

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

Date of decision: 23rd October, 2013

+ **RFA No.842/2003**

HINDUSTAN PAPER CORPORATION Appellant
Through: Mr. Ratan Kumar Singh, Mr.
Nikhilesh Krishnan, Ms. Sonakshi
Banga and Ms. Shashi, Advocates.

Versus

KANTA MANOCHA Respondent
Through: Mr. Pravin K. Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (dated 20th September, 2003 of the Court of the Additional District Judge, Delhi in Suit No. 179/2001 filed by the respondent) of recovery of mesne profits/damages for use and occupation against the appellant.

2. Notice of the appeal was issued and the trial court record requisitioned. Vide *ex parte ad interim* order dated 12th November, 2003, subject to the appellant depositing the entire decretal amount with interest in this Court, the attachment order in execution issued by the Trial Court was stayed. The appeal was on 9th December, 2003 admitted for hearing. The appellant in pursuance to the ad interim order deposited an amount of Rs. 12,67,415/- in this Court. Vide order dated 9th December, 2003 the said

amount was permitted to be withdrawn by the respondent subject to furnishing the security. The amount was so withdrawn by the respondent /decree holder against the bank guarantee which has been renewed from time to time. The appeal was on 29th January, 2013 dismissed in default of appearance of the appellant and the bank guarantee furnished by the respondent /plaintiff was discharged. However on application for restoration being filed by the appellant, the appeal as well as the bank guarantee were restored to original position. The counsels have been heard and the trial court record perused.

3. The undisputed facts are –

- i. that the appellant was a tenant under the respondent/landlord with respect to the two and a half storied property No.E-525, Greater Kailash-II, New Delhi constructed over a plot of land admeasuring 500 sq. yds. and comprising of a drawing cum dining room, three bed rooms with attached bathrooms on each of the ground and the first floors and a barsati with attached bath on the second floor, besides car garage, two servant quarters, lounge, courtyard, drive way, etc;
- ii. that the property was initially let out to the appellant on 18th January, 1982 at a rent of Rs.6500/- per month for a period of five years;
- iii. that though the said period of five years expired on 18th January, 1987 but the appellant failed to vacate the premises, perhaps taking advantage of the protection from eviction then available under the Delhi Rent Control Act, 1958;
- iv. that however after the amendment w.e.f. 1st December, 1988 of

the Rent Act, making the provisions thereof inapplicable to premises the rent whereof was in excess of Rs.3500/- per month, the respondent/landlord in or about the year 1991 filed a suit for ejectment of the appellant;

- v. however the said suit was dismissed on 13th July, 1998 holding the notice of determination of tenancy to be not in accordance with law;
- vi. that the respondent/landlord, after again terminating the tenancy of the appellant, in or about the year 1999 instituted the suit from which this appeal arises, again for ejectment and mesne profits;
- vii. that vide order dated 10th September, 2001 in the said suit, the application of the respondent/landlord under Order 12 Rule 6 of the CPC was allowed and an order of ejectment of the appellant made and inquiry into mesne profits ordered;
- viii. that the respondent/landlord applied for execution of the order of the ejectment and during the said execution proceedings the appellant/defendant sought time till 31st March, 2002 to vacate the property and agreed to pay a sum of Rs.50,000/- per month to the respondent/landlord for the said period.

4. The learned Additional District Judge, vide the impugned judgment, has awarded mesne profits/damages for use and occupation to the respondent/landlord @ Rs.50,000/- per month from 18th April, 1999 i.e. from which date the tenancy of the appellant was terminated and till the vacation of the premises on 31st March, 2002, less the amounts already paid, finding, observing, holding –

