor and Mr. Noor Alam,
Advocates.

VERSUS

CINERAMA PRIVATE LTD. Respondent
Through: Mr. Naveen Kr. Chaudhary and Mr. Shiv
B. Chetry, Advocates.

4. RFA No. 209/2011

M/s BHARAT SANCHAR NIGAM LTD Appellant
Through: Mr. Sharat Kapoor and Mr. Noor Alam,
Advocates.

VERSUS

CINERAMA PRIVATE LTD. Respondent
Through: Mr. Naveen Kr. Chaudhary and Mr. Shiv
B. Chetry, Advocates.

5. RFA No. 211/2011

M/s BHARAT SANCHAR NIGAM LTD Appellant
Through: Mr. Sharat Kapoor and Mr. Noor Alam,
Advocates.

VERSUS

CINERAMA PRIVATE LTD. Respondent
Through: Mr. Naveen Kr. Chaudhary and Mr. Shiv
B. Chetry, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

RFA No.210/2011 & CM No. 7344/2011 (Stay) & 7872/2011 (Cross objections)

RFA No.212/2011 & CM No. 7352/2011 (Stay) & 7866/2011 (Cross objections)

RFA No.213/2011 & CM No. 7360/2011 (Stay) & 7932/2011 (Cross objections)

RFA No.209/2011 & CM No. 7329/2011 (Stay) & 7896/2011 (Cross objections)

RFA No.211/2011 & CM No. 7348/2011 (Stay) & 7891/2011 (Cross objections)

1. The challenge by means of these appeals and the cross objections, filed by both parties to the suit, is to certain limited aspects of the impugned judgment and decree of possession with mesne profits and interest. The appellant/defendant claims that firstly it should not be held liable to pay interest on arrears of rent and secondly that the mesne profits which have been awarded from 14.2.2007 to 31.7.2007 be reduced to Rs.95 per sq. ft. from Rs.125 per sq. ft. The cross objector/respondent/plaintiff on the other hand relying upon the lease deed Ex.PW2/2, which is a registered lease deed for the same building of November, 2007, prays for enhancement in the rate of mesne profits for the period 14.2.2007 to 31.7.2007 i.e. from the date of termination of tenancy to the date of handing over possession.

2. So far as the relief claimed by the appellant that no interest should at all be payable, I find that the prayer is misconceived because to the extent monies/amounts are not paid when due to a due person, the same results in a loss to the person entitled to such monies towards interest which would have been earned if the monies would have been paid on time to the person. Looking at the aspect in another manner since the monies remained in the

pocket of the appellant it would have earned interest on these amounts and thus it is logical that they return such benefit to the respondent/landlord. That interest ought to be paid on the arrears of rent is also now statutorily recognized vide Section 26 of the Delhi Rent Control Act, 1958 wherein, the rate of interest of 15% per annum is payable on the arrears of rent. The Supreme Court has also been granting interest on the arrears of rent/mesne profits which are decreed and one such judgment is the decision in the case of **Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298**. Accordingly, considering the provision of Section 26 of the Delhi Rent Control Act and the decision in the case of **Indian Oil Corporation (supra)**, I find that the trial court was completely justified in granting interest on that portion of the rent which was not paid on the respective due dates.

3. Related to this aspect of payment of interest is the prayer of the appellant that since rate of interest at 9% per annum has been awarded after termination of tenancy on the mesne profits awarded, it is this same rate which ought to have been awarded even for the prior period. I find strength in this argument inasmuch as the Supreme Court in the recent chain of judgments reported as **Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700 & Krishna**

Bhagya Jala Nigam Ltd. v. G.Harischandra, 2007 (2) SCC 720 and State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC) has held that the courts must take note of the changed economic scenario and the consistent fall in the rates of interest, and ought not to grant high rates of interest. I, therefore, feel that the appeals should be partially allowed by modifying the rate of interest which was granted at 12% per annum from 13.12.2007 by reducing the same to 9% per annum simple and which rate will serve the ends of justice. It is clarified that rate of interest of 9% per annum simple on the damages in any case will also be payable to the respondent in terms of the impugned judgment and decree for the period after termination of tenancy.

4. So far as the claim of the appellant for reduction in the rate of mesne profits is concerned to Rs.95 per sq. ft, instead of 125 per sq. ft., this issue can be dealt with along with the cross objections inasmuch as in the cross objections, the respondent/plaintiff has prayed for a higher rate of mesne profits. In this regard, learned counsel for the respondent has drawn my attention to Ex.PW2/2, which is a registered lease deed for the same premises, viz. Statesman House, Barakhamba Road, New Delhi and as per which in November 2007 the rate of rent of Rs. 295/- per sq. ft. has been fixed. If therefore the rate of rent contractually is proved to be Rs.295/- in November, 2007 the trial court thus ought not to have reduced the rate of mesne profits to 125 per sq. ft. for the near period of February to July 2007

although the trial court had itself relied upon lease deed Ex.PW2/2. Surely, it cannot be said that the contractual rent would be Rs.295/- per sq. ft. per month in November 2007, but for a few months before it would only be 125 sq. ft. per month i.e. from February to July 2007. Even if, I consider a substantial increase in rate of rent, i.e.33% in one year, and considering that the contractual rent is Rs.295 per sq. ft. per month in November, 2007, the rate of rent/mesne profits should be at least Rs.200 per sq. ft per month from February, 2007 to July, 2007. Accordingly, I partly accept the cross objections and enhance the rate of mesne profits from 14.2.2007 to 31.7.2007 to Rs.200 per sq. ft per month.

5. The appeals and the cross objections are disposed of by reducing the rate of interest of 12% per annum to 9% per annum from 13.12.2004 to 12.2.2007 and increasing the rate of mesne profits from 14.2.2007 to 31.7.2007, to Rs.200 per sq. ft. per month. Rest of the judgment will operate as it is. Decree sheet be prepared. Appeals are accordingly disposed of.

May 18, 2011
ib

VALMIKI J. MEHTA, J.