

4  
\$~7

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

+ **RFA(OS) 56/2013**

**CENTRAL BOARD OF EXCISE & CUSTOMS ..... Appellant**

Through: **Mr. Rajeeve Mehra, ASG with  
Mr. Kamal Nijhawan, Sr. Adv. &  
Mr. Sumit Gaur, Adv.**

versus

**ASHOKA PROMOTORS P LTD & ORS ..... Respondents**

Through: **Mr. S.N.Gupta with Mr. S.S.Sukla, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

**%**

**19.11.2013**

**CM No.8671/2013(exemption)**

Allowed, subject to just exceptions.

Application stands disposed off.

**CM No.8670/2013(for condonation of delay in filing the appeal)**

**CM No.8672/2013(for condonation of delay in re-filing the appeal)**

For the reasons stated in the applications, the applications are allowed  
and delay is condoned.

CMs stand disposed off.

**RFA(OS) 56/2013 & CM No.8669/2013(stay)**

1. The Central Board of Excise and Customs has preferred the present

5

appeal aggrieved by an order of learned Single Judge in CS(OS) No.1611/2000. By the said judgment dated 29<sup>th</sup> November, 2012, the learned Single Judge decreed the plaintiff's claim for damages/mesne profits for the use and occupation of the suit premises being five storeyed building measuring 14,010 square feet bearing No.G-80, Preet Vihar, Delhi. The appellant submits that the damages and mesne profits were calculated erroneously by the learned Single Judge. It is pointed out by the learned Additional Solicitor General in this regard that the learned Single Judge premised his findings entirely upon the consideration of the three lease deeds presented to him i.e. Ex.PW-1/10, Ex.PW-1/11 and Ex.PW-1/12. Counsel submitted that each of these leases deeds were in respect of ground floor premises in commercial property and had been leased by banks in 2000-2001. In the present case, the calculation of damages and mesne profits had to be on the basis of the agreed facts whereby the arrangement had to have ended by efflux of time in the year 1996. It was submitted that apart from the excessive amount of Rs.30/- per square feet ultimately fixed by the Court, the impugned order is also in error inasmuch as the learned Single Judge has directed 15% cumulative yearly increase for the period with effect from 1.5.1998 to 11.11.2004 (latter being the date when the suit

premises were vacated). Counsel highlighted the fact that the yearly increase together with the 9% per annum simple interest on the arrears of mesne profits amount to a windfall earning which was not warranted in the circumstances of the case.

2. Counsel for the respondents/plaintiff submitted that no interference is called for with the impugned order. It was emphasised that the three lease deeds were in respect of commercial premises that exists in that vicinity and were in respect of the same period when the appellant was in occupation of the premises. Counsel also submitted that the learned Single Judge in the impugned order had even observed that for the period of 1999-2000 the monthly rent could be upto Rs.60/- per square feet for the ground floor and as low as Rs.18.32 per square feet for the basement. Having considered these circumstances, the Court consciously awarded an average sum of Rs.30/- per square feet per month in respect to the entire 14,010 square feet area of the suit which can neither be considered unreasonable nor excessive. Counsel emphasised upon the fact that the direction to pay 15% cumulative increase every twelve months for six and a half years period between 1.5.1998 to 11.11.2004 was supported by authority i.e. *M.C. Agrawal (HUF) vs. Sahara India Pvt. Ltd. 183 (2011) DLT 105.*

7

3. The learned Single Judge after setting out the details of the defendants' lease deeds, discussed the effect of the three lease deeds which formed the basis of the award of mesne profits. They have been reproduced in a tabular form in para 5 of the impugned order and are extracted below:-

**"Details of plaintiff's lease deed"**

| S. No. | Lease Deed | Date of Lease Deed | Property demised                        | Rent agreed upon (p.m.) | Area under Lease | Rate of rent |
|--------|------------|--------------------|-----------------------------------------|-------------------------|------------------|--------------|
| 1.     | Ex.PW1/10  | 17.8.2001          | G-83, Preet Vihar, Delhi (Ground Floor) | Rs.1,60,000/-           | 2700 sq.ft.      | 59.20 sq.ft. |
| 2.     | Ex.PW1/11  | 22.10.2001         | C-61, Preet Vihar, Delhi (Ground Floor) | Rs.1,20,000/-           | 2588 sq.ft.      | 46.36 sq.ft. |
| 3.     | Ex.PW1/12  | 23.02.2000         | F-21, Preet Vihar, Delhi (Ground Floor) | Rs.98,800/-             | 2600 sq.ft.      | 38/ sq.ft.   |

