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

+ RFA 370/2012 and CM Appl. No. 6064/2013 (O 41 R 5(2) CPC)

Decided on 25th April, 2013

INTERNATIONAL COLLEGE OF
FINANCIAL PLANNING LTD Appellant
Through : Ms. Garima Prashad, Adv.

versus

SANJIV BATRA Respondent
Through : Ms. Leena Tuteja, Adv.

AND

+ RFA 371/2012 and CM Appl. No. 6007/2013 (O 41 R 5(2) CPC)

INTERNATIONAL COLLEGE OF
FINANCIAL PLANNING LTD Appellant
Through : Ms. Garima Prashad, Adv.

versus

KANWALJEET KAUR KOCHAR Respondent
Through : Ms. Leena Tuteja, Adv.

AND

+ RFA 372/2012 and CM Appl. No. 6065/2013 (O 41 R 5(2) CPC)

INTERNATIONAL COLLEGE OF
FINANCIAL PLANNING LTD Appellant
Through : Ms. Garima Prashad, Adv.

versus

ROHIT ANAND Respondent
Through : Ms. Leena Tuteja, Adv.
AND

+ RFