

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

+ **RFA 941/2003 & RFA 204/2004**

% **May 15, 2012**

RFA No. 941/2003

M/s Water & Power Consultancy Services (India) Ltd., New Delhi

..... Appellant

Through: Mr. Ankit Sibbal, Adv.

VERSUS

Smt. Renu Gupta

... Respondent

Through: Mr. K.K.Bhuchar, Adv.

AND

RFA 204/2004

Smt. Renu Gupta

....Appellant

Through: Mr. K.K.Bhuchar, Adv.

VERSUS

M/s Water & Power Consultancy Services (India) Ltd., New Delhi

....Respondent

Through: Mr. Ankit Sibbal, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. On 10.4.2012, I passed the following order:-

“1. The issue in these appeals is what are the mesne profits to be awarded to the landlady for the tenanted premises for the period from 1995-2001. Before the trial Court, the landlady filed two lease deeds of the years 1995 and 1997 which show the rents payable were at Rs. 115 per sq. ft. per month and Rs.105 per sq. ft. per month, respectively. There is also an admission in the cross-examination of the landlady as to having let out the suit premises in the year 2002 after renovation at Rs.50 per sq. ft. Therefore, there is shown, in the facts of the case, a decline in the rent from the year 1995 at Rs.115 per sq. ft. to Rs.50 per sq. ft. in the year 2002. Since the mesne profits have to be determined for the year 1995 to 2001 in this case, the mesne profits which should be granted may vary for different years to rates varying between Rs.115 per sq. ft. per month to about Rs.75 per sq. ft. per month.

2. In addition, there is also an issue of payment of interest on arrears of mesne profits in terms of the judgment of the Supreme Court as per the case reported as ***Indian Oil Corporation vs. Saroj Baweja 2005(12) SCC 298***.

3. The aforesaid are only *prima facie* observations on the matter after hearing learned counsel for the parties.

4. Learned counsel for the landlady says that if the appellant pays a sum of Rs.60 per sq. ft. per month for the period from 1995-2001 alongwith interest @9% per annum simple on the arrears of mesne profits, the landlady will not press for higher rate of mesne profits, which otherwise the landlady is entitled to in terms of the lease deeds Ex.PW2/2 and Ex.DW1/P-1, filed on record.

5. In view of the above, there seems to be valid reason for this matter to be otherwise settled out of Court on account of the fair offers made on behalf of the landlady.

6. Learned counsel for the appellant says that the appellant being a Public Sector Undertaking will have to take appropriate sanction from the requisite authorities and, therefore, prays for an adjournment.

7. I may state that the present order is passed without prejudice to the rights and contentions of the parties and is only to enable the parties to arrive at an out of Court settlement which is preferable.

8. List for further proceedings on 23rd April, 2012.

9. A copy of this order be given *dasti* to learned counsel for

both the parties.”

2. On 23.4.2012, further time was taken on behalf of the appellant in RFA No.941/2003. Today, the counsel for the appellant in RFA No.941/2003 states that he has no instructions and therefore, the appeals be disposed of on merits.

3. The two appeals being RFA No.941/2003 and RFA No.204/2004 are being disposed of by this common judgment inasmuch as they both arise out of the impugned judgment dated 23.8.2003 passed by the trial Court. RFA No. 941/2003 is the appeal by the tenant seeking reduction in the rate of mesne profits and RFA No. 204/2004 is the appeal of the landlady seeking enhancement in the rate of mesne profits. The limited issue to be decided in these appeals is the determination of mesne profits as would be payable for the period from 5.11.1995 to 31.7.2001, the period of illegal occupation by the appellant/tenant/M/s Water and Power Consultancy Services (India) Ltd. of the suit premises being Flat No.512, Kailash Building, Kasturba Gandhi Marg, New Delhi admeasuring 1020 sq. ft.

4. As stated in the order dated 10.4.2012, as per the documents being the lease deeds filed by the landlady exhibited as Ex.PW2/2 and Ex.DW1/P-1, the rate of rent in the same building where the tenanted premises are situated was ₹ 115 per sq. ft. per month in the year 1995 and ₹ 105 per sq. ft. per month in the year 1997. In the year 2002, admittedly, the suit premises after renovation were let out at ₹ 50

per sq. ft. per month. In my opinion, therefore, in view of the aforesaid documentary evidence and the other facts which have emerged on record, it will be appropriate that the rate of mesne profits is fixed at an average rate of ₹80 per sq. ft. per month for the period 1995 to 2001. I am fixing an average mesne rate instead of giving separate rates for different years, inasmuch as, there has to be some amount of honest guesswork in the issue of computation of rents/mesne profits inasmuch as, no two premises can be identical whether qua its location or construction or individualized factors.

5. In addition to the liability of the tenant to pay mesne profits at ₹80 per sq. ft. per month, the landlady will also be entitled to interest at the rate of 9% per annum simple from the end of the month for which mesne profits would be payable till the same are actually paid to the landlady in terms of the ratio of the judgment of the Supreme Court in the case of *Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298*.

6. Both the appeals are therefore disposed of by directing the tenant/M/s Water & Power Consultancy Services (India) Ltd. to pay mesne profits at the rate of ₹80 per sq. ft. per month from 5.11.1995 to 31.7.2001. The tenant will also be liable to pay interest on the mesne profits at 9% per annum simple from the end of the month from which the mesne profits will be payable till actual payment.

7. The tenant being the appellant in RFA No.941/2003 had deposited the amounts in the executing Court pursuant to the impugned judgment and decree, and part of the said amount has been withdrawn by the landlady. Another part of the amount has been withdrawn subject to furnishing security and which security shall therefore stand discharged. The balance amount lying in the executing Court alongwith accrued interest thereon be released to the landlady in appropriate satisfaction of the impugned judgment and decree as modified by today's judgment.

8. Decree sheet be prepared on the landlady filing Court fees with respect to the enhanced amount of mesne profits. Parties are left to bear their own costs. The appeals are disposed of with the aforesaid observations. Trial court record be sent back.

May 15, 2012
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VALMIKI J. MEHTA, J.