

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

+ **RFA No.250/2010**

% **19th October, 2011**

M/S JASBIR SINGH CHADHA (HUF) & ANR. Appellants
Through: Mr. Ravinder Agarwal, Advocate.

versus

M/S JEEVAN DIESELS & ELECTRICALS LTD. Respondent
Through: Mr. Punit Vinay, Advocate.

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)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 6.1.2010 whereby the issue of entitlement of mesne profits to the appellants/landlords was decided. By the impugned judgment, the appellants/landlords were only granted the percentage increase in terms of the lease deed between the parties and not the market rate of rent as mesne profits, and the latter are therefore claimed in this appeal.

2. The admitted facts are that the respondent was a tenant of the appellants with respect to the premises bearing No.205, 2nd Floor, Arunachal Building, 19, Barakhambha Road, New Delhi w.e.f. 7.7.2003 at a monthly rent of Rs.23,200/- per month. This tenancy although expired by efflux of time, the same was however as a matter of abundant caution terminated by a notice dated 15.7.2006. The tenancy was terminated w.e.f. 31.8.2006 and therefore mesne profits would be payable from 1.9.2006. Admittedly, the premises were vacated on 31.8.2011 and therefore mesne profits will be payable till 31.8.2011 i.e. the period for which mesne profits are to be granted is from 1.9.2006 to 31.8.2011. The impugned judgment, if at all the same can be categorized as a 'judgment', is a one paragraph judgment which reads as under:-

“Present: Counsel for the parties.

Heard the arguments addressed on behalf of counsel for the parties on the issue *“To what amount plaintiff is entitled to”*? Plaintiff examined in support of its case PW-1 Shri Sunil Srivastava, LDC, Sub Registrar-VII, Vikas Sadan, INA, New Delhi and brought on record the certified copy of lease deed Ex.PW-1/1 to PW-1/6. No evidence was lead by the defendant. It is the sole contention of counsel for defendant that as per Lease Deed executed between parties, rent was to increase by 20% after every three years. However, this lease deed is unregistered Lease Deed though relied upon by the plaintiff and can not be looked into. Hence, the certified copy Lease Deed brought on record by the plaintiff are not properly proved and executed and the same has not been examined

by the plaintiff. However, as agreed by counsel for defendant, issue for mesne profits is decided and it is held that looking into the lease for collateral purpose, whereby parties have agreed to increase or rent by 20% after every three years, plaintiff is entitled to mesne profits of Rs.23,000/- plus 20% increased per month from 1st August till July 2009 and further increase of 20% from August, 2009 till the defendant continue in possession. However, plaintiff will pay the court fees on the amount decreed in his favour. Decree sheet be prepared and file be consigned to Record Room."

3. The facts of the case as per the record of the trial Court shows that the appellants/landlords summoned lease deeds of different premises situated in the same area i.e. Connaught Place, New Delhi and proved various lease deeds Ex.PW1/1 to Ex.PW1/6 in order to prove its case for mesne profits at market rate of rent.

4. It is at this stage relevant to note that whereas the affirmative evidence was led by the appellants/landlords, no evidence in rebuttal whatsoever was led by the respondent/tenant. Thus, ordinarily unless there are other valid legal reasons, the affirmative evidence of the appellants should be accepted, of course, subject to caveat of the Court ensuring the credibility of the evidence.

5. The trial Court in the impugned judgment has refused to refer to the certified copies of the lease deeds on the ground that the same were not said to be properly proved and executed. On this conclusion the trial Court is wrong because once a document is

exhibited during the course of trial in the suit, and no objection is raised on the same at the time of exhibition of same, nothing further is required to be done. It is not open to the opposite party subsequently to contend that the documents were not validly exhibited. This is the ratio of decision of the Supreme Court in the case of ***R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple 2003 (8) SCC 752.*** Admittedly, no objection was raised on behalf of the respondent/tenant at the time of exhibition of these documents and therefore the trial Court was not justified in discarding the leased deeds in question.

6. The issue therefore is as per the evidence of the lease deeds filed by the appellants what rate of mesne profits should be awarded to the appellants. Out of the various lease deeds, the relevant lease deeds are Ex.PW1/2 to Ex.PW1/4 being of May, 2006 and since the rent is to be proved as on 1.9.2006. The rate of rent per square feet in the lease deed Ex.PW1/2 is Rs.140 per sq. feet. In the lease deed Ex.PW1/3 the rate of rent is Rs.95/- per sq. feet and in the lease deed Ex.PW1/4 it is Rs.105/- per sq. feet. Whereas the suit premises are situated on the second floor, the lease deeds are with respect to the premises which are situated on the 13, 12 and 11th floor respectively. The flats which are the subject matter of the lease deeds

Ex.PW1/2 to Ex.PW1/4 are in the same area where the subject/lease premises are situated i.e. at Connaught Place, New Delhi. Since the rent in the lease deeds vary from Rs.95/- per sq. feet to Rs.140/- per sq. feet, I would to be on the safe side seek to take the lowest of that figure of Rs.95/- per sq. feet so as to award such rate of mesne profits. I am taking this lowest figure because one does not know for sure what is the difference in the conditions with respect to the flats which are subject matter of the lease deeds Ex.PW1/2 to Ex.PW1/4 as compared to the subject flats/lease premises. I must admit that an honest guesswork has to be done by the Courts when mesne profits are to be calculated, and therefore taking the mesne profits at the most conservative rates, the appellants/landlords is entitled to mesne profits @ Rs.95/- per sq. feet from 1.9.2006 to 31.8.2011.

7. A landlord is also entitled to interest on arrears of mesne profits. This issue is no longer res integra and has been decided by this Court in the judgment reported as ***Bharat Sanchar Nigam Ltd. Vs. Cinerama Private Ltd. 180 (2011) DLT 292.*** In this decision, I have relied upon the judgment of the Supreme Court in the case of ***Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298*** and in which decision the Supreme Court has allowed interest on arrears of mesne profits. I therefore hold that appellants are entitled to interest

on the mesne profits @ 12% simple and which interest will be payable from the end of the month from which the mesne profits are payable by the respondent/tenant to the appellants/landlords. I may note that as per Section 26 of the Delhi Rent Control Act, 1958 interest is granted @ 15% per annum simple on arrears of rent. I am however allowing interest @ 12% per annum simple on the arrears of mesne profits.

8. In case, the respondent/tenant has paid any amounts to the landlords during this period from 1.9.2006 to 31.8.2011 towards use and occupation charges, the appellants/landlords will be bound to give adjustment for such charges which have been received by him.

9. In view of the above, the appeal is allowed. The appellants/plaintiffs are granted mesne profits @ Rs.95/- per sq. feet from 1.9.2006 to 31.8.2011. The appellants will also be entitled to interest @ 12% per annum simple from the end of the month for which the mesne profits will be payable. Parties are left to bear their own costs. Decree sheet be prepared on filing of the Court fee on the amounts of arrears of mesne profits with interest. Appeal is disposed of accordingly.

VALMIKI J. MEHTA,J

OCTOBER 19, 2011
Ne

RFA No.250/2010

Page 6 of 6