

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

+ **RFA Nos.563/05 & 591/05**

% **12th July, 2011**

1. **RFA No.563/05**

M/S. P.E.C. LIMITED Appellant
Through: Mr. Sanjeev Narula, Advocate.

VERSUS

SH. SAMIR PRAKASH & ANOTHER Respondents
Through: Respondent No.2 in person.

2. **RFA NO.591/05**

SAURABH PRAKASH Appellant
Through: Appellant in person.

VERSUS

M/S. PROJECTS & EQUIPMENT CORP. OF INDIA LTD. & ANR..... Respondent
Through: Mr. Sanjeev Narula, Advocate for the
respondent No.1.

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? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. These three appeals are filed against the same impugned judgment dated 9.5.2005 of the trial Court. RFA No.563/05 is the appeal of the tenant and RFA Nos.591/05 and 712/05 are the appeals filed by the

landlords. RFA No.712/05 already stands dismissed for default on 15.3.2010. Whereas the landlords seek increase in the rate of mesne profits than as awarded by the impugned judgment besides increase in the rate of interest, the tenant seeks the setting aside or reduction in the rate of interest granted on the mesne profits.

2. The undisputed facts are that the company M/s. P.E.C. Limited (formally Project & Equipment Corp. of India Ltd.), a government of India enterprises, was a tenant of the premises being flat No.9H, 9th floor, Hansalaya Building, 15 Barakhamba Road, New Delhi. The covered area of the property is 1413 sq. feet. The tenancy of the tenant was terminated by a legal notice dated 5.5.1989 and the mesne profits were accordingly to be calculated from 15.6.1989 till 30.9.1998, the latter being the date on which the subject premises were vacated by the tenant. The trial Court has granted the following mesne profits:

“13. The result of the aforesaid discussion is that the plaintiff is awarded damages as under:-

- a) for the period 15.06.1989 till 14.11.1990, damages are awarded @ Rs.25/-per Sq.Ft.p.m.;
- b) from December 1990 till 30.9.1995, damages are awarded @ Rs.28.75 per Sq.Ft. p.m.; and
- c) from October 1995 till 30.09.1998 @ Rs.60/- per Sq. Ft. p.m.”

3. The aforesaid rates of mesne profits for different periods of occupation by the tenant company have been granted considering the

evidence on both sides. Whereas the landlords led evidence in the form of lease deeds Ex.PW1/1 to Ex.PW1/3 and another lease deed Ex.PW2/1, the tenant relied upon judicial pronouncements with respect to different floors of the same building in which it was the tenant under other landlords. Relevant discussion given by the trial Court is contained in paras 10 to 12 of the impugned judgment and which read as under:-

“10. Plaintiff No.2 has proved certified copies of three lease deeds in respect of the property in the neighbourhood of the property which are Ex.PW-1/2 to Ex.PW-1/3. He has further deposed that the lease deeds of the properties at Arunachal Building indicate the area of the premises in terms of super area. However, the area in the sale agreements with the builder indicate the area in terms of covered area. The suit property also indicates covered area. He, therefore, obtained from the builders of Arunachal Building, M/s. Kailash Nath & Associates, a letter dated 26.09.2000 that indicates the covered area as well as super area of the flat no.910. As per the market practice as disclosed in the letter an area indicated in terms of covered area is translated into the super area by multiplication by a factor of 1.15 to arrive at the super area. Hence, according to him the covered area of the suit property is 1413 Sq. Ft. covered area translate to 1624.95 Sq. Ft. He also filed photocopies of two other lease deeds which are marked A and B. He examined PW-2 Sh. A.K. Ojha to prove the lease deeds Ex.PW-2/1. On the other hand, defendant examined Sh. S.K. Talwar who is working as Deputy Marketing Manager posted in General Administration Division. He has deposed that as per compromise/settlement arrived at in the present case on 17.10.1995, possession of the premises was handed over to the plaintiffs on 30.09.1998. According to him the question for determination of amount payable by way of use and occupation charges for the period w.e.f. 15.06.1989 to 30.09.1995 was left open to be determined by the Court. He has referred to 12 other premises which were taken on lease from different owners in the same building and has deposed that for the period of 15.06.1989 to 30.09.1995 the defendant has been paying rent to various lessors @ Rs.9.61 to Rs.11.05 per Sq. Ft. p.m. He further deposed that some of the lessors/owners of the flats had also filed Court

cases against the defendant company in the Hon'ble High Court and Hon'ble Delhi High Court was pleased to fix the rate for use and occupation of the premises as per details given in his affidavit. Even the plaintiffs themselves at the time of filing the present case have claimed damages/mesne profits @ Rs.25/- per Sq. Ft. The amount of damages/mesne profits claimed by the plaintiff is wholly arbitrary and highly exaggerated and the plaintiff is not entitled to the same.