- a. that the Executive (Commercial) of the appellant appearing as a witness had deposed that the property was being used as the guest house of the appellant company and was in a dilapidated condition and the appellant was last paying a sum of Rs.9350/- per month therefor and the prevalent market rent thereof could not have been more;
 - b. that a real estate agent examined by the appellant/defendant had also deposed that the market rent of the property for the period between 1999-2002 could not be in excess of Rs.9000/- per month;
 - c. that the witness of the respondent/landlord had proved that after vacation by the appellant, the property had been let out at a rent of Rs.60,000/- per month.
5. The counsel for the appellant has argued –
- I. that the learned Additional District Judge erred in holding that the subject property after vacation of the appellant had been let out at a rent of Rs.60,000/- per month when no registered lease deed was filed and only Memorandum of Understanding (MoU) showing the said rent was tendered into evidence;
 - II. that the said MoU also was not the original but only a copy;
 - III. that there was no material cross examination of the witness of the appellant who had deposed of the property being in dilapidated condition and not in a condition of fetching more than Rs.9000/- per month;
 - IV. relying on *National Radio & Electronic Co. Ltd. Vs. Motion Pictures Association* 2005(122) DLT 629 it is contended that no

judicial notice of prevalent rent can be taken and judicial notice only of rise in rent can be taken;

V. reliance is placed on *Hindustan Photofilms Manufacturing Co. Ltd. Vs. Anu Enterprises* 2010(174) DLT 171 to contend that no cognizance of photocopy of a document can be taken;

VI. relying on *Printers House Pvt. Ltd. Vs. Mst. Saiyadan (deceased) by Lrs* (1994) 2 SCC 133 it is contended that the respondent/landlord without leading evidence of comparable premises fetching rent as claimed of Rs.50,000/- per month, could not have been awarded mesne profit at the said rate.

6. The counsel for the respondent/landlord at the outset, to satisfy the judicial conscience of this Court, has handed over a copy of the registered lease deed in pursuance of the MoU earlier executed, showing the property to have in fact been let out w.e.f. 1st September, 2002 at a rent of Rs.60,000/- per month. He has further argued -

- a. that though the appellant was liable to be ejected much earlier but owing to the dismissal of the suit for ejectment earlier filed by the respondent/landlord on the technicality of defective termination, the claim of the respondent / landlord for mesne profits has been restricted only from 18th April, 1999;
- b. that the appellant having agreed to pay Rs.50,000/- per month for a period of three months sought by it to vacate the premises, is itself an indication of the same being the market value of the premises; a copy of the order dated 20th December, 2001 in this regard in the proceedings for execution of the ejectment order was handed over;

- c. that the MoU has been proved by the signatory thereof i.e, the attorney of the respondent/landlord;
- d. attention is also invited to the cross examination by the respondent/landlord of the witness of the appellant to controvert that he was not cross examined;
- e. that the colony in which the property is situated is one of the posh colonies of Delhi and for this reason alone the decree ought not to be interfered with.

7. The counsel for the appellant in rejoinder has argued that no evidence of any other letting in the vicinity has been led.

8. I have considered the rival contentions and am not inclined to interfere with the decree for the following reasons-

- A. the respondent/landlord in the notice dated 1st March, 1999 of determination of tenancy itself, warned the appellant/tenant that if it failed to vacate the premises inspite of determination of its tenancy, it shall be liable to pay mesne profits/damages for use and occupation at the prevalent market rate which then was more than Rs.50,000/- per month;
- B. the appellant in its advocates' reply dated 28th August, 1999 to the said legal notice neither controverted that the market rent was not Rs.50,000/- per month nor pleaded that the property in its occupation was not capable of fetching the market rent for the reason of being in a dilapidated condition; on the contrary it was stated that since the appellant was not in unauthorized use and occupation of the premises, the question of it being liable for payment of market rent did not arise;

- C. the respondent/landlord in the plaint of the suit from which this appeal arises again reiterated that the prevailing market rent was more than Rs.50,000/- per month;
- D. the appellant in its written statement though denied that the market rent was Rs.50,000/- per month but again did not plead that the premises in its occupation was incapable of fetching the market rent for the reason of being dilapidated or for any other reason;
- E. that the attorney of the respondent /landlord in his affidavit by way of examination-in-chief deposed that the respondent/landlord had let out the property at a rent of Rs.60,000/- per month and tendered in evidence the MoU executed with the tenant in this regard and the copies of the cheques received from the tenant towards security deposit and rent in pursuance to the said MoU; the document on trial court record on which exhibit PW-1/9 has been put, is a photocopy of the signed MoU;
- F. that the said attorney of the respondent/landlord in his affidavit by way of examination-in-chief also deposed that the appellant, after vacating the subject property had issued an advertisement in the newspaper for alternative accommodation and had taken on rent a two and a half storeyed house built on 200 sq yrd. in the trans-Yamuna colony of Chitra Vihar at a rent of more than Rs.35,000/- per month;
- G. the appellant/tenant in cross examination controverted the said fact.

