

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

+ **RFA No.502/2011**

% **24th January, 2012**

MAHANAGAR TELEPHONE NIGAM LTD Appellant
Through: Mr. R.P.Sharma, Adv.

versus

SMT. SANTOSH GUPTA Respondent
Through: Mr. Satya Prakash Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial Court dated 25.7.2011 decreeing the suit of the respondent/plaintiff/landlord for possession and mesne profits with respect to the suit premises being the ground floor of the property bearing no. S-164, School Complex, Shakarpur, New Delhi.

2. The facts for the case are that the appellant/defendant became a tenant of the suit premises vide a registered lease deed dated 17.8.2005 for a period of three years. Though the lease deed had a renewal clause, no fresh lease deed was executed for the optional period of three years and

consequently the respondent/landlord terminated the tenancy by serving a legal notice dated 21.7.2008. As the appellant/defendant failed to vacate the premises and to pay the mesne profits, the subject suit came to be filed.

3. In the Trial Court, the notice terminating tenancy dated 21.7.2008 has been proved and exhibited as Ex.PW1/4 and the Registry receipts and UPC Certificate have been proved and exhibited as Ex.PW1/5 to Ex.PW1/7. The AD card has been proved and exhibited as Ex.PW1/8. In fact a reply was sent and the reply has been exhibited as Ex.PW1/9. Once, there is no registered lease deed for a fixed period, the tenancy is a monthly tenancy which can be terminated by means of a legal notice and therefore the Trial Court has rightly held that the tenancy was validly terminated. The Supreme Court in the case of *Hardesh Ores vs. (P) Ltd. vs. Hede & Company 2007 (5) SCC 614* has held that unless there is an appropriate lease deed for the renewal period, it cannot be said that the tenant continues to stay in the tenanted premises by virtue of an option of a fixed term, and in fact, the tenancy is only a monthly tenancy. Accordingly, the Trial Court has rightly held that the suit for possession was bound to be decreed.

4. So far as the issue of mesne profits is concerned, the same are payable with effect from 17.8.2008, the date from which the tenancy stood

terminated. The respondent/plaintiff filed before the Trial Court two lease deeds of the same area, the first dated 20.9.2006 and second of the year 2009, as per which lease deeds, Ex.PW-3/1 and Ex.PW-4/1, the rate of rent was ₹35/- per square feet per month and ₹105/- per square feet per month respectively. The Trial Court has taken the rate for mesne profits to be payable on a conservative rate of ₹35/- per square feet per month. The relevant paras in this regard are paras 19 to 22 of the impugned judgment and which read as under:-

“19. Onus of proof of both these issues lies upon the plaintiff. IN support of her contentions, the plaintiff has categorically stated that the defendant is also liable to pay damages @ ₹70,000/- per month as the area where, the suit property is situated, is a thickly populated area and is surrounded by residential and commercial properties and has a great market value and it could very easily fetch a rent of ₹70,000/- per month in the year 2008. The plaintiff has also filed on record two lease deeds regarding the rent of similarly situated properties, to prove the damages. The Lease deed dated 20.9.2006 has been proved on record by PW-3 Sharad Srivastav as Ex.PW-3/1. The said lease deed pertains to the ground floor of the property bearing no. FF-9, Mangal Bazar Road, Laxmi Nagar, Delhi-92, which was let out to Dena Bank for commercial purposes w.e.f. 20.9.2006 to 19.9.2016. Initially the rate of rent was fixed ₹35/- per sq.ft. per month, for an initial period of five years till 19.9.2011 and thereafter, the rate of rent is to be enhanced by 25% of the existing rent.

20. PW-4, Ms. Vandana Handa, has proved another lease deed in respect of the similarly situated property bearing no.S-529, Ground Floor, School Block, Shakurpur, Delhi and the said lease deed has been proved on record as

Ex.PW-4/1. Perusal of the said lease deed shows that the said property has been let out in the year 2009 at a rent of ₹1,05,000/- per month, for a premises of about 1000 sq. ft. As per this lease deed, the rate of rent comes to about ₹105/- per sq.ft. per month.

21. No evidence has come on record, in contradiction to these lease deeds and the defendant has failed to examine any witness to rebut these contentions and to make the testimonies of PW-3 and PW-4 unreliable.

22. Keeping in view the locality, where the suit property is situated, the nature of tenancy and keeping in view the various factors for increase in rent and the lease deed Ex.PW-3/1 and Ex.PW-4/1, I am of the considered opinion that the claim of the plaintiff for damages @ ₹35/- per sq. ft. per month is a valid claim and accordingly, both these issues are decided in favour of the plaintiff and against the defendant and it is, hereby, held that the plaintiff is also entitled to claim damages/mesne profits @ ₹35/- per sq. ft. per month, amounting to ₹74,445/- per month w.e.f. 18.8.2008 till its realization.”

5. I completely agree with the aforesaid observations and conclusions of the Trial Court. In fact, the Trial Court has been more than conservative although the mesne profits could have been granted at a much higher rate considering that ₹35/- per square feet per month was the amount payable in terms of the lease deed dated 20.9.2006, and in the present case, mesne profits had to be calculated with effect from 17.8.2008.

6. At this stage, counsel for the appellant states that the appellant agrees to abide by today's judgment, and seeks one year time to vacate the premises. In my opinion, a period of one year is excessive, and cannot be

granted. However, in the interest of justice, subject to the appellant paying mesne profits at ₹90/- per square feet per month from 1.8.2011 till 31.12.2012, the operation of the today's judgment as also the impugned judgment and decree dated 25.7.2011 will remain stayed till 31.12.2012. The appellant however will file an undertaking in this Court within a period of 3 weeks from today to vacate the premises on or before 31.12.2012 and to pay the mesne profits at ₹90/- per square feet per month with effect from 1.8.2011 to 31.12.2012 every month till the premises are vacated. The arrears be cleared in four weeks. The appellant will also be liable to pay the electricity and water charges payable with respect to the premises till the same are vacated. The time to vacate the premises is granted to the appellant, on the appellant filing and complying with the terms of the undertaking as aforestated.

7. The amount deposited in this Court along with accrued interest, if any, be released to the respondent in appropriate satisfaction of the impugned judgment and decree dated 25.7.2011. The appeal is disposed of accordingly. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J

JANUARY 24, 2012
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