

the second CS(OS)2799/1999 being the tenant's suit wherein adjustment of advance rent and deposit is prayed as also the claim towards charges for renovations of the tenanted premises. Originally the tenant had also claimed specific performance of a lease agreement and which relief is now given up.

2. The suit filed by the landlord being CS(OS) 245/2000 claimed possession and mesne profits with respect to the tenanted premises being first floor of Kamal Cinema Building, Safdarjang Enclave, New Delhi admeasuring 15,000 sq. ft.

3. It is not disputed that during the pendency of the suit, possession of the suit premises have been handed over to the landlord in June, 2006. The receipt of the notice terminating tenancy dated 13.11.1999 (Ex.PW1/3) terminating the tenancy w.e.f. 31.12.1999 is not disputed. There was no registered lease deed for the premises and therefore the tenancy only remained a monthly tenancy. The tenancy could therefore be terminated by means of service of legal notice under Section 106 of the Transfer of Property Act,1882 and the notice Ex.PW1/3 (receipt of which is not disputed) thus legally terminates the tenancy from the midnight of 31.12.1999.

4. In the landlord's suit the mesne profits which would be payable and reliefs incidental thereto have to be determined.

5. In the suit filed by the tenant the relief for specific performance no longer remains as already stated, and the issues which are relevant are those as framed by the Court on 3.9.2007 pertaining to refund of advance rent and security deposit as also the claim towards amounts spent for renovations and improvements in the suit property.

6. The issues were framed on 3.9.2007 in the landlord's suit being CS(OS) 245/2000 and which read as under:-

(i) Whether the plaintiff is entitled to recovery of any arrears of rent in respect of the suit premises and if so, at what rate and for which period? OPP.

(ii) Whether the plaintiff is entitled to recovery of damages/mesne profit for alleged unauthorized use and occupation of the suit premises by the defendant? If so, at what rate and for which period?OPP

(iii) Whether the plaintiff is entitled to interest? If so, at what rate, on what amount and for which period?

(iv) Relief.”

7. The issues were framed on 3.9.2007 in the suit of the tenant being CS(OS) 2799/1999 and which read as under:-

“(i) Whether the plaintiff is entitled to refund of advance rent and security deposit allegedly paid by him to the defendants at the time of inception of tenancy of the suit premises?OPP

(ii) Whether the plaintiff is also entitled to refund of amount spent towards renovation and improvements of the suit property during the period of tenancy of the suit premises?OPP

(iii) Relief.”

The suits were consolidated by the order dated 3.9.2007 when issues were framed.

8. Before proceeding to decide the issues, I must note that the evidence of tenant i.e. defendant in CS(OS) 245/2000 and plaintiff in CS(OS) 2799/1999 was closed on 23.7.2012 inasmuch as he failed to lead evidence in spite of repeated opportunities.

9. I will now take up the issues framed in the landlord's suit being issue nos. 2 and 3. Counsel for the landlord does not press issue no.1 with respect to arrears of rent.

10. Learned counsel for the plaintiff states that he does not rely on any evidence led by him in support of the plea of mesne profits but only relies upon the judgment of this Court reported as *M.C.Agrawal HUF Vs. Sahara India & Ors. 183(2011) DLT 105*, in support of the proposition that unless evidence is led to the contrary, normally so far as commercial premises are concerned 15% increase per year ought to be granted.

11. The relevant paras in the judgment of *M.C.Agrawal's case* and which are relied upon on behalf of the plaintiff are paras 8 and 10 of the judgment, which read as under:-

“8. What is now therefore to be determined is that what should be the mesne profits which should be awarded to the landlord in the absence of any evidence having been led by the landlord with respect to the rents prevalent in the area. Though it has not been argued on behalf of the landlord, I would like to give benefit to landlord of various precedents of this Court and the Supreme Court which take judicial notice of increase of rent in the urban areas by applying the provisions of Sections 114 and 57 of the Evidence Act, 1872. In my opinion, considering that the premises are situated in one of the most centrally located commercial localities of Delhi, situated in Connaught Place, an increase of 15% every year should be awarded (and nothing has otherwise been shown to me for the increase to be lesser) during the period for which the tenants have over stayed in the tenanted premises. Putting it differently, for the first year of illegal occupation, the tenant will pay 15% increased rent over the contractual rent. For the second year of illegal occupation, 15% increase will be over the original contractual rent plus the additional 15%. It will be accordingly for all subsequent years of the illegal occupation till the premises were vacated on 3.4.2005. I rely upon and refer to a Division Bench judgment of this Court in the case of *S. Kumar Vs. G.R. Kathpalia 1999 RLR 114*, and in which case the Division Bench has given benefit to the landlord and has taken judicial notice of increase in rent, and has accordingly allowed mesne profits at a rate higher than the contractual rate of rent.

10. The penultimate issue remaining is with respect to the argument of the counsel for the tenants that an exorbitant rate of interest of 20% per annum has been granted by the impugned judgment on the arrears of mesne profits and which thus be set aside. The impugned judgment is not very clear as to for what period and from when this interest of 20% per annum simple is payable, though there are observations that the same would be payable for the period during which landlord was deprived of the possession of the tenanted premises. The judgment is not clear whether the interest will be payable on the accumulated amount due on the date of the suit or at the end of each year of illegal occupation or at the end of expiry of tenancy month of illegal occupation.