11. It was submitted by the plaintiff that merely because rate of Rs.25/- Sq.Ft. has been awarded in the other matters does not mean that it has to be adopted in this case also. In those cases, no evidence has been led by either party on the correct rate to be adopted as such, those decisions do not constitute precedent. Moreover, if the Court had to grant relief on the basis of the decisions given in the other case it would not have wasted its time in recording evidence. Reliance was placed on **(i) Bharat Petroleum Corporation Ltd. & Anr. Vs. N.R. Vairamani & Anr. (2004) 8 Supreme Court 579, (ii) The Divisional Controller, KSRTC Vs. Mahadeva Shetty AIR 2003 SC 4172, (iii) Punjab National Bank Vs. R.L. Vaid (2004) 7 SCC 698 and (iv) Director of Settlement Vs. M.R. Apparao 2002 (4) SCC 638** for contending that Court should not place reliance on a decision without discussing how the factual situation fits within the case and judgments of Courts are not to be construed as statutes. It was further contended that the plaintiff has led independent evidence to show that a much higher rent was available in the nearby area and as such, it was submitted that for the period 1989-90 damages @ Rs.25/- per Sq. Ft. p.m. be awarded since that was the rate as which it was claimed although much higher rate was available. From 1995 till 1998, damages be awarded @ Rs.140/- per Sq. Ft. p.m. for the remaining years, the rates may be presumed to have proceeded in linear progression between the known rates and thus could be taken at Rs.60/- per Sq. Ft. p.m. for 1991, Rs.75/- for 1992, Rs.90/- for 1993 and Rs.120 for 1994.

12. I have carefully gone through the authorities relied upon by Ld. counsel for plaintiff. With due respect, it may be mentioned that law laid down in these authorities is undisputed that the facts and circumstances of every case has to be seen while placing reliance on a particular decision. The plaintiff has filed three lease deeds Ex.PW-1/1 to Ex.PW-1/3 which are in respect of different properties. On the other hand, the defendant has placed on record certified copies of the judgment passed by Hon'ble Court in which the same property was involved and the defendant was a

tenant in respect of different flat numbers. There is no force in the plea of the plaintiff that no evidence was led by either of the parties on the amount of mesne profits in those cases. A perusal of certified copy of judgment Ex.DW-1/2 goes to show that suit was filed by Mrs. (Dr.) P.S. Bedl against the defendant in respect of Flat No.9-B, Hansalaya Building, 15 Barakhamba Road, New Delhi for possession and mesne profits. Evidence was led in regard to means profits however, Hon'ble High Court awarded mesne profits from May 1989 to February 1990 @ Rs.25/- per Sq. Ft. Ex.DW-1/3 is the certified copy of the judgment in which suit for possession against the defendant was filed by Mrs. Usha Paul in respect of Flat No.14D in the same building. Hon'ble High Court awarded damages @ Rs.25/- per Sq. Ft. from February 1989 to February 1992 and @ Rs.28.75P from February 1992 to May 1995. From June 1995 till October, 1998, damages were awarded @ Rs.60/- per Sq. Ft. p.m. Ex.DW-1/4 is the certified copy of the judgment in which suit for possession and damages was filed by Mrs. Kanti Singh against the defendant in respect of Flat No.14E in the same building and similar damages were awarded. Keeping in view the fact that all these three judgments have been passed by Hon'ble High Court in respect of the same building as such, these judgments act as binding precedent and moreover since the location and other amenities in this building are same as the suit premises therefore, the plaintiff can not get help from the lease deed Ex.PW-1/1 to Ex.PW-1/3 which are in respect of different premises. "

On the issue of interest, the trial Court has awarded interest @ 9% per annum on mesne profits awarded.

4. Learned counsel for the tenant argued that the trial Court ought not to have awarded interest on the mesne profits inasmuch as the landlords/plaintiffs took about nine years to get the evidence completed. It is argued that not only time was taken for completing the evidence, various order sheets show that original documents were not filed by the plaintiffs/landlords or list of witnesses. It is argued that in the facts of the

present case, at least the rate of interest should be at a lower rate even assuming that rate of interest has to be awarded.

