

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

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Date of decision: 30th July, 2013

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RFA 325/2013

UCO BANK

.....Appellant

Through: Mr. Dilip Agarwal, Adv.

Versus

RAM PRAKASH KAKKAR & ORS.

..... Respondents

Through: Mr. Tara Chand Gupta.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This first appeal impugns the judgment and decree, dated 10.04.2013 of the Additional District Judge (Central)-17, Delhi in Suit No.315 of 2011 (Unique ID No.02401C1204902008) filed by the respondents, against the appellant Bank for ejectment of the appellant Bank from the premises earlier in its tenancy under the respondents and for *mesne* profits; the appellant during the pendency of the suit agreed to vacate the premises and to hand over vacant, peaceful physical possession thereof to the respondents on or before 31.12.2010 and the suit continued qua the claim of the respondents for *mesne* profits only; the impugned judgment and decree is for recovery of *mesne* profits / damages for use and occupation with effect from 01.10.2007

to 31.12.2010 at the rate of Rs.60,680/- per month less the agreed amount of Rs.34,935.64p already paid by the appellant Bank; interest at 12% per annum has also been awarded on the arrears of *mesne* profits.

2. The appeal came up first before this Court on 16.07.2013 when finding the controversy to be within a narrow compass, the Trial Court record was requisitioned and the counsel for the appellant Bank asked to inform the counsel for the respondents before the trial court also of today's date.

3. The trial court record has been received. Though the counsel for the respondents appears but without even the suit file and states that he is not prepared to argue. However adjournment is deemed inappropriate and the counsel for the appellant Bank has been heard and the trial court record perused.

4. The respondents instituted the suit from which this appeal arises pleading, i) that their predecessors had let out the ground floor portion ad-measuring 1517.3 sq. ft. of property No.C-6/1, Krishna Nagar, Delhi-110 051 to the appellant Bank on 01.10.1997 at Rs.27,948.50p and in this respect a Lease Deed was executed on 09.10.1998 for a period of five years with an option to the appellant Bank to occupy the premises for a further period of

five years by increasing the rent by 25%; ii) that the period of five years expired on 30.09.2002 and the appellant Bank started paying rent increased by 25% i.e. at the rate of Rs.34,935.64p per month with effect from 01.10.2002; iii) that the renewal period of five years was to expire on 30.09.2007 and the respondents well before that i.e. from the month of May, 2007 started writing to the appellant Bank to vacate the premises on expiry of the said further period of five years on 30.09.2007 and ultimately also got issued a legal notice dated 06.08.2007 in this regard, also terminating the tenancy of the appellant Bank with effect from 30.09.2007; iv) that the appellant Bank however did not vacate the premises compelling the respondents to institute the suit; and (v) the prevalent letting value of the premises was stated to be Rs.100/- to Rs.125/- per sq. ft. per month and *mesne* profits / damages for use and occupation with effect from 01.10.2007 were claimed at the rate of Rs.1,21,400/- per month along with interest at 18% per annum.

5. The appellant Bank contested the suit filing a written statement *inter alia* pleading, (i) that there were other legal heirs also besides the respondents / plaintiffs of the deceased landlords; (ii) that the tenancy had not been determined in accordance with law; (iii) that the determination if

any of the tenancy had been waived; (iv) that the appellant Bank's tenancy of the premises is to continue so long as the appellant Bank continued to pay the rent; (v) that the parking area in the tenancy of the appellant Bank was being used by the respondents also for their commercial purposes as they kept their tandoor and other material for preparation of food and also parked their motorcycle therein; (vi) that the letters / notice of the respondents asking the appellant Bank to vacate the premises and terminating the tenancy of the appellant Bank had not been received by the appellant Bank; (vii) that the prevalent rent in the area was Rs.30/- to Rs.35/- per sq.ft. per month; and, (viii) that the premises were residential in nature though being used by the appellant Bank for its branch.

6. The respondents / plaintiffs filed a replication to the written statement aforesaid of the appellant Bank along with an application under Order 12 Rule 6 of the CPC for decree for ejectment on admissions.

