

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

+ **RFA No.107/2004**

% **27th February, 2012**

SNEH VAISH & ANR. Appellants

Through: Mr.Aashish Aggarwal, Adv.

versus

STATE BANK OF PATIALA & ORS. Respondents

Through: none.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 2.2.2012. Today, the matter is effective item no. 15 on the Regular Board. No one appears for the respondents although it is 3.15 P.M. I have therefore heard counsel for the appellants, and after perusing the record, am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the

impugned judgment of the Trial Court dated 29.11.2003 dismissing the suit for possession and mesne profits filed by the appellants/plaintiffs/landladies. The Trial Court has dismissed the suit on the ground that what was the monthly tenancy was not proved and therefore the notice terminating tenancy dated 18.8.1998, Ex.PW1/4, cannot be said to have validly terminated the tenancy.

3. The impugned judgment was passed on 29.11.2003 and the Trial Court has committed an error in overlooking the Transfer of Property (Amendment) Act, 2002 which became applicable from 31.12.2002. As per this Amendment Act, Section 106 of the Transfer of Property Act, 1882 was amended, and thereby, objections as to invalidity of notices terminating tenancy was done away with as long as a period of 15 days was given to a tenant to vacate the premises. This Amendment Act also applies to the pending proceedings. The Amendment Act reads as under:-

“THE TRANSFER OF PROPERTY (AMENDMENT)
ACT, 2002

[31st December, 2002]

(3 of 2003)

An Act further to amend the Transfer of Property Act, 1882.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

1. Short title.- This Act may be called the Transfer to Property (Amendment) Act, 2002.

2. Substitution of new section for section 106.- For Section 106 of the
RFA No.107/2004 Page 2 of 6

Transfer of Property Act, 1882 (4 of 1882) (hereinafter referred to as the principal Act), the following section shall be substituted, namely:-

“106. Duration of certain leases in absence of written contract or local usage.-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipts of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

3. Transitory provisions.- The provisions of section 106 of the principal Act, as amended by section 2, shall apply to-

- (a) all notices in pursuance of which any suit or proceeding is pending at the commencement of this Act; and
- (b) all notices which have been issued before the commencement of this Act but where no suit or proceeding has been filed before such commencement.”

4. A reference to Section 3 of the Amendment Act shows that the amended Section 106 of the Transfer of Property Act applies to all notices pursuant to which any suit or proceeding is pending before the commencement of Amendment Act and also to notices where proceedings

have not commenced. Accordingly, applying the amended Section 106 of the Transfer of Property Act, 1882 it is held that the tenancy of the respondents/defendants was validly terminated.

5. The issue which now arises is what should be the mesne profits which should be granted. Mesne profits have to be granted with effect from 24.10.1998 to 31.12.2002, the latter date being the date when the respondents vacated the suit premises. The tenancy was terminated by the legal notice dated 18.8.1998, Ex.PW1/4, with effect from 24.10.1998.

6. Learned counsel for the appellants/plaintiffs has argued that the appellants/plaintiffs have made a statement in examination-in-chief to show the prevailing rate of rent and which rate therefore should be granted. However, in my opinion, mere oral statement in the deposition cannot be said to be discharge of proof, and it was incumbent upon the appellants/landladies to lead evidence of the rate of rent prevalent in the area during the required period by proving the lease deeds in the areas. One thing is the evidence led, and the other thing is the weight required to be attached to the same. Merely because the appellants/landladies have made an averment with respect to rate of rent, the same does not mean that weight has to be attached to the same. In view of the fact that no documentary evidence has been led, mesne profits

cannot be awarded at the rate as prayed for by the appellants/landladies.

7. That is however not the end of the matter, inasmuch as, Courts have been taking judicial notice of increases in the rent in urban areas such as Delhi. A Division Bench judgment of this Court taking judicial notice of increase in rents is the judgment in the case of *S.Kumar vs. G.R.Kathpalia*, **1999 RLR 114**. I have also had an occasion to consider this aspect in the judgment in the case of *M.C. Agrawal HUF vs. M/s.Sahara India & Ors.*, **183 (2011) DLT 105**, wherein I have held that the Courts can take judicial notice of 15% annual increase in rent. In this case, the last rate of rent which was paid before the tenancy was terminated was ₹40,472/-. I therefore hold that the appellants/plaintiffs/landladies are entitled to increased rent of 15% over ₹40,472/- with effect from 24.10.1998 to 23.10.1999. However, with effect from 24.10.1999 the mesne profits payable would be 15% more than what were payable on 23.10.1999. Every year there will be a cumulative increase of 15% over the last rate payable for mesne profits till the vacation of the premises on 31.12.2002.

8. In accordance with the judgment in the case of *M.C. Agrawal (supra)*, the appellants/landladies are also entitled to interest on arrears of mesne profits. Accordingly, the appellants/landladies are held entitled to

interest at 12% per annum simple on the arrears of mesne profits which will be payable from the end of the relevant calendar month for which the mesne profits are payable.

I may note that Supreme Court in the judgment in the case of *Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298* , has held that landlords are entitled to interest on the arrears of mesne profits which have not been paid.

9. In view of the above, the impugned judgment dated 29.11.2003 is set aside. The appellants/plaintiffs/landladies are entitled to mesne profits at the rate of ₹40,472/- plus 15% addition thereof with effect from 24.10.1998 to 23.10.1999, and a cumulative increase of 15% every year thereafter till the premises were vacated on 31.12.2002. The appellants/plaintiffs/landladies will also be entitled to interest at 12% per annum simple from the end of the each calendar month for which the mesne profits were payable. The appellants/plaintiffs/landladies are also entitled to costs of this appeal. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

FEBRUARY 27, 2012
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RFA No.107/2004

Page 6 of 6