

M/S. ROSHAN LAL VEGETABLE
 PRODUCTS PVT. LTD. Plaintiff
 Through : Mr. Tanveer A. Mir, Adv.

versus

M/S. PARAM INTERNATIONAL & ANR Defendants
 Through : None.

CORAM :-**HON'BLE MR. JUSTICE J.R. MIDHA**

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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 the Digest? | YES |

J.R. MIDHA, J. (Oral)

1. The plaintiff has filed this suit for possession and mesne profits in respect of the property bearing No.F-90/12, Okhla Industrial Area, Phase-I, New Delhi built over land admeasuring 1353 sqr.yrds., hereinafter referred to as the 'suit property'.
2. The suit property was let out by the plaintiff to the defendant vide two licence agreements – Ex.PW1/2 and Ex.PW1/3 for a total monthly rental of ₹72,000/- (₹32,000/- towards the licence fee and ₹40,000/- towards fee for the facilities) for a period of three years with effect from 1st February, 2004. The defendants handed over six cheques to the plaintiff at the time of taking over the vacant possession of

the suit property. However, the said cheques were dishonoured. The plaintiff terminated the defendants lease vide notice Ex.PW1/11 dated 31st March, 2005 and thereafter, filed the present suit claiming the possession and recovery of rent/mesne profits from the defendants.

3. Vide order dated 7th February, 2007, the decree of possession was passed in favour of the plaintiff and against the defendants in pursuance to which the plaintiff got back the possession on 2nd April, 2007. With respect to the claim for rent and mesne profits, the plaintiff was directed to lead the evidence.

4. The plaintiff is claiming rent for the period 1st February, 2004 to 13th May, 2005 at the rate of ₹72,000/- per month and mesne profits at the rate of ₹1,52,000/- per month with effect from 14th May, 2005.

5. The defendants were proceeded ex-parte vide order dated 6th August, 2010. The plaintiff has filed the evidence by way of affidavit. The plaintiff has deposed in para 18 of the affidavit by way of evidence that the monthly rentals of the suit property have doubled from the date of signing the lease agreement and therefore, the plaintiff be awarded the mesne profits at the rate of ₹1,52,000/- per month.

6. When a lease comes to an end by efflux of time, or by notice of termination, or if there be a breach and the lessee's rights are forfeited, the lessee becomes a tenant at sufferance, and it becomes the duty of the lessee under Section 108(q) of

the Transfer of Property Act to restore possession to the lessor forthwith. (Raptakos Brett & Co. Ltd. vs Ganesh Property AIR 1998 SC 3085).

7. By not vacating and voluntarily handing over possession to the lessor, a lessee invites upon himself the liability towards mesne profits/damages. In Union of India v. Wing Commander R.R. Hingorani, AIR 1987 SC 808, the Hon'ble Supreme Court was pleased to hold in para 8:

“... ... The respondent retained the flat in question at his own peril with full knowledge of the consequences. He was bound by the declaration to abide by the Allotment Rules and was clearly liable under SR 317-B-22 to pay damages equal to the market rent for the period of his unauthorised occupation. ...”

8. The liability for damages arises out of the lessee's own wrongful act. A person doing something with knowledge of its adverse consequences must face the consequences. However, it is an impression harboured by some that it will be cheaper to force the lessor to go to Court than to hire alternate accommodation, and that encourages litigation.

9. Both to do justice and to remove the factor of this difference as encouraging disputes and court delays, it is necessary that courts must assess mesne profits at a figure which closely resembles the rate at which the premises in question could have been let or the rate at which the lessee could have hired similar premises, i.e., prevalent market rate of rent.

10. On the question of evidence for assessment of mesne profits, the following decisions have been noted:

- (i) National Radio & Electronic Co. Ltd. v. Motion Pictures Association, 122 (2005) DLT 629
- (ii) UCO Bank v. Vyas Aqua Products Pvt. Ltd., RFA No. 564/2005 decided by the Division Bench of the Delhi High Court on 10.10.2006
- (iii) M.R. Sahni v. Doris Randhawa, AIR 2008 Delhi 110 = 149 (2008) DLT 635
- (iv) Shakti Vats v. Dr. Fatima Raja, RSA 136 of 2008 decided by the Delhi High Court on 3.05.2008
- (v) Umesh Mediratta v. State Bank of Indore, 2008 (106) DRJ 745
- (vi) Sonia and Co. (P) Ltd. v. Saboo Cylinders (P) Ltd, CS(OS) No.626/2004 decided by the Delhi High Court on 20.01.2009
- (vii) Nawal Kishore Gupta v. Employees State Insurance Corporation, R.F.A. No. 269 of 1996 decided by the Delhi High Court on 20.05.2009
- (viii) Consep India Pvt. Ltd. v. CEPCO Industries Pvt. Ltd., RFA 329/2007 decided by the Delhi High Court on 26.03.2010
- (ix) Punjab National Bank v. Delhi Properties, RFA 580 of 1999 decided by the Delhi High Court on 10.01.2011

11. From these decisions, it is clear that for assessing mesne profits, judicial notice can be taken of the prevailing rents and that an element of guess work is always involved.