4. Thereafter the impugned order proceeded to fix the damages and mesne profits at Rs.30/- per month on the basis of the following reasoning:-

"8. There is always involved some amount of reasonable guess works in the exercise of computation of mesne profits inasmuch as rent of exactly similar premises cannot be calculated to the last square feet and to the last rupee. In the facts of the present case there is no lease deed of the year 1996, from when I have to start calculation of mesne profits. Considering all the above documents which have been filed on behalf of both the parties, and considering the fact that the plaintiff itself has prayed for rent from 1996 to 1999 at Rs.32/- per sq.ft. per month and from 1.11.1999 to 30.4.2000 at Rs.50/- per sq.ft. per month, and since the rate of rents proved by the

8

different lease deeds (of course for a different period) varies from Rs.18.32/- per sq.ft.(only for basement) to Rs.60/- per sq.ft (for the ground floor), I am of the opinion that the rate of rent for the purpose of grant of mesne profits should be fixed at Rs.30/- per sq.ft. per month for the leased premises of 14,010 sq.ft. with effect from 1.11.1996. I am fixing this rate by factoring in various aspects including the aspects of the lease deeds filed and proved on record being of different years than 1996, the lease deeds being only of the ground floor or basement, since not being of the same neighbourhood and so on. I also note that the suit premises comprise of basement, ground floor, mezzanine, first floor, second floor and third floor.

9. Since the premises were let out for non-residential purposes of an office, in terms of my judgment in the case of *M.C. Agrawal (HUF) vs. Sahara India Pvt. Ltd.* 183 (2011) DLT 105 I grant 15% cumulative yearly increase every twelve months from 1.5.1998 till the premises were vacated on 11.11.2004.”

5. This Court has considered the submissions of the parties. The claim of the appellant for the basic fixation of Rs.30/- as the rate for calculation of damages/mesne profits being excessive, in this case, is without force and insubstantial. As is evident from the reasoning of the learned Single Judge the rates of rents discernible from an overall reading of the lease deeds and the material varied, floor-wise as well as period-wise from a low of Rs.18.32/- per square feet for the basement, to a high of Rs.60/- per square feet in respect of ground floor. The learned Single Judge therefore averaged out the various rates and directed that Rs.30/- be the basis for calculation of

9

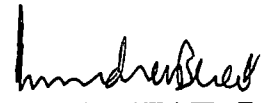
mense profits/damages with effect from 1.11.1996. The Court was conscious that the exercise carried out by it was based on some empirical data and also involved a reasonable and fair degree of guess work. This Court is of the opinion that no fault can be found with such an approach. So far as the grant of 15% cumulative increase for six and a half years period between 1.5.1998 to 11.11.2004 is concerned, the Court is of the opinion that there cannot be a uniform judicial approach in such matters, but judicial notice can be taken of the fact that rents tend to increase which depend on the situation of the premises and the demand felt for such premises.

6. Under these circumstances to adopt a uniform or consistent approach and direct a yearly cumulative increase might not be justified. This Court is not ruling out the possibility of such a grant in some cases provided there is a material to support it. However, no such material is available on the record in the facts of this case. Consequently, the Court is of the opinion that an award of 15% cumulative increase every twelve months is not justified. Instead, the Court modifies the said direction to increase the amounts cumulatively by 15% every three years.

7. In view of the above discussion, the appeal is allowed in part to the

extent of the modification in respect of the 15% cumulative annual increase.

In the circumstances of the case, there shall be no orders as to costs. The appeal and the application for stay are disposed off accordingly.

  
S. RAVINDRA BHAT, J

  
NAJMI WAZIRI, J

NOVEMBER 19, 2013

ak