

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

+ **RFA No.681/2005**

% 5th December, 2011

FOOD CORPORATION OF INDIA Appellant
Through: Mr. Kamal Sawhney, Adv.

versus

SARVSHRI BAL KARAN SINGH &ORS. Respondents
Through: Mr. K.K.Rai, Sr. Adv. With
Mr. Bankey Bihari, Adv.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial Court dated 25.7.2005 decreeing the suit of the respondents/landlords/plaintiffs for possession and mesne profits at Rs.40/- per square feet for super area of 1183 square feet for the period from 1.9.1993 till 28.2.2005. The Trial Court has also granted interest on the total

amount due on the date of the decree at 6% per annum in case the amount is not paid within 8 weeks. The appellant has already vacated the suit premises and therefore the only issue which remains to be adjudicated is with respect to the mesne profits.

2. At the outset, it is agreed between the counsel for the parties that the Trial Court has wrongly recorded grant of mesne profits at Rs.40/- per square feet for the super area and it is agreed that the mesne profits would be at Rs.40/- per square feet for covered area of 962 square feet on allowing of the present appeal. It is also agreed that the period in question for which mesne profits are payable is from 1.9.1993 till 28.2.2005.

3. The facts of the case are that the appellant became a tenant of the suit premises bearing flat no.108, Dinar Bhawan, 44, Nehru Place, New Delhi at monthly rent of Rs.3,703.70 paise . The tenancy was subsequently terminated by a legal notice issued on behalf of the respondents/landlords dated 4.8.1993 and the tenancy was terminated from the midnight of 31.8.1993. Since the appellant/defendant failed to vacate the property, the subject suit for mesne profits came to be filed.

4. The appellant/defendant contested the suit and denied the rate of mesne profits. It was pleaded that rate of mesne profits should only be

Rs.5.50 per square feet inasmuch as this rate was being paid with respect to similar premises. The only issue which was argued before the Trial Court, and which has been argued before this Court also, is as to what should be the rate of mesne profits which should be awarded for the period after tenancy was terminated with effect from 1.9.1993. Incidental to this issue is also whether any mesne profits are payable from 1.9.1993 till the suit was filed, inasmuch as it is pleaded that on acceptance of the rent being paid, the appellant became month-to-month tenant and was hence not liable to pay mesne profits.

5. Before the Trial Court, the respondents/plaintiffs/landlords proved two lease deeds, Ex.PW2/1 and Ex.PW4/1, to show the rate of rents payable with respect to similar premises. The lease deed, Ex.PW2/1 was with respect to the premises being property no.95, First Floor, Nehru Place, New Delhi and with respect to which, the rent was Rs.56.18 per square feet. The lease deed in question, Ex.PW2/1 is dated 20.11.1996. The second lease deed, Ex.PW4/1 is a lease deed dated 25.2.1993 with respect to the premises being 516, Trade Tower, Nehru Place, New Delhi, and as per which, the monthly rent is fixed approximately at Rs.40/- per square feet per month.

6. I may note that there is no challenge to these lease deeds,
RFA No.681/2005

Ex.PW2/1 and Ex.PW4/1 on the ground that these lease deeds are bogus or fabricated documents or that the same were not acted upon by the concerned parties. It is also relevant to note that some amount of honest guesswork is always entailed when mesne profits have to be calculated and which mesne profits are basically rents of similar premises in the vicinity/area. The Trial Court, therefore considering the two lease deeds, which were for the same area of Nehru Place granted the mesne profits at Rs.40/- per square feet per month. A civil case is decided on balance of probabilities, and merely because two views are possible, unless the view taken by the trial Court is perverse or causes grave injustice, this Court will not interfere in appeal. I do not find any perversity or illegality causing injustice in the impugned judgment.

7. The Trial Court also rightly disbelieved the evidence led on behalf of the appellant of the rent being Rs.5.50 per square feet at the relevant time as DW-2, Sh. R.S.Bedi could not give the names of residents of Nehru Place from whom he allegedly inquired that the rate of rent was Rs.5.50 per square feet.

