

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

% *Date of Judgment: 29.04.2011*

+ **R.S.A.No. 186/2007 & CM Nos.9770-71/2007**

ORIENTAL BANK OF COMMERCE Appellant
Through: Mr. Saran Suri & Mr. Gunjan
Kumar, Advocates.

Versus

TILAK RAJ & ORS. Respondents
Through: Mr.Ashok Sapra, Advocate for
respondent No. 2.

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 02.12.2006 which had endorsed the findings of the trial Judge dated 24.03.2003 whereby the suit filed by the plaintiff Tilak Raj seeking possession of the suit property i.e. property bearing No. D-985, New Friends Colony, New Delhi had been decreed along with mesne profits granted in favour of the plaintiff @ ₹40/- per

sq. feet for ground floor, ₹35/- per sq. feet for the first floor, ₹34/- per sq. feet for the second floor and ₹30/- per sq. feet for the third floor from 01.09.1990 to 27.10.1997.

2 The suit had been filed by the plaintiff who is admittedly the landlord of the suit premises. The suit property had in the course of proceedings been handed over to the plaintiff. The suit property had been vacated on 31.10.1997 pursuant to the compromise arrived at between the parties. This was in terms of the order of the High Court where the statement of the respective counsel for the parties had been recorded. It was further agreed between the parties that by means of negotiation, the quantum of mesne profits and damages for the period up to the date of vacation of the suit property shall also be mutually settled and in case it is not settled, the plaintiff would be at liberty to move an application under Order 20 Rule 12 of the Code of Civil Procedure (hereinafter referred to as the 'Code') before the executing Court for determination of the said amount. The mesne profit could not be mutually settled.

3 On 10.09.1998 on an application under Order 20 Rule 12 of the Code, the following two issues were framed:-

1. Whether the plaintiff/D.H. is entitled to the mesne profits/damages, if so, at what rate and for what period? OPP

2. Relief.

4 The evidence was led by the respective parties which included two witnesses on behalf of the plaintiff and two on behalf of the defendant. Apart from the oral testimony, documentary evidence was also adduced which was the lease deed Ex. PW-1/1 executed between the plaintiff and Essar Commercial Vision dated 26.09.1997; Ex. PW-1/2 was the maintenance agreement and Ex. PW-1/3 was the hire agreement. On the other hand the defendant had produced only one document Ex. DW-1/1; it was about the handing over of possession back to the plaintiff. The Court had examined oral and documentary evidence led by the respective parties and granted mesne profits at the aforementioned rate.

5 This finding was endorsed in the first appellate court.

6 This is a second appeal. It had been admitted and on 24.07.2007, the following substantial question of law was formulated. It reads as under:-

“Whether the mesne profits/damages granted by the courts below is on the higher side. If so, its effect?”

7 On behalf of the appellant, it has been urged that the judgment of the trial court is illegal and arbitrary for the reason that even as per the documentary evidence adduced by the

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plaintiff, he had been able to prove that the adjoining property i.e. property bearing No. D-942, New Friends Colony, had been leased out at a rental of ₹22.50/- per sq. feet; the Court having been awarded damages for the ground floor of the suit property @ ₹40/- per sq. feet is clearly a perversity. It is pointed out that even in the application under Order 20 Rule 12 of the Code which had been filed by the plaintiff seeking adjudication of the mesne profits, for the second floor he had claimed ₹30/- per sq. feet; the impugned judgment has granted mesne profits @ ₹34/- per sq. feet for the second floor which is the second perversity. For the aforementioned reasons, the judgment is liable to be set aside.

8 Arguments have been refuted. It is pointed out that the finding of fact cannot be lightly disturbed. No interference is called for.

9 Admittedly parties had reconciled their disputes and property had been handed back to the plaintiff on 31.10.1997. Impugned judgment has awarded mesne profits in favour of the plaintiff @ ₹40/- per sq. feet for ground floor, ₹35/- per sq. feet for the first floor, ₹34/- per sq. feet for the second floor and ₹30/- per sq. feet for the third floor; this was for the period from 01.09.1990 to 27.10.1997 i.e. for the period when admittedly the defendant

was an unauthorized occupant. PW-1 was the neighbor who had come into the witness box, he had proved the lease deed as Ex. PW-1/1; apart from the lease deed, the maintenance agreement and hire agreement for fixtures Ex. PW-1/2 and Ex. PW-1/3 had also been proved. As per Ex. PW-1/1 ₹25,000/- per month was the rent, maintenance agreement Ex. PW-1/2 was for ₹15,000/- per month and hire agreement Ex. PW-1/3 was for ₹10,000/- per month for the first two years and thereafter an escalation of 20% after every two years was noted; the total rent would thus be ₹50,000/-. PW-2 had deposed that he had leased out his property measuring 442 square yards at ₹50,000/- per month. He had deposed that the property of the plaintiff would fetch market rent @ ₹40/- per sq. feet as it is located on the main road and has a greater potential area. PW-2 was the plaintiff; he had corroborated this version and deposed that he is claimed damages @ ₹40/- per sq. feet for ground floor, ₹35/- per sq. feet for the first floor, ₹34/- per sq. feet for the second floor and ₹30/- per sq. feet for the third floor. The court had noted that in fact no cross-examination had been effected of this witness that the rate of damages/mesne profits being claimed by him for the different levels of the suit property was not the said market rent. The Court

had also noted that the defendant had not led any evidence.

10 These are findings of fact returned by the two fact finding courts below. In no manner it can they be said to be perverse. A second appellate court can interfere in the findings of fact only if the same are shown to be perverse i.e. based on no evidence. This is not one such case. The trial Judge had in fact after detailed scrutiny of the evidence, oral and documentary arrived at the aforementioned finding. The impugned judgment had thereafter affirmed it which was again after a detailed examination of the evidence both oral and documentary. This court is not a third fact finding court. No perversity has been pointed out. The impugned judgment calls for no interference.

11 Substantial question of law is answered accordingly in favour of the respondent and against the appellant. There is no merit in this appeal. Dismissed.

INDERMEET KAUR, J.

APRIL 29, 2011

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