12. Once some evidence has been adduced by the plaintiff as to the prevailing rate and judicial notice taken as supplementing that, the burden shifts to the defendant to establish his version as to the prevailing rents, or the rent at which similar premises were being leased out during the relevant period. He has also to prove the prevailing rate as being not what the lessor seeks to prove, but the rate which he

contends it to be. It is on weighing the two that the Court determines the correct figure. The defendant's failure to adduce evidence to rebut leaves the Court free to draw an appropriate inference, and pass orders.

13. If premises were available at a cheaper rate than that being claimed by the lessor, the defendant always had the option of vacating and shifting to such cheaper premises. While it is advisable that sample leases are brought on record, the practical difficulties of a plaintiff in getting hold of contemporaneous leases cannot be ignored, and the non-bringing of these is not always fatal. It is on an overall conspectus of all these factors that the Court decides the rate of mesne profits. The court has to arrive at a figure that is no less than that at which the lessor could have let or the lessee could have hired similar premises.

14. These being the settled principles, it needs to be considered whether by applying these principles to the facts of this case, the plaintiff is entitled to mesne profits higher than ₹72,000/- as fixed by the original lease / licence. In the present case, the lease / licence dated 1st February, 2004, and it was for three years, i.e., from 1st February, 2004 till 31st January, 2007. The possession was given back on 2nd April, 2007, i.e., about two months later than the date originally fixed for expiry. If after the date of termination on 13th May, 2005 and till vacating of the premises on 2nd April, 2007, there had been any special or unusual rise in the prevailing rents, then upon proof

of such unusual rise within that period, an additional sum as mesne profits would have been payable. The affidavit of evidence filed by the plaintiff says virtually nothing. No evidence as such has been adduced, let alone a specific instance, even a newspaper report of abnormal increase in this period has not been filed. In any case, the period here is too small to apply the principle of taking judicial notice of the rise in the rents. It would have been a different matter if the possession was still with the Defendants or the period was longer.

15. In this view of the matter, the claim of the plaintiff for mesne profits at ₹1,52,000/- per month, i.e., ₹80,000/- beyond ₹72,000/- is rejected and the mesne profits are allowed only at ₹72,000/- per month.

16. As far as the form for making a claim for mesne profits, and interest on mesne profits, are concerned, there is a difference between a claim for the period prior to the suit and a claim for the period subsequent to the suit. However, by the Code of Civil Procedure (Amendment) Act, 1976, clause (b) of sub-rule(1) had been redrafted in two clauses (b) and (ba); (b) for rents and (ba) for mesne profits. The Court may either order a specific amount or it may order an inquiry under Order XX Rule 12 CPC and then on the inquiry being completed, pass appropriate orders. The Court fees on the claim for pendente lite mesne profits is to be paid before framing the decree. Regarding interest on mesne profits, Section 2(12) of the CPC

which defines mesne profits, itself includes interest.

17. The present suit was filed on 10th January, 2006. Regarding interest, the claim is vague. Therefore, on the mesne profits for the period prior to the suit, interest is not allowed. However, the grant of pendente lite mesne profits and interest thereon is always in the jurisdiction of the court. (Fateh Chand v. Balkishan Das AIR 1963 SC 1405 : [1964] 1 SCR 515; Mahant Narayana Dasjee Varu v. Board of Trustees AIR 1965 SC 1231; Lucy Kochuvareed v. P. Mariappa Gounder AIR 1979 SC 1214; and Tarquino Raul Henriques v. Damodar Mangalji and Co. Pvt. Ltd AIR 1989 Bombay 309).

18. In the result, the suit is decreed in favour of the plaintiff and against the defendant for recovery on the following amounts:-

- (i) Licence fee for the period 1st February, 2004 to 13th May, 2005 [16 months 13 days] @ ₹72,000 p.m. = ₹11,83,000/-.
- (ii) Mesne profits for the period 14th May, 2005 to 10th January, 2006, 7 months 27 days] @ ₹72,000 p.m. = ₹4,96,000/-.
- (iii) The security, if any, lying with the plaintiff is treated as payment as of the date of the suit. The defendant has paid ₹2.08 lakhs to the plaintiff during the pendency of the suit which shall be adjusted towards the decretal amount as on the date of payment.

- (iv) The plaintiff shall also have interest on ₹16,79,000/-, less the amount paid/adjusted, from the date of the suit till the date of the decree @ 9% p.a., and thereafter, the plaintiff shall have future interest on the principal sum @ 6% per annum till payment.
- (v) In so far as the claim for mesne profits for the period pendente lite, i.e. the period after 10th January, 2006 and till the vacation of the premises (2nd April, 2007), is concerned, the suit is decreed as under:
 - (a) Mesne profits for the period 10th January, 2006 to 2nd April, 2007 [15 months 24 days] @ ₹72,000 p.m. = ₹11,37,600/-.
 - (b) The plaintiff is awarded interest @ 9% p.a. on the mesne profits from the date of accrual (each month) till the date of decree and thereafter as future interest on the principal sum adjudged (₹11,37,600/-) @ 6% per annum till payment.

19. The Plaintiff shall prepare a statement of account and interest in terms of this judgment duly supported by an affidavit which shall be filed with the Registry and on being verified and found correct by the Joint Registrar after notice to the plaintiff, the figures shall be included in the decree sheet. Ad-valorem court fees shall be paid on that amount, including the amount paid during the pendency of the suit, before the

decree is framed.

20. The Plaintiff is awarded costs, including the Court fees paid earlier and the Court fees to be now paid.

JANUARY 20, 2011/aj

J.R. MIDHA, J