7. The parties were at that stage referred to mediation and which was successful. The appellant Bank as aforesaid agreed to vacate the premises on or before 31.12.2010. Accordingly, on the basis of the said settlement arrived at, a decree for ejectment was passed in favour of the respondents and against the appellant Bank and the suit, insofar as for the claim of the

respondents / plaintiffs for *mesne* profits, was put to trial on the following issues:

- “1. *Whether the plaintiff is entitled for mesne profits / damages relating to the suit premises as against the defendants, if so at what rate and for which period? OPP*
2. *Whether the plaintiff is entitled for interest on the mesne profits / damages, if so at what rate and for which period? OPP*
3. *Relief.”*

8. The appellant Bank could not vacate the premises by 31.12.2010 as agreed by it and applied to the trial court for extension of time and offered to pay damages at the rate of Rs.80,000/- per month for the additional time of two months sought i.e. from 01.01.2011 to 28.02.2011. The said application was allowed and time granted to vacate the premises on or before 28.02.2011, however observing that the payment of Rs.80,000/- per month was without prejudice to the rights and contentions of the parties and would not affect the final outcome of the *mesne* profits / damages to be determined by the Court.

9. The appellant Bank vacated the premises and delivered possession thereof to the respondents on 29.01.2011.

10. The learned Additional District Judge has by the impugned judgment and decree awarded *mesne* profits / damages for use and occupation to the respondents against the appellant at Rs.60,680/- per month i.e. at the rate of Rs.40/- per sq. ft. per month for the period with effect from 01.10.2007 till 31.12.2010, finding / observing / holding:

- (i) that the respondents / plaintiffs had proved service / delivery of letters dated 07.05.2007 and 21.05.2007 and legal notice dated 06.08.2007 on the appellant Bank; thus the tenancy of the appellant Bank stood determined by efflux of time as well as by notice, with effect from 30.09.2007 and the appellant Bank became liable for *mesne* profits with effect from 01.10.2007;
- (ii) that the appellant Bank had placed on record a Lease Deed proved as Ex.DW1/10 of letting of premises ad-measuring 4590 sq. ft. in the same colony to Punjab National Bank on a monthly rent of Rs.1,59,732/- (i.e. Rs.34.80p per sq. ft. per month) with effect from 18.05.2008;

- (iii) that the appellant Bank had also proved Lease Deed Ex.DW1/1 executed on 09.01.2009 with effect from 01.12.2006 of a premises ad-measuring 2335 sq. ft. consisting of ground floor and basement and let out at Rs.93,400/- per month i.e. Rs.40/- per sq.ft. per month;
- (iv) that both these Lease Deeds proved by the appellant Bank itself clearly showed that the premises in the vicinity were fetching rent of Rs.40/- per sq.ft. per month during the relevant time;
- (v) the appellant Bank had also admitted having shifted its branch earlier running in the premises of the respondents to another premises in the locality taken on rent vide Lease Deed Ex.DW1/P1 dated 18.10.2010 at a rent of Rs.80/- per sq.ft. per month;
- (vi) thus the appellant Bank was found liable to pay *mesne* profits / damages for use and occupation at Rs.40/- per sq. ft. per month for an area of 1517.3 sq. ft. i.e. Rs.60,680/- per month; and
- (vii) interest at 12% per annum on arrears of *mesne* profits was also awarded.

11. The counsel for the appellant Bank had argued that the appellant Bank for the period from 2002-2007 was paying rent at the rate of Rs.23/- per sq. ft. per month and the enhancement thereof to Rs.40/- per sq. ft. per month is unreasonable and the learned Additional District Judge could at best have awarded *mesne* profits enhanced by 25% over the last paid amount. It is also argued that the area of 1517 sq. ft. in the tenancy of the appellant Bank is inclusive of open parking space also and rear courtyard of the premises and the covered carpet area in the tenancy of the appellant Bank is of 1070 sq. ft. only and *mesne* profits per sq. ft. per month ought to have been calculated on covered carpet area only and not for the open areas also in the tenancy of the appellant Bank. It is yet further contended that the learned Additional District Judge has not considered the plea of the appellant Bank of the respondents also using the open space for the purpose of parking their motorcycle or keeping goods in connection with the restaurant being run by them in the adjoining portion of the property. Lastly, it is argued that the interest on arrears of *mesne* profits awarded at 12% per annum is exorbitant. Reliance is placed on:

