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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No.186/2010 & RSA No.187/2010

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11th August, 2011

1. RSA No.186/2010

BHARAT BHUSHAN JAIN & ORS. Appellants
Through: Mr. V.K.Srivastava with Mr. B.B.Jain, Advs.

VERSUS

GOODYEAR INDIA LTD. & ANR. Respondents
Through: Mr. B.Mohan & Ms. Shashi Saxena,
Advs. for the respondent no.1.
Mr. Abhinav Jain with Ms. Shikha Sapra,
Advs. for the respondent no.2.

&

2. RSA No.187/2010

BHARAT BHUSHAN JAIN & ORS. Appellants
Through: Mr. V.K.Srivastava with Mr. B.B.Jain, Advs.

VERSUS

GOODYEAR INDIA LTD. & ANR. Respondents
Through: Mr. B.Mohan & Ms. Shashi Saxena,
Advs. for the respondent no.1.
Mr. Abhinav Jain with Ms. Shikha Sapra,
Advs. for the respondent no.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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**

VALMIKI J. MEHTA, J (ORAL)

1. Both these appeals can be disposed of by this common judgment inasmuch as they are between the same parties and involve more or less identical facts.

2. The issue is with respect to entitlement of mesne profits of the appellants and the respondent no.2 (hereinafter 'the landlord') with respect to the premises which were held over by the respondent no.1/tenant after termination of tenancy and till the vacation thereof. In RSA No.186/2010 the period in question is from 2.1.1990 to 30.3.2001 and in RSA No.187/2010 it is from 2.1.1990 to 30.4.1999.

3. By the impugned judgment, the Appellate Court allowed the appeals of the respondent no.1 and granted only the admitted rate of rent as mesne profits. The appellants are aggrieved by this aspect inasmuch as even if the entire rationale of the Appellate Court is accepted, yet, a most vital judicial admission made by the witness of the respondent no.1 was ignored while considering this issue of mesne profits and which if considered the landlords would have been granted mesne profits higher than the admitted rent.

4. Learned counsel for the appellants has taken me through the testimony of DW1, Sh.P.V.Ramni, Officer of the respondent no.1 who in his examination in chief stated as under:-

“At that time when the termination notice of tenancy was served upon the defendant the prevailing rate in the locality was Rs.5/ to Rs.8/ per sq.ft. per month.”

5. It is argued that this is a judicial admission not even in the cross-examination but in examination in chief, and judicial admissions are placed on a much higher pedestal than the evidential admissions in view of a decision of Division Bench of three judges of the Supreme Court in the case of ***Nagindas Ramdas vs. Dalpatram Ichharam (1974) 1***

SCC 242. Para 27 of the judgment is relied upon and which reads as under:-

“From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.“(underlining added)

6. A reference to para 27 of the judgment in the case of **Nagindas (supra)** shows that admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, made by the parties or their agents at the hearing of the case, stand on a higher footing than evidentiary admissions. These judicial admissions are fully binding on the party that makes them and constitute a waiver of proof. Such admissions by themselves can be made the foundation of the rights of the parties.

7. Learned counsel for the appellants also argues that the Appellate Court has very surprisingly ignored this most crucial evidence

and granted only the admitted rate of rent. It is argued that the appellants are definitely entitled to mesne profits at Rs.5-8 per square feet. It is argued that this perversity raises a substantial question of law. I agree. The substantial question of law which is thus framed is:- "Can a Court ignore clinching evidence which entitle a person to relief thus making the judgment perverse requiring it to be set aside."

8. Learned counsel for the respondent, of course, tried to vehemently rebut the arguments of the appellants and said that the Appellate Court's judgment is a detailed judgment giving the correct reasons for denying the mesne profits at a higher rate than the admitted rate. However, I find this argument not of much substance inasmuch as admittedly the Appellate Court has ignored the vital evidence being the admission made by the witness of the respondent no.1 itself. This therefore clearly raises a substantial question of law entitling this Court to interfere with the impugned judgment dated 12.7.2010. I therefore hold, considering all the facts and circumstances of the case, that since the rate of rent is stated to be in a range of Rs. 5/- per square feet to Rs. 8/- per square feet, the appellants should be entitled to mesne profits for the relevant period at Rs.7/- per square feet per month. This rate of Rs. 7/- per square feet per month is for the ground floor and for the mezzanine floor, the landlord will be entitled to at Rs.5/- per square feet per month.

9. The next issue is the issue with respect to Award of interest on the arrears of mesne profits. I have an occasion to consider this aspect in the judgment titled as ***M/s. P.E.C. Ltd. vs. Sh. Samir Prakash & Anr.***

in RFA No.563/2005 decided on 12.7.2011 in which I have relied upon the Supreme Court's decision in the case of **Indian Oil Corporation vs. Saroj Baweja 2005(12) SCC 298** which held that the landlord is entitled to interest on arrears of mesne profits. On this aspect I may note that in the present scenario there has been a consistent fall in the rates of the interest in the fixed deposits, and therefore, weighing and considering all the aspects, being the interest during the relevant period, I deem it fit that the appellants are entitled to interest at 7 ½ % simple pendent lite and future till payment from the respective months mesne profits became payable till the date of payment. If however, the respondent no.1 in terms of the present decree makes payment of the decretal amount within a period of 2 months from today, then the rate of interest shall only be 6 % per annum simple.

10. Accordingly, the appeal is accepted to the extent as stated above. Decree sheet be prepared. Trial Court record be sent back.

11. I may clarify that if the respondent no. 1 is shown to have paid any amount for the relevant period to the landlords, then, the counsel for the appellants states that adjustment will be given for such payments made.

12. The entitlement of mesne profits to the landlords, I may clarify, will include the entitlement of rent to the respondent no.2 herein and who was originally the plaintiff in the suit. If there are any, inter se, disputes with respect to the inter se division of the rent, this Court cannot

go into the same and this aspect will be considered by the Civil Court before whom appropriate proceedings may be filed or pending.

CM Nos.18595/10(stay), 4687/11 & 9751/11 in RSA No.186/10
CM No.18632/10 & 4688/11 in RSA No.187/10

13. Since the main appeals stand disposed of, no orders are required to be passed in these CMs and the same are disposed of accordingly.

AUGUST 11, 2011
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VALMIKI J. MEHTA, J.