

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

% *Date of Judgment: 15.03.2011*

+ **RSA No. 154/2005**

M/S BANNER INDIA LTD. Appellant
Through: Mr.Jagdeep Anand, Advocate.

Versus

SMT.SAVITRI DEVI SIKAND (DECEASED) THROUGH LRS.
.....Respondent
Through: Mr.B.C.Pandey, Advocate for L.R.
No.1(a).
Mr.Ashish Bhagat & Mr.Abhishek
Bhagat, Advocate for L.Rs.No.1(b).
Mr.Hamilton Simpson for L.Rs.
No.1(c).

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 5.4.2005 which had endorsed the finding of the trial judge whereby the suit filed by the plaintiff Savitri Devi seeking possession and damages/mesne profits qua the suit property i.e. the property comprising of the ground floor, 26, Siri Fort Road, New Delhi had been decreed. A decree for possession had been passed in favour of the plaintiff; mesne profits @ Rs.15,000/- per month had also been awarded from 01.5.1996 till handing over of the vacant possession of the suit property.

2. It is not in dispute that the suit property had since been handed back to the plaintiff; this was in 2006 i.e. during the

pendency of this appeal. The only issue which remains to be decided is qua the rate at which the mesne profits had been awarded i.e. @Rs.15,000/- per month.

3. The second appeal had been admitted and in fact the following substantial question of law had been formulated on 13.7.2007 which reads as follows:

“Whether the appellant is liable to pay mesne profits/damages from the date of termination of his tenancy to passing of decree against him as per law cited by learned counsel for the appellant in Chander Kali and Others Vs. Jagdish Singh Thakur and Another, AIR 1977 SC 2262.

4. On behalf of the appellant, it has been urged that the findings of the two courts below are perverse and are liable to be set aside qua the grant of mesne profits @ Rs.15,000/- per month; there was no evidence with the court below who had decreed mesne profits at such a figure; it was mandatory upon the trial court to have got an enquiry conducted under the provisions of Order XX Rule 12 of the Code of Civil Procedure (hereinafter referred to as “the Code”) which mandate had not been complied with. The impugned judgment is accordingly liable to be set aside. Learned counsel for the appellant has placed reliance upon AIR 1977 SC 2262 Chander Kali and Others Vs. Jagdish Singh Thakur and Another, (2008) 3 SCC 183 Ganpati Madhav Sawant Vs. Dattur Hamadav Sawant (2001) 5 SCC 705 Deena Nath Vs. Pooran Mal, as also another judgment of this Court reported in Manu/DE3498/2010 Holiday Home Vs. R.P.Kapur Huf to substantiate this submission. Reliance has also been placed upon 162(2009) DLT 459 Kavita Gambhir vs. Hari Chand Gambhir to support his submission that future mesne profits cannot in any

manner be awarded.

5. Arguments have been heard.

6. The trial judge had framed five issues. Issue no.3 is relevant to decide this controversy; it reads as follows:

3. Whether the plaintiff is entitled to damages/mesne profits. If so, at rate and for what period? OPP

7. The finding of the trial judge returned on this count is contained in para 20 ; it reads as follows:

“20. The onus to prove this issue was upon the plaintiff. Plaintiff has claimed damages/mesne profits from 01.4.1996 to 30.4.1996 and also from 01.05.1996 till the recovery of possession. Plaintiff has examined PW-3 in order to prove lease agreement executed between M/s Singhal Diwan Properties Pvt. Ltd and M/s Wartsila Diesel India Ltd. in respect of Property No.24, Siri Fort in order to show prevalent rent in the same locality in which the disputed property is situated. PW-3 deposed that he was working as record keeper in the office of Sub-Registrar III and he was proved photocopy of lease deed as Ex.3/1 regarding lease deed with respect of adjoining property. This property consisting of three floors and is fetching rent of Rs.1,62,586/- per month. Defendant has contended that this property is fetching more rent because it is to be used for commercial purposes while, the suit property is to be used for commercial purposes only by the defendant. In the present case, after termination of the tenancy vide legal notice dtd. 02.3.1996 the defendant became an unauthorized occupant in respect of the demised premises. In the present facts and circumstances, I deem it proper to award Rs.15,000/- per month as damages/mesne profits in favour of the plaintiff and against the defendant from 01.4.1996 to 30.04.19996 and also at Rs.15,000/- per month from 01.5.1996 till handing over of the possession. This issue is decided in favour of the plaintiff and against the defendant.”