- H. however the witness of the appellant in his affidavit by way of examination-in-chief did not deny having taken alternative accommodation at Chitra Vihar and in cross examination admitted having taken alternative accommodation of a two and a half storeyed house on a 300 sq. yrds plot of land at Gagan Vihar, Trans Yamuna, East Delhi but neither produced any document showing the rent thereof nor inspite of being asked, disclosed the rent thereof;
- I. that adverse inference has to be drawn against the appellant that had the appellant disclosed the rent of the alternative accommodation, it would have become apparent that the claim of the respondent/landlord for mesne profits at the rate of Rs.50,000/- per month for a much larger accommodation and in a elite colony was justified;
- J. that the property broker examined by the appellant also hesitated from giving instance of any actual letting of similar premises in same locality at a rent of Rs.9000/- per month;
- K. that the appellant did not challenge the order of its eviction and only sought time to vacate the premises; the same is indicative of the appellant being aware that it had no right to continue in the premises; the appellant still, despite notice aforesaid of determination of its tenancy and in which the appellant was also cautioned that for over stay it would be charged at a rate of Rs.50,000/- per month, to gain time, did not vacate the premises and contested the suit; the only inference which can be drawn is that the appellant was aware that if it were to vacate, for similar

- premises it would have to pay more than Rs.50,000/- per month;
- L. the witness of the appellant did not depose that he had made any inquiry and that the premises after vacation by the appellant were not let out at the rent of Rs.60,000/- per month to the new tenant, as deposed by the attorney of the respondent/landlord;
 - M. the appellant if so desirous of controverting the said fact, ought to have led such evidence;
 - N. again, the only inference is that the said fact could not be disputed by the appellant;
 - O. some extrapolation is always involved in the grant of mesne profits/damages for use and occupation, inasmuch as evidence of letting of identical premises is rarely available;
 - P. judicial notice has to be taken of the difficulties in finding evidence of letting of similar premises, specially residential, and that the owners as well as the tenants of residential premises hesitate from disclosing the terms of occupation to strangers;
 - Q. from the production now of the registered lease deed of letting in consonance with the MoU, no doubt remains of the subject premises, after vacation by the appellant fetching rent of Rs.60,000/- per month;
 - R. the Supreme Court subsequent to *National Radio & Electronic Co. Ltd. in Saradamani Kandappan Vs. S. Rajalakshmi* (2011) 12 SCC 18 has held that though the third quarter of the 20th Century saw a very slow but steady increase in prices of immovable property but a drastic change occurred from the beginning of the last quarter and a galloping increase in prices of

immovable properties has taken place with prices increasing steeply, by leaps and bounds and judicial notice can be taken thereof;

- S. the cross examination of the attorney of the respondent / landlord was recorded on 23rd September, 2002 and registered lease deed is of 24th September, 2002 and there is thus sufficient reason for non production thereof;
- T. once it is found that the property immediately after vacation by the appellant could fetch Rs.60,000/- per month besides substantial interest free security deposit of six months' rent to the respondent/landlord, his evidence is enough of the market value of the property for the immediately preceding three years being not less than Rs.50,000/- per month as judicial notice can be taken of increase by 10-15% in rent of residential premises every three years;
- U. the said mesne profits were payable by the appellant to the respondent/landlord month by month and the learned Additional District Judge while fixing the rate of mesne profit at Rs.50,000/- has not awarded any interest on arrears thereof to the respondent;
- V. that though the decretal amount has been released to the respondent/landlord but against the bank guarantee for which also charges must be being paid by the respondent/landlord;
- W. strict rules of evidence and proof cannot be applied to 'enquiry' into mesne profits; *Printers House Pvt. Ltd.* supra relied upon by the counsel for the appellant was in the context of compensation for land acquisition;

X. the award of mesne profits @ Rs.50,000/- per month, considering the location and size of the property and further considering that the appellant has overstayed in the premises for much longer than the period for which it has been made liable to pay mesne profits, is found to be just and not calling for any interference at this stage.

9. No merit is thus found in the appeal which is dismissed. However no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

OCTOBER 23, 2013

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