- (i) Judgment dated 13.02.20012 of this Court in RFA No.6/2004 titled ***State Bank of India Vs. H.C. Takyar (HUF)*** awarding

mesne profits at a rate enhanced at 15% every year over the last rent paid by the tenant;

- (ii) ***M.C. Agrawal HUF Vs. Sahara India*** 183 (2011) DLT 105 holding the landlord to be not entitled to *mesne* profits at double the rent and also awarding *mesne* profits at a rate enhanced by 15% every year over the last paid rent and reducing the interest on arrears of *mesne* profits from 20% awarded by the trial court to 12% per annum;

(I may however add that both the judgments aforesaid are in cases where the landlord had not led evidence as to the prevalent rent in the locality and thus would have no application.)

- (iii) ***CMC Ltd. Vs. Balwant Singh Dharmarait*** 2010 (114) DRJ 735 awarding *mesne* profits at a rate 30% over the last paid rent;

(however this is also a case of no evidence as to the rate of *mesne* profits being led by the landlord)

- (iv) Judgment dated 04.11.2008 of the Division Bench of this Court in RFA No.358/2004 titled ***Smt. Ram Chameli Kohli Vs. M/s National Book Trust of India*** laying down that while

determining *mesne* profits, the nature and use of occupation, amenities provided by the landlord in the building, location, age and condition of the building etc. are relevant;

- (v) ***Fab India Overseas P. Ltd. Vs. S.N. Sheopori*** 199 (2013) DLT 351 (DB) awarding interest on arrears of *mesne* profits at 6% per annum;
- (vi) ***State of Rajasthan Vs. Nav Bharat Construction Co.*** (2002) 1 SCC 659;
- (vii) ***Mahant Narayan Dasjee Varu Vs. Board of Trustees*** AIR 1965 SC 1231;
- (viii) ***State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd.*** 2009 (3) Arb. LR 140 (SC);
- (ix) ***Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy*** (2007) 2 SCC 720; and
- (x) ***S. Kaushnuma Begum Vs. The New India Assurance Co. Ltd.*** AIR 2001 SC 485.

All to show that the Courts have awarded interest at 6% to 9% per annum

12. I have perused the evidence recorded in the suit. The appellant Bank in the cross examination of the respondent no.1 appearing as the sole witness on behalf of the respondents / plaintiffs did not bring out any reasons as to why the letting value of the said premises would be at a rate lesser than the letting value of the premises leases whereof at the rate of Rs.34.80 or Rs.40/- per sq.ft. per month were filed by the appellant Bank itself. Similarly, though a suggestion was given that the respondents were using the open space for keeping their goods but save for the admission of the respondents of parking their motorcycle therein, could not establish so.

13. The Chief Manager of the appellant Bank appearing as a defense witness though deposed of the respondents keeping their goods in the open space but did not depose that any objection was taken by the appellant Bank at any point of time with respect thereto; he in his examination-in-chief also did not state as to why the suit premises were not capable of fetching rent of Rs.34.80 or Rs.40/- per sq. ft. per month as the premises leases whereof were filed by the appellant Bank itself were fetching.

14. There was thus clear evidence before the learned Additional District Judge of the letting value of the premises at the relevant time being at the rate of Rs.40/- per sq.ft. per month and no error can be found in the award of

mesne profits at the said rate. After all, it cannot be forgotten that the appellant Bank after vacating the premises, had to take alternate premises at the rate of Rs.80/- per sq.ft. per month. Even though the said rate is of the year 2010 and the *mesne* profits were due from the year 2007 but even if the formula advocated by the appellant Bank itself of 15% to 30% increase in rent every year is applied backwards from the rent of Rs.80/- per sq. ft. per month in the year 2010, the rate awarded of Rs.40/- per sq.ft. per month in the year 2007 is found to be on the lower side only. Not only so, the said rate is applied uniformly, from 1.10.2007 to 31.12.2010. Even if the rate of Rs.40/- per sq. ft. per month was a little on the higher side in the year 2007, the same is offset by the same rate being given for the year 2010 also, when the rate was much higher.

