

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

% *Date of Judgment: 21.03.2011*

+ **RSA No.68/2006**

LT.COL.JASPAL SINGH Appellant
Through: Mr.Amit S.Chadha, Sr.Advocate
with Mr.Naveen Sharma,
Advocate.

Versus

NATIONAL THERMAL POWER CORPORATION LTD.
.....Respondent.
Through: Mr.Vishwa Bhushan Arya,
Advocate.

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 5.11.2005 which had endorsed the findings of the trial judge dated 30.4.1998. Trial judge vide the judgment and decree dated 30.4.1998 had granted damages/mesne profit to the plaintiff qua the suit property i.e. premises bearing No.101-102, first floor, in the multi storey building No.62-63, Nehru Place, New Delhi for the period 10.8.1995 to 06.4.1998 @ ₹40/- per sq. ft. along with interest @ 24% per annum. The impugned judgment had modified this finding. The damages/mesne profits had been granted @ ₹10/- per sq.ft. This judgment is the subject matter of the present

appeal. It is not in dispute that the suit premises has since been handed back by the defendant to the plaintiff. The period for which mesne profits has been claimed is also not in dispute i.e. 10.8.1005 to 06.4.1998.

2. Although there is no formal order of admission, the following substantial question of law was formulated on 24.4.2008:

“Whether the learned Appellate Court was justified in reversing the findings of the learned Trial Judge by giving precedents to lease deeds pertaining to renewal of leases in the same building viz-a-viz lease deeds of flats let out for the first time in adjoining buildings.”

3. The appellant was the plaintiff before the trial court. Apart from the testimony of PW-1 and PW-2 he had proved on record a registered lease deed Ex.PW-2/1 dated 01.11.1995 wherein adjoining premises on the third floor had been leased out at ₹40/- per sq. ft. per month. Relevant would it be to examine the evidence led by the plaintiff. PW-1 had on oath deposed that the lease of the defendant had been terminated vide legal notice Ex.PW-1/7 terminating the tenancy of the defendant w.e.f. 09.8.1995. He had claimed damages at the market rate which as per his version in 1995 would be ₹60/- per sq. ft. per month. PW-2 had proved a registered lease deed dated 01.11.1995 executed between one Anil Kumar Dhall and M/s Modi Rubber Ltd. wherein flat No.302 on the third floor, Hemkunt Tower, 98 Nehru Place has been leased out at a rent of ₹17,600/- per month which admittedly is approximately ₹40/- per sq. ft. per month.

4. Per contra, the defendant had also produced two witnesses in defence. He had deposed that the rate in 1995 is ₹7/- per sq.ft. per month approximately and lease qua the adjoining properties had been executed for ₹7.17 per sq.ft. per month and ₹9.95 per sq. ft.

per month. He had proved four documents Mark G to H which were lease of adjoining places taken on leases by the NTPC which are ranging from December 1995 to August 1996; the rate of rent as per these documents is between ₹7/- to ₹9/- per sq. ft. per month. These are supplementary leases.

5. The vehement contention of the appellant is that what has to be paid for unauthorized use and occupation is mesne profits and damages which has to be assessed as per the market rate of rent. It is submitted that both the concurrent findings of fact given by the courts below have given different quantum of mesne profits; yet both have agreed that mesne profits after termination of tenancy have to be awarded as per the market rate of rent.

6. This proposition is not in dispute and in fact is borne out from the record of both the courts below. Trial judge had granted ₹40/- per sq. ft. per month holding it to be the market rate of rent prevailing in the year 1995. The impugned judgment had reduced the figure from ₹40/- to ₹10/- but had held it to be the market rate.

Section 2(12) of the Code of Civil Procedure defines mesne profits as follows:

“Mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profit, but shall not include profits due to improvements made by the person in wrongful possession;”

Mesne profits is the amounts which the person in wrongful possession is liable to pay i.e. the amount the person in wrongful possession has actually received or with due diligence would have received; this amount is coupled with the quotient of interest.

7. The trial judge while awarding mesne profits at ₹40/- per sq.

ft. per month had adverted to the oral and documentary evidence of the plaintiff but had omitted to discuss the defence of the defendant. This was the main ground of appeal before the first appellate court. The appellate court on the other hand has completely overlooked the documents of the plaintiff. Plaintiff had produced a registered lease deed which is admittedly of a adjoining property leased out in the adjacent area i.e. 98, Nehru Place. This lease was entered into on 01.11.1995 which was a first time lease between the parties. The negotiations between the parties which had finally fructified into the lease deed was based on prevailing market rent which was ₹40/-per sq. ft. per month. On the other hand, the documents relied upon by the defendant which are Mark G to J are unregistered documents; that is why they had been marked. Executant of those documents had not been come into witness box. They were supplementary lease deeds. Admittedly, in all these cases (i.e. of Mark G to Mark J) they were not the cases of fresh leases; they were continuations of earlier leases which had been effected between the parties in 1978. This is an admitted position.

8. In the present case, the plaintiff had validly terminated the tenancy of the defendant vide Ex.PW-1/7 w.e.f. 10.8.1995. From the stand point of the plaintiff a new and fresh lease on prevailing market rate had to be executed between the parties if the parties had agreed for a negotiation. Prevailing market rate in terms of Ex.PW-1/2 was ₹40/-per sq. ft. per month. This has been proved and established. Mark G to Mark J being unregistered supplementary lease deeds had not been proved; they were admittedly continuation of earlier lease agreements; considerations

prevailing for a continuation and an extension of a lease are distinct and different from considerations to be weighed at the time of entering a first time agreement. A new lease would be entered into as per prevailing market rent whereas a continuation of an earlier lease which is by agreement may not necessarily be on the current market rate of rent. In these circumstances reliance in the impugned judgment upon Mark G to Mark J was uncalled for.

9. Counsel for the appellant has also placed reliance upon the MCD Schedule (down loaded from the internet) of rates of rent which shows that prevailing rate in the year 1995 for the first floor premises at Nehru Place would be ₹50/- per sq. ft. per month; for 1996 it would be ₹65/- per sq. ft. per month.

10. In 2002 IV AD (Delhi) 733 Anant Raj Agencies Properties Vs. State Bank of Patiala, where the rate of rent was ₹21,065/- per month mesne profits were claimed for an amount more than three times of the said amount i.e. ₹76,025/- per month i.e ₹35/- per sq.ft. per month. The rate awarded by the Court, taking judicial notice of the increase in rents was ₹35/-per sq.ft. per month for a part period and ₹50/-per sq.ft. per month thereafter. In 120(2005)DLT 407 State Bank of Bikaner and Jaipuar Vs. I.S.Ratta & Ors. damages/mesne profits had been awarded at the prevailing market rate of rent which claimed at ₹81/- per sq.ft. per month had been granted for different periods ranging from ₹98.30 per sq. ft. per month up to ₹200/- per sq. ft. per month. This was keeping in view the escalated market rent which was ever-increasing.

11. Learned counsel for the appellant has also placed reliance upon (2001) 7 SCC 494 Leela Soni & Ors. Vs. Rajesh Goyal & Ors.

to substantiate his submission that findings of fact can be interfered with if there is ample power of the Court to do so under Section 103 of the Code. There is no dispute to this proposition. Findings of fact if perverse do raise a substantial question of law.

12. In view of the aforementioned discussion the appeal is allowed. Mesne profits is granted @ ₹40/- per sq. ft. w.e.f 10.8.1995 to 06.4.1998 along with interest @ 12% per annum. Appeal is disposed of.

INDERMEET KAUR, J.

MARCH 21, 2011
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