8. This finding of the trial court was confirmed in appeal. The first appellate court had returned its finding from para 21 onwards.

The relevant extract reads as follows:

“Since the tenancy of the appellant was validly determined on expiry of lease deed Ex.PW-01/2 and on 02.3.1996 he was given

a notice to vacate the said premises. Thus the appellant became unlawful user and in occupation of the suit premises. Thus, the respondent is entitled to recover damages/mesne profits for the period thereafter. The respondent has claimed the damages and mesne profits at the rate of Rs.40,000/- per month from 01.05.1996 till the recovery of the possession. To prove the said rate of damages the evidence by PW-1 Sh.S.K.Sikand and PW-3 Sh.G.C.Chopra were adduced. PW-3 has proved the lease deed dated 15.03.1995 executed between M/s Singhal Diwan Properties Pvt. Ltd and M/s Warstila Diesel India Ltd. as Ex.PW-3/1. It was contended that according to the said lease deed the surrounding premises where the suit property was situated were fetching rent of Rs.40,000/- per month. Thus the respondent is also entitled to claim the same amount from the appellant as damages/mesne profits.

22. On behalf of the appellant it was contended that the lease deed Ex.PW-3/1 is in respect of commercial premises and the three floors of the premises from the tenanted premises. Whereas in the lease of the suit premises is in respect of residential premises and that too only for ground floor. It was also contended that the learned trial court failed to form any basis for awarding damages at the rate of Rs.15,000/- per month. It was submitted that the appellant was not residing in the tenanted premises which were lying vacant and thus was not required to pay damages as it was not using the premises.

23. To support these contentions, the following judgments were cited:-

1. Chander Kali and Others Vs. Jagdish Singh Thakur and Another AIR 1977 SC 2262.
- 2.Nathumal Chandanmal and Co. Vs. Damodar Prabhat Sharma & Others 1979, Mh. L.J.
- 3.Union of India Vs. Banwari Lal & Sons (P)Ltd. (2004) 5 Supreme Court Cases 304.

24. The contentions raised on behalf of the appellant that the tenanted premises were lying vacant is without any basis. DW-1 has categorically denied the suggestions that the premises were lying vacant for the past 2-3 years. He further denied that no employee was staying at the suit premises, he rather deposed that he was residing there.

25. The judgments cited on behalf of the appellant Smt.Chander Kali and Others Vs. Jagdish Singh Thakur and another is distinguishable on facts from the facts of the present case as in the present case, the tenancy of the appellant came to an end by the efflux of time under section 111 of the Transfer of

the Property Act and appellant became a month to month tenant. Whereas in that case, the contractual tenant became a statutory tenant under the M.P. Accommodation Contract Act 1961.

26. PW-2 Stiveen Handrsen has admitted that the premises under the lease deed Ex.PW-3/1 were taken on rent for commercial purposes which comprised of three floors having covered area approximately 8,543 sq. fts. Admittedly the ground floor of the suit property had been leased out for residential purpose. But the covered area of the tenanted premises is not mentioned. Dw-1 has admitted that from the month of October, 1995, the appellant was paying rent at the rate of Rs.7,700/- per month. The respondent has failed to prove that she is entitled to damages at the rate of Rs.40,000/- per month. Thus I do not find any infirmity in the judgment of the learned trial court awarding the damages and mesne profits at the rate of Rs.15,000/- per month for the period from 01.04.1996 till the handing over of the vacant possession. Thus issue no.2,3 and 4 are correctly decided in favour of the respondent and against the appellant.

27. In Nathumal Chandanmal and Co. Vs. Damodar Prabhat Sharma & Others (supra), it was observed that "landlord mentioning specific amount as mesne profits in plaint. He is not debarred from claiming appropriate amount as he may in law establish in enquiry for determination of mesne pforits."