8. Relevant issue which has been decided is issue no. 4 by the Trial Court and the same reads as under:-

“Issue No.4:-

It was argued on behalf of plaintiffs that market rate of rent was Rs.40 per square feet during 1993 and therefore defendants are liable to pay mesne profits at the said rate. In support of his submission, CI for plaintiff had referred to two lease deeds Ex.PW2/1 and Ex.PW4/1. Counsel submitted that said lease deeds are in respect of properties situated in the same area and are also of the relevant period. Therefore, debts may be directed to pay mesne profits @ Rs.40 per sqr feet for super area of 1183 sqr. Feet w.e.f.1.9.93. On the other hand it was stated on behalf of debts that Ex.PW2/1 and PW4/1 have not been proved as per law of evidence as neither the original lease deeds were produced before the Court nor Ld CI for debts should have the opportunity to know about the nature of properties, their exact area and situation. It was also submitted that PW2 as well as PW-4 admitted in their cross examination that they had no personal knowledge about the execution of lease deeds Ex.PW2/1 and PW4/1. CI submitted that pltfes have failed to show that market rate was Rs.40/- per sqr feet during 1993. Ld CI also referred to stat3emetn of DW-1 and DW-2 wherein they have stated that debts are lessee in respect of another property no.42, Nehru Place, New Delhi at monthly rent of Rs.95,561.40 paise for the entire building consisting of basement, ground floor, first floor, second floor and third floor. Ld CL also submitted that the market rate was not more than Rs.5.50 per sqr feet at the relevant time and therefore, debts are not liable to pay any amount more than that.

The submissions made on behalf of debts that Ex.PW2/1 and PW4/1 are not proved according to law, is mis-conceived and not tenable in the eyes of law. The reason being that both documents are certified copies of lease deeds which have been regd with the office of Sub Registrar. They are public documents and are perse admissible as per provisions of India Evidence Act 1872

the argument of CL for defts that he could not have the opportunity to ascertain the exact area of the properties or the nature of properties is also without any force. The no production of original lease deeds is also of not by much consequence. PW3 Sh. N.K.Kaushik has been examined by plfffs who deposed on oath that he was dealing in sale and purchase of properties in the area in question. He identified the signatures of lessor and lessee on Ex.PW2/1. No contradiction has come on record in his cross examination. Similarly PW4 Ms. Veena Bakshi also deposed on oath that lease deed Ex.PW4/1 was executed in her presence. Thus, there is no reason to over look the said lease deeds Ec.PW2/1 and PW4/1. The locality as well as the exact area are duly mentioned in the said lease deeds and therefore, the submission of CI for defts is rejected. The statements made by DW-1 Ms. Rama Sachdeva and DW-2 Sh. R.S. Bedi to the effect that defts are tenants in respect of property no.42, Nehru Place, New Delhi is not supported by any document on record. A specific question was put in the cross examination of DW-2 regarding the existence of any document showing that property no9. 42, Nehru Place, New Delhi is on rent @ ₹95,561.40 paise to which DWs replied in negative. Moreover, it has come in the cross examination of both the DWs that they never inquired from any architect or valuer about the exact rate of rent in respect of area in question at the relevant time. DW-2 Sh.R.K.Bedi could not give the names of the residents of Nehru Place from whom the allegedly inquired about the rate of rent to be ₹5.50 per sqr feet at the relevant time. DW-2 also stated in his cross examination that he had no proof to show that market rate of rent was ₹5.50 per sqr feet at the relevant time. On the other hand, lease deed Ex.PW2/1 shows that same pertains to property no.95, Nehru Place, New Delhi and was executed on 20.11.96 by which three shops situated on the ground floor were let out at monthly rent of

₹60,000/- The total area of the said floor has been mentioned as 1065 sqr feet. In this manner, per sqr feet rent comes out to about ₹56.18. Similarly the other lease deed Ex.PW4/1 shows that same pertains to property no. 516 having super area of 638 sqr feet which was executed on 25.2.93. The same also shows that monthly rent of the said premises was more than ₹40 per sqr feet in February 1993. The pltffs in the present case have claimed mesne profits @ ₹40 per sqr feet for super area of 1183 sqr feet. The measurement of area of the demised premises is not in dispute as DW1 Ms. Rama Sachdeva has admitted in her cross examination that super area of demised premises is approximately 1183 sqr feet. Considering all these facts and in view of the aforesaid discussion the Court does not think that the rate of mesne profits @ ₹40, per sqr feet claimed by pltffs is excessive or un reasonable. Accordingly, it is held that, plftts are entitled to receive mesne profits @ ₹40 per sqr feet for super area of 1183 sqr feet w.e.f. 1.9.93 till the date of delivery of possession i.e. 28.2.05. The issue is decided accordingly.” (underlining added)

I agree with the aforesaid conclusion of the Trial Court of fixing the rate of rent at Rs.40/- per square feet in view of the evidence led on behalf of the respondents/landlords being the two lease deeds as stated above and disbelieving the evidence led on behalf of the appellant. I may once again note that it is not the case of the appellant that the lease deeds Ex.PW2/1 and Ex.PW4/1 are forged, fabricated or bogus documents.

9. Learned counsel for the appellant argued two basic points. The

first point which was argued was that the respondents after termination of
RFA No.681/2005

the tenancy accepted rent and therefore there came into existence the monthly tenancy. It is argued that therefore mesne profits are not liable to be paid. The second argument is that the Trial Court has erred in not granting adjustment to the appellant for the payments which have been made for the period for which mesne profits were granted.

10. So far as the first argument on behalf of the appellant is concerned, the same is no longer *res integra* inasmuch as it has been held by the Supreme Court in the case of ***Sarup Singh Gupta vs. Jagdish Singh & Ors. 2006 (4) SCC 205*** that if a landlord after termination of tenancy, accepts the rent, merely by acceptance of rent a new tenancy does not come into existence, and the landlord is in fact entitled to appropriate the amounts received towards charges for use and occupation. To the same effect are the observations of the Supreme Court in the case of ***Shanti Prasad Devi Vs. Shankar Mahato 2005 (5) SCC 543***. I therefore reject this argument on behalf of the appellants.

11. So far as the second argument is concerned, learned counsel for the respondents does not dispute that in case any amounts have been received by the respondents/landlords after termination of the tenancy, all such amounts which have been received by the respondents/landlords, and

obviously such amounts would have been paid by cheque, the respondents/landlords will give adjustments of such amounts which have been received.

12. At this stage, I may also dispose of CM No.5674/2007, which has been filed on behalf of the appellant under Order 41 Rule 27 CPC. The appellant seeks to set the clock back by over 15 years by seeking to lead additional evidence. Once the appellant had complete opportunity and had led evidence then now it cannot be allowed to lead additional evidence because object of Order 41 Rule 27 CPC is not to enable a litigant who has not been vigilant by leading evidence in the suit, to fill up the lacuna by again seeking to get the clock set back. The only ground which is urged on behalf of the appellant is negligence of its official who was handling the matter. Merely because a show-cause notice is issued to the officer will not mean that the requirement of law under Order 41 Rule 27 CPC will change, and which is that only such evidence which was not in the knowledge of the litigant or there are equally grave reasons, only then additional evidence will be allowed to be led. I therefore reject the application filed by the appellant for leading additional evidence.

13. The respondents/landlords have filed CM No.6347/06, which
RFA No.681/2005

are cross objections for claiming the relief of interest on mesne profits, the claim is for interest at 18% per annum.

14. That the landlords/plaintiffs are entitled to interest on mesne profits, is now well settled and a reference can be made to the decision of the Supreme Court in the case of *Indian Oil Corporation vs. Saroj Baweja 2005 (12) SCC 298*. The only issue is the rate at which the interest should be awarded. The Supreme Court in the recent chain of its judgments has directed the Courts to reduce the high rates of interests which have been granted by the Courts, and considering the facts and circumstances of the case, and also considering that I have dismissed the application under Order 41 Rule 27 CPC filed by the appellant, interest of justice will be served if the respondents are granted interest at 6% per annum simple from the date the mesne profits became payable. Interest therefore will be payable at 6% per annum simple from the first day of the next month for which the mesne profits have become payable, till the same are actually paid.

15. In view of the above, the appeal is dismissed. Cross objections are allowed by granting interest at 6% per annum simple as stated above. Parties are left to bear their own costs. Decree sheet be prepared after the respondents pay additional Court fees for the money decree today passed for
RFA No.681/2005 **Page 10 of 11**

the interest on mesne profits. Any Court fees already paid by the respondents/landlords would be liable to be adjusted. Trial Court record be sent back.

VALMIKI J. MEHTA, J

DECEMBER 05, 2011
ak