15. As far as the argument of the counsel for the appellant Bank of use of the open parking space and rear open courtyard by the respondents as well is concerned, the same though not established would not reduce the rate of *mesne* profits. The appellant Bank as aforesaid has never protested against the same. Even if it is believed that the respondents have been so using the said open space in the tenancy of the appellant Bank, such user without any protest by the appellant Bank has but to be construed as with the consent of

the appellant Bank and the appellant Bank on this count cannot claim any reduction in rate of *mesne* profits.

16. The challenge by the counsel for the appellant Bank to the rate of the *mesne* profits on the ground that it is at double the rate of the last paid rent also has no merit for the reason that the counsel for the appellant has himself argued that the appellant Bank is an old tenant in the premises i.e. since the year 1982. Thus the lease in the year 1998 was by way of renewal only. Judicial notice can be taken of the fact that renewal of leases of old tenancies are generally at a rent much below the prevalent market rent. It thus cannot be said that the rate at which the appellant Bank was paying rent i.e. Rs.23/- per sq. ft. per month for the period 2002 to 2007 was the market rent.

17. As far as the contention of the appellant Bank, of the *mesne* profits being required to be computed for the covered area and not for the open area, though the Lease Deed between the appellant and the predecessor of the respondents mentions the covered area as 1037.8 sq.ft. and total area as 1517.3 sq.ft. but in my view, the award of *mesne* profits at ₹40/- per sq.ft. on the basis of the two lease deeds produced by the appellant Bank itself does not call for any interference. It may be mentioned that the Lease Deed, the rent whereunder is at the rate of ₹34.80 per sq.ft. per month is for 4590 sq.ft.

of which 1540 sq. ft. is in the basement, 1570 sq. ft. on the ground floor and 1480 sq. ft. on the first floor. Judicial notice can be taken of the fact that the rent of the basement and first floor is generally lower than the rent of the ground floor, especially qua premises used for commercial purposes. Similarly, the Lease Deed, the rate of rent whereunder is at the rate of Rs.40 per sq. ft. per month is also for 1179 sq. ft. in basement and 1156 sq. ft. on the ground floor. Per contra, the entire suit premises in the present case were on the ground floor only and thus computation of *mesne* profits at the rate of Rs.40/- per sq. ft. per month on the entire area of 1517.3 sq. ft. is found to be justified.

18. I may mention that the appellant Bank had also disputed the service / receipt of the letters asking it to vacate the premises and notice of determination of tenancy and finding in which regard has been returned by the learned Additional District Judge against the appellant Bank. Though the counsel for the appellant Bank has not agitated the said aspect or any other aspect before me and thus need is not felt to deal therewith but suffice it is to mention that the judgment in that regard is found to be in accordance with law. It even otherwise defies logic as to why a landlord who obviously was interested in having its old tenant vacate the premises and who did ultimately

file a suit for ejectment, would not send such letters or get such legal notice issued to the appellant Bank. Moreover, the said aspect in fact lost relevance after the appellant Bank agreed to a decree for ejectment and which decree was on the basis of the tenancy having been determined.

19. However I do find some merit in the challenge by the appellant Bank to the rate of interest awarded on arrears of *mesne* profits. The learned Additional District Judge has not given any reasoning whatsoever for awarding interest @ 12% per annum. The said interest is largely for the period during the pendency of the proceedings before the Court. The judgments cited by the counsel for the appellant Bank do indeed show the award of interest by the Courts at the rate of 6% or 9% per annum. Since the nationalized banks during the relevant period have been paying interest on fixed deposits at the average rate of 9% per annum, it is deemed appropriate to reduce the rate of interest from 12% per annum as awarded by the learned Additional District Judge to 9% per annum. It is further made clear that interest would run from the end of each month for which *mesne* profits are due and till the date of the payment.

20. The appeal is therefore partly allowed. Though the challenge to the period and rate of *mesne* profits is dismissed but the challenge to the rate of

interest awarded on arrears of *mesne* profits succeeds and the judgment and decree is modified accordingly. In the circumstances, no costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JULY 30, 2013
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