28. The facts of the present case are also distinguishable from the facts of the judgment Union of India Vs. Banwari Lal & Sons (P) Ltd. as in that case the Delhi Administration had requisitioned the premises under the provisions of the Requisitioning and Acquisition of immovable Property Act 1952 which lapsed on 10.03.1987. Whereas in the present case the premises were let out under a lease deed which came to an end by efflux of time."

9. There is no infirmity in this finding. It can in no manner said to be perverse. This is clearly not a case where there is no evidence. PW-1 has categorically deposed that he is entitled to damages/mesne profits qua the suit property w.e.f. 01.5.1996 @ Rs.40,000/- per month. This is the specific averment made by him in his plaint as also his deposition on oath. Last rent paid was admittedly Rs.7700/- per month. Lease has been terminated vide legal notice Ex.PW-1/4 to which reply had also been filed by the defendant Ex.PW-1/10. PW-3 was a summoned witness; he had

brought a lease agreement executed between M/s Singhal Diwan Properties Pvt. Ltd and M/s Wartsila Diesel India Ltd. qua the Property No.24, Siri Fort road; the said lease deed has been proved as Ex.PW-3/1. Admittedly this lease was for a commercial property. Ex.PW-3/1 shows that this lease agreement is dated 15.3.1995 executed qua a four storey building at 24, Siri Fort Road. The lessee had taken three floor i.e. ground floor, first floor and third floor having an area of 8543 sq. fts. at monthly rent of Rs.1,62,586/-. A security deposit of Rs.39,02,076/- has also been paid equivalent to one year rent. On expiry of two years the lessee would make a further security deposit equivalent to 12 months rent. This document had been scrutinized by the two Courts below along with the version of PW-1 and PW-3 to arrive at a fact finding that although the plaintiff had claimed damages @ Rs.40,000/- per month yet the evidence adduced in fact entitled him to mesne profits @ Rs.15,000/- per month only. This amount was payable from 01.5.1996 which was the period from which this claim was made in the plaint. There is no infirmity whatsoever in this finding.

10. The judgments relied by learned counsel for the appellant are clearly distinguishable. In Chander Kali Bail (supra) it was held that a tenant after the termination of his contractual tenancy does not become an unauthorized occupant; in Ganpati Madhav Sawant (supra) the Apex court had returned a finding that the grant of mesne profits without an enquiry under Order XX R.12 of the Code was not permissible; the Apex Court in this case had relied upon a judgment reported in AIR 1952 SC 358 Mohd.Amin Vs. Vakil Ahmad to arrive at this finding. In para 6 of this judgment it had noted that where the plaint had not made a claim for mesne profits

it could not be included within the expression “awarding possession and occupation of the property aforesaid together with all the rights appertaining thereto” without any separate prayer for mesne profits; enquiry under Order 20 Rule 12 of the Code became necessary. Facts are clearly decipherable. In Deena Nath (supra) it had been held that findings of fact can be interfered with even in a second appeal. There is dispute about this proposition, however, interference is called for only if findings of fact are perverse. The judgment of Holiday Home (supra) is also inapplicable. In that case the Court had held that the enquiry under Order XX Rule 12 of the Code is warranted where the landlord has not been able to adduce sufficient evidence; this is not so in the instant case. In Kavita Gambhir (supra) the court had in fact stated that a suit for possession can be coupled with a prayer for mesne profits; a separate suit for mesne profits and damages is not required to be filed; in this case also the court had held that where there is no sufficient material available with the Court for granting mesne profits/damages, the court has the discretion to direct an enquiry qua the said purpose. There is no dispute about these propositions.

11. In fact Order XX Rule 12 of the Code postulates this.

12. Order 20 Rule 12 of the Code reads as follows:

12. Decree for possession and mesne profits - (1)
Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

(a).....
(b).....
(ba) for the mesne profits or directing an inquiry as to such mesne profits;

13. This statutory provision envisages that a suit for recovery of immovable property can be decreed along with a decree for mesne

profits. Directing of an inquiry as to such mesne profits is in the alternate. This alternate will come into play only when there is no sufficient evidence before the court to decree the claim for the mesne profits. This was not so in the instant case.

14. Appeal is dismissed being without any merit.

INDERMEET KAUR, J.

MARCH 15, 2011
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