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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 690/2010

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Judgment Delivered on: 28.02.2011

ORIENTAL INSURANCE COMPANY LTD Appellant
Through: Mr.Vishnu Mehra, Advocate

versus

B K RAINA Respondent
Through: Mr.Manbir Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Respondent, landlord had filed a suit for possession and recovery of damages/ mesne profit. On an application filed by the respondent under Order XII Rule 6 of the Code of Civil Procedure, vide order dated 10.10.2008 the possession of the suit property was decreed in favour of respondent, landlord. The following issues were framed in this case:

- (i) Whether the plaintiff is entitled for the recovery of Rs.Two Lacs as damages/ mesne profit, as prayed? (OPP)
- (ii) Whether the plaintiff is entitled for the damages/ mesne profits from the date of filing of suit till the possession of the premises, if so, at what rate and for which period? (OPP)
- (iii) Whether the plaintiff is entitled for the interest on the damages/ mesne profits, if so at what rate and for

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what period? (OPP)

(iv) Whether the suit of the plaintiff is not maintainable?
(OPD)

2. The present appeal is directed against the judgment and decree granting mesne profit in favour of the respondent.
3. Counsel for the appellant submits that the trial court has exceeded its jurisdiction and has come to an incorrect finding with regard to the grant of mesne profit. It is further submitted that the judgment and decree dated 30.07.2010 is based on erroneous and mis-appreciation of facts and evidence and is contrary to the record. It is also submitted that respondent was not entitled to any damages/ mesne profit for any period in respect of the demised premises as there was a mutual understanding between the respondent and the appellant and based on the understandings, the lease of the suit premises was renewed from time to time and the lease was still continuing on the date of filing of the suit and the appellant was thus a lawful tenant of the suit premises, and the respondent was not entitled to any damages/mesne profit.
4. Mr. Mehra, counsel for the appellant also submits that since the appellant has been regularly paying monthly rent at the agreed rate, there was no liability on the part of the appellant to pay the mesne profit. It is submitted that the finding of the trial court that the appellant was in unauthorized possession of the suit property w.e.f. 01.06.2007 to 09.02.2009 was erroneous. It is also submitted by counsel for the appellant that trial court has



gravely erred in holding the respondent to be entitled to damages/ mesne profit @ ₹40,000/- per month w.e.f. 01.06.2007 to 09.02.2009. It is submitted that the trial court has erred in not accepting the testimony of DW-1, (D.K.Arora), with regard to rate of rent in the year 2007 and has failed to appreciate that no independent witness has been summoned by the respondent to prove the market rent for the relevant period.

5. Counsel for the respondent submits that the appellant was inducted as a tenant in the suit property at an initial monthly rent of ₹11,748/- for a period of three years. The lease was renewed from time to time and finally the extended lease expired on 30.04.2005. At that point of time the appellant was paying rent @ ₹16,212/- per month. The respondent then terminated the lease of the appellant vide a notice dated 14.04.2007 and called upon the appellant to vacate the suit property on 01.06.2007. The notice was duly served on the appellant, which is evident from the fact that reply to the notice was issued by the appellant. It is submitted that as after the termination of the tenancy the appellant continued to stay illegally in the demised premises, the respondent was forced to file a suit for possession and damages in the sum of ₹2,00,000/-. It is submitted that the grounds sought to be urged by learned counsel for the appellant are not tenable, in view of the fact that trial court has already passed a judgment/decreed under Order XII Rule 6 of the Code of Civil Procedure, wherein it has been held that the lease was validly terminated. It is next contended that

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the judgment and decree has attained finality and consequent thereto possession has also been handed over to the respondent. It is thus submitted that trial court has held that the appellant was in wrongful possession of the suit property after termination of the tenancy. It is further submitted that as far as fixation of mesne profit is concerned, the appellant has not led any evidence.

6. Counsel for the respondent submits that respondent has led evidence and examined PW-1, who has proved his affidavit as Ex.PW-1/A. PW-1 has also proved two rent agreements exhibited as Ex.PW-1/1 and Ex.PW-1/2. Ex.PW-1/2 is a lease deed dated 22.04.2009, showing that the suit property has been leased out at a monthly rent of ₹53,400/- and also another lease deed Ex.PW-1/1 dated 22.09.2008, as per which a similarly placed property i.e. flat No.206, Ansal Chambers-II, Bhikaji Cama Place, New Delhi was given on a monthly rent of ₹79,800/-.
7. I have heard counsel for the parties and also perused the order of learned trial court and the lease deeds. Having regard to the evidence placed on record by the respondent, I find that the trial court has been rather conservative in awarding mesne profit @₹40,000/- per month, whereas the rate of rent of similarly situated flats has been proved by the respondent, to the tune of ₹53,400/- per month in one case and ₹79,800/- per month in another case.
8. The trial court has dealt with the question of awarding mesne profits in favour of the respondent in the following manner:

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"The defendant has not proved any document on record to prove that the plaintiff has received the entire amount of the rent/damages from the defendant till 19.02.09 and also that the prevailing market rate of rent of the similar placed property as of the suit property is not more than the monthly rent paid by the defendant to the plaintiff.

Lease deed Ex.PW1/2 is dated 22.04.09 and as per this lease deed, the suit property has been given on lease on a monthly rent of Rs.53,400/- per month for a period of three years. Lease deed Ex.PW1/1 is dated 22.09.08 and as per this lease deed the flat No.206, Ansal Chambers-II, Bikaji Cama Place, New Delhi has given on a monthly rent of Rs.79,800/- per month for a period of three years. As per the case of the plaintiff, the defendant has been paying the rent @16,112/- per month after the expiry of the lease on April, 2005. All these facts shows that there is fluctuations in the market as to the rent of the properties situated in the Ansal Chambers-II, Bikaji Cama Place, New Delhi where the suit property is situated. Undoubtedly there is a increase in the rental values of the properties situated in Delhi. After taking into consideration all these facts, I am of the opinion that the claim of the plaintiff for Rs. One Lac per month as damages/mesne profits is excessive and the plaintiff is entitled for the damages/mesne profits @40,000/- per month from the defendant w.e.f. 01.06.07 to 09.02.09. Both these issues are accordingly decided."

9. I find no force in the submission made by counsel for the petitioner that month to month rent was paid and the lease was renewed by mutual agreement, as this question has attained finality against the appellant herein in judgment rendered by the trial court dated 10.10.2008 on an application filed by the respondent under Order XII Rule 6 of the CPC. Since the tenancy of the suit premises was terminated by a legal notice dated 14.04.2007 and the appellant was ordered to vacate the suit premises on 01.02.2007 the status of the appellant in the suit premises thereafter would be that of an illegal occupant, hence,

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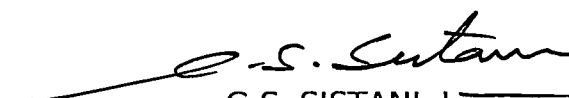
the appellant would be liable to pay use and occupation charges.

I find no infirmity in the judgment of the trial court. No merit in the appeal and the same is accordingly dismissed. Parties shall bear their own costs.

CM.No.17327/2010 (STAY)

10. In view of the order passed in the appeal, application is also dismissed.

February 28, 2011
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G.S. SISTANI, J.

- Fresh CM 1491/12 w/s 151 C.R. by respondent for release of amount kept in FDR
- Amount of Rs. 4,87,60/- kept in FDR
- Appeal disposed of vide above order