5. The appellant in RFA No.591/05, who is a landlord and also an Advocate, argued his appeal in person and also replied to the arguments urged on behalf of the counsel for the tenant company. No one had appeared on behalf of the landlord in RFA Nos.712/05 (this landlord is again an Advocate and the real brother of the appellant in RFA No.591/05) and which was dismissed for default on 15.3.2010. However, all the arguments as could have been raised on behalf of the landlords have been raised by the appellant/landlord in RFA No.591/05. It is argued that the trial Court has wrongly discarded the lease deeds being Ex.PW1/1 to Ex.PW1/3 and Ex.PW2/1 which were lease deeds with respect to flats in the same area viz Connaught Place. It was also argued that the trial Court erred in wrongly granting percentage increase in mesne profits from the base period of 15.6.1989 to 14.11.1990. It was urged that though the mesne profits for this period @ Rs.25/- per month for the period from 15.6.1989 till 14.11.1990 are accepted by the landlord, however, the increase thereafter should not be percentage increase on this base rate of mesne profits, but, should be relatable to the market rate after a block of years such as three years, five years or so on.

6. In my opinion, there is hardly any ground to interfere with the impugned judgment and decree inasmuch as a civil case is decided on

balance of probabilities. Firstly, the lease deeds which have been relied upon by the landlords no doubt may be for the same area but are not of the same building in Connaught Place. Depending on the age of the building and also the condition of the building, fixtures and fittings, besides various other factors such as the location, parking space and so on, rents within an area also can substantially vary. Further, one of the lease deeds relied upon by the landlords is for an upper ground floor of the building viz. equivalent to a showroom on ground floor and which lease rental cannot be therefore considered with respect to the subject premises which are situated on the 9th floor. Even if this lease deed is considered, and which is of the building Antriksh Bhawan, Kasturba Gandhi Marg, New Delhi, rent in February, 1990 comes to Rs.41/- to Rs.42/- per sq. feet of covered area. The trial Court has therefore rightly relied upon rate of Rs.25/- per sq. feet per month of covered area for the period from 15.6.1989 to 14.11.1990. So far as the period from 1990 to 1995 is concerned, the trial Court has itself taken this as a block period and I do not find the block period should have been taken of five years instead of three years as is sought to be argued by the landlords. For this base period, for which rent has been granted @ Rs.25/- per sq. feet per month for the next block of five years, rent has been granted @ Rs.28.75/- per sq. per feet per month and which is a reasonable percentage increase. In fact, the period from 15.6.1989 to 30.9.1995 can be taken as one block period of lease because there is nothing unusual in a lease of a commercial

premises being of generally of around six years. So far as the next period from 1995 to 1998 is concerned, the trial Court has more than doubled the rent per sq. feet from Rs.28.75 per sq. feet per month to Rs.65/- per sq. feet per month. Considering that the lease deeds filed on behalf of the landlords contained wide and varied rents from about Rs.41/- per sq. feet to Rs.115/- per sq. feet, without their being evidence as to how there is similarity in the year of construction, nature of construction, similarity between the premises which are subject matter of the lease deeds and the suit property is concerned, the trial Court was justified in giving the mean figure of Rs.60/- per sq. feet per month. In fact, assuming there is any lesser rate of mesne profits granted, in my opinion, the same is compensated by the high rate of interest of 9% per annum granted on the arrears of mesne profits. I may note that 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 & State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC)*** has mandated the reduction of interest and ordinarily in the facts and circumstances of the case, rate of interest of 6/7% per annum simple would

have been adequate in the facts of the present case, however, since there is a genuine and intelligent guesswork so far as the rate of mesne profits is concerned, I do not think that I should change the delicate balance as brought out in the judgment of the trial Court by granting a particular rate of mesne profits and a particular rate of interest.

7. On the aspect that no rate of interest should be awarded on mesne profits, the argument is without any basis. This issue was recently dealt with by me while deciding a batch of RFA Nos. 209/2011 to 213/2011 decided on 18.5.2011 and para 2 of which judgment reads as under:-

“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.”

Accordingly, there is no merit in the argument as urged on behalf of the counsel for the tenant company that no mesne profits should be awarded on the arrears of mesne profits.

8. As an appellate Court, I can interfere with the judgment and decree of the trial Court only if the view as taken by the trial Court is illegal or perverse. Merely because two views are possible and one acceptable view is taken by the trial Court and which view itself is based upon balancing the entire evidence, led by both the parties in the case, would not mean that this Court has power to interfere in appeal.

9. In view of the above, none of the appeals filed, whether of the tenant, or of the landlords have any merits. The appeals are therefore dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

JULY 12, 2011
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VALMIKI J. MEHTA, J.