

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

+ **RFA No.581/2011**

% **24th February, 2012**
LALIT MOHAN MADHAN Appellant
Through: Mr. Raman Kapur, Senior Advocate
with Mr. Aviral Tiwari, Advocate.

VERSUS

LIFE INSURANCE CORPORATON OF INDIA Respondent
Through: Mr. Kamal Mehta, Advocate with
Mr. Sudeep Singh, Advocate.

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 (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 17.8.2011 dismissing the suit filed by the appellant/plaintiff/landlord for mesne profits/damages. The suit was dismissed inasmuch as the trial Court held that the appellant/plaintiff/landlord did not lead any evidence with respect to the rate of rent prevalent for the relevant period i.e. from 1995 to 1999 because the lease deed relied upon to prove the rate of rent was of the year 2000.

2. The facts of the case are that the respondent/defendant took on lease from the appellant/plaintiff the suit premises comprising of the third and fourth floor of the property bearing No.B-1/26-27, Community Centre, Janakpuri, New Delhi admeasuring 4136 sq. ft. The lease had commenced w.e.f. 25.9.1992 at a monthly rent of Rs. 39,000/- per month. The tenancy was a monthly tenancy inasmuch as there was no registered lease between the parties and consequently the appellant/plaintiff terminated the tenancy of the respondent vide notice dated 25.9.1995. The premises were ultimately vacated on 1.5.1999. It is for this period i.e. from 1.12.1995 to 1.5.1999 that the subject suit was filed claiming damages/mesne profits.

3. The respondent/defendant contested the suit and pleaded that though the lease was initially granted for three years w.e.f. 25.9.1992, however, the same was renewable for a further period of three years at an enhanced rate of 20% on the same terms and conditions contained in the document dated 25.9.1992 which was accepted and signed by both the parties. It was pleaded that the rent therefore became Rs. 46,800/- per month w.e.f.25.9.1995. It was pleaded that the notice dated 25.9.1995 was contrary and in violation of the agreement between the parties. It was pleaded that notice was waived by the appellant/plaintiff accepting the enhanced rent.

4. After completion of pleadings, the trial Court framed the following issues:-

- “(1) Whether by notice dt. 25.09.1995 to the defendant the tenancy has been validly terminated?
- (2) Whether the notice has been waived by accepting rent after service of notice?
- (3) Reliefs:-
 - (i) Whether the plaintiff is entitled to possession?
 - (ii) Whether the plaintiff is entitled to any damages and mesne profits? And
 - (iii) Cost.”

5. As already stated above, I have to only decide the issue as to whether any mesne profits are payable from 1.12.1995 to 1.5.1999 and if so at what rate inasmuch as unless there is a registered lease for a fixed period, the tenant remains only a monthly tenant. Mere entitlement of renewal has no effect unless there is a registered lease deed for the renewal period-vide ***Hardesh Ores (P) Ltd. Vs. Hede & Company, 2007(5) SCC 614***. So far as the fact that the legal notice dated 25.9.1995 was duly served upon the respondent/defendant is not disputed before me. This notice was proved and exhibited before the trial Court as Ex.PW1/1. The postal receipt was proved and exhibited as Ex.PW1/2 and AD card was proved and exhibited as Ex.PW1/3. Therefore, there does not remain any doubt that mesne profits became payable from 1.12.1995. Further, this notice specifically in para 6 stated that any amount sent by the respondent after the termination

of the tenancy will be treated as damages for use and occupation of the premises. At this stage itself, I may note that this stand of the appellant/landlord of receiving charges only towards mesne profits is correct in terms of the judgment of the Supreme Court in the case reported as *Sarup Singh Gupta v. S. Jagdish Singh & Ors., 2006 (4) SCC 205*.

The argument raised on behalf of the respondent/defendant/tenant that a fresh tenancy was created on account of acceptance of rent, in view of the clause 6 of the notice dated 25.9.1995 is misconceived and I therefore reject the same.

6. The issue now is that what mesne profits should be awarded. Besides the oral depositions, the only documentary evidence which was led on behalf of the appellant/plaintiff was the lease deed, Ex.PW2/1, though which is with respect to same community centre with rent @ 39/- per sq.ft and which will translate to approximately ₹1,60,000 per month, however, the same is of a much later period i.e. w.e.f. 1.2.2000. This lease deed of the year 2000 cannot be taken as evidence so as to determine the rent payable for the period from 1.12.1995 to 1.5.1999. Courts have however taken judicial notice of increase of rent. Besides various judgments of the Supreme Court on this aspect, I have had an occasion to deal with this aspect in the judgment reported as *M/s. M.C. Agrawal HUF Vs. M/S.*

Sahara India & Ors. 183 (2011) DLT 105 wherein I have said that once the premises are situated in a commercial centre, then, unless there is evidence to show the contrary, an increase of 15% per year can be ordinarily taken to show the mesne profits payable although the landlord does not lead any credible evidence to prove the rate of rent during the period for which the mesne profits have to be calculated. I would therefore apply the ratio of the judgment of ***M/s. M.C. Agrawal (supra)*** to the facts of the present case and consequently the appellant/plaintiff will be entitled to rent which is 15% more than Rs. 46,800/- per month w.e.f. 1.12.1996. I may note that the respondent/defendant itself gave a rent at Rs. 46,800/- per month w.e.f. 25.9.1995, and therefore I am giving 15% increase of rent after about one year and two months from the date on which Rs. 46,800/- per month was paid. Further, in terms of the ratio of the judgment in the case of ***M/s. M.C. Agrawal (supra)***, increase will be a cumulative increase i.e. the amount payable of mesne profits w.e.f. 1.12.1997 will be 15% more than the rate of mesne profits which were payable on 30.11.1996. The same increment will continue every year and for the period up to which the respondent/defendant occupied the suit premises.

7. In view of the above, the appeal is allowed. Impugned judgment and decree dated 17.8.2011 is set aside. Appellant/plaintiff will

be entitled to mesne profits @ 46,800/- from 25.9.1995 to 30.11.1996 and w.e.f. 1.12.1996 with a cumulative increase of 15% every year as stated above. In terms of the ratio of the judgment in the case of *M/s. M.C. Agrawal (supra)* and which has followed the judgment of the Supreme Court in the case of *Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298*, I hold that the appellant/plaintiff will also be entitled to interest on the arrears of mesne profits @ 12% per annum simple from the end of the calendar month from which the mesne profits would be payable. Parties are left to bear their own costs. Decree sheet be prepared on the appellant depositing the Court fees with respect to mesne profits payable. Trial Court record be sent back.

VALMIKI J. MEHTA, J

FEBRUARY 24, 2012

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