In my opinion, the interest granted at the rate of 20% per month besides being wholly vague is clearly exorbitant in the present economic scenario where the rates of interest on fixed deposit vary between 6% to 10% per annum. The Supreme Court also in its recent chain of judgments reported as *Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others*, 2005 (6) SCC 678, *McDermott International Inc. v. Burn Standard Co. Ltd. and others*, 2006 (11) SCC 181, *Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.*, (2006) 7 SCC 700, *Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra*, 2007 (2) SCC 720 & *State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd* (2009) 3 Arb. LR 140 (SC) has held that Courts are mandated to reduce high rates of interest which are granted. Accordingly, in the facts and circumstances of this case, I reduce the interest granted by the trial Court from 20% to 12% per simple. The interest liability will come into existence at the end of each month of illegal occupation of the tenants on the amount due at the end of the month and till payment thereof. To clarify further, so far as the month of January, 2005 is concerned, interest will be payable for the said month from 1.2.2005. For the month of February,

2005 interest will be payable from 1.3.2005 and similarly with respect to earlier months, the interest will be payable at the end of the month of illegal occupation by the tenants. I may note that the Supreme Court has also awarded interest on arrears of mesne profits and one such judgment of the Supreme Court is the case of *Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298.*”

12. The admitted rate of rent in this case was ₹ 9 lacs w.e.f 15.6.1999. Under the contract, this rate of rent was to remain for a period of 4 years. Therefore, though the lease is not registered, I am inclined to grant mesne profits only at the admitted rate of rent of ₹ 9 lacs per month from 1.1.2000 till 15.6.2003 i.e. for the period of the original lease. Though there is a clause with respect to increase of rent under the lease deed, but since the lease deed is not registered, I cannot look at the said clause in view of Section 17(1)(d) read with Section 49 of the Registration Act, 1908. The landlord however will be entitled to 15% cumulative yearly increase w.e.f 16.6.2003 till the premises were vacated in June, 2006 i.e. for a period of three years in terms of ratio of the judgment in the case of *M.C.Agrawal HUF (supra)*. The landlord will also be entitled to interest at the rate of 9% per annum simple on the arrears of mesne profits payable for the period for which mesne profits would be payable i.e. from 1.1.2000 till 15.6.2006 as per the ratio of *Indian Oil Corporation's* case cited in *M.C.Agrawal's* case. Interest will be payable on the mesne

profits from the end of the month for which the mesne profits would be payable. I am giving the date of vacation of the suit premises as 15.6.2006 inasmuch as unfortunately neither of the parties have brought on record the exact date in June, 2006 when the tenant vacated the suit premises. Issue nos. 2 and 3 of CS(OS) No. 245/2000 are decided accordingly.

13. The suit of the landlord is thus decreed for mesne profits at the rate of ₹9 lacs per month from 1.1.2000 till 15.6.2003. Mesne profits will be increased by 15% from 16.6.2003 every twelve months up to 15.6.2004. On the total amount which would be payable on and from 16.6.2004 there will be an increase of 15% on the amount as payable on 15.5.2004 i.e. increase will be an increase of 15% on the last rate of mesne profits payable for the earlier year every year till 15.6.2006 i.e. the increase will be 15% increase cumulative. Interest at 9% per annum will be payable by the defendant/tenant on the arrears of mesne profits from the end of the month for which the mesne profits would be payable, till actually paid.

14. Now, I take up for disposal the issues framed in the suit of the tenant pertaining to the claim for adjustment of the advance rent and security deposit as also the alleged claim for renovation/repair charges of ₹ 2,45,00,000/-.

15. So far as the issue of adjustment of advance rent and security deposit is

concerned, counsel for the landlord i.e plaintiff in CS(OS) 245/2000 and defendant in CS(OS) 2799/1999 states that due adjustment will be given for the amount of advance rent with the landlord, if this advance rent has not been already adjusted towards the rent payable. If so required the advance rent amount will be adjusted towards the mesne profits. Learned counsel for the landlord also states that the amount of the security deposit will also be adjusted accordingly. This aspect of calculation I leave to be decided in the execution proceedings as to what is the amount which is payable to the landlord after giving adjustment to the tenant for the advance rent and security deposit.

16. So far as the claim of the tenant/plaintiff in CS(OS) No. 2799/1999 for renovation charges of ₹ 2,45,00,000/-, I find the same to be totally unbelievable. I have already noted that the tenant has failed to lead any evidence and therefore the tenant has failed to prove his case and it cannot be known whether and if spent what is the amount spent for renovations which were said to have been carried out. Also, renovations which were carried out by the tenant were for its own use of the tenanted premises and surely such amount cannot be reduced from the rent or the mesne profits which would be payable. Further, if there were removable items surely it is logical that the

tenant would have removed the same when the tenant vacated the suit premises on 15.6.2006. I have nothing before me to the contrary to suggest that any valuable items have been left by the tenant when he vacated the suit premises, and which stand in any case I find it hard to believe as already stated.

17. In view of the above discussion, issue no.1 in CS(OS) 2799/1999 is answered by holding that the amount of advance rent and security deposit can be adjusted, from any dues which the landlord is entitled to in terms of the decree passed in CS(OS) 245/2000 and this aspect of calculation of any amount due will be gone into by the executing Court.

18. So far as issue no.2 is concerned, it is answered against the tenant i.e. plaintiff in CS(OS) 2799/1999.

19. Decree sheets be prepared. Parties are left to bear their own costs. Suits are disposed of accordingly.

JULY 24, 2012
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VALMIKI J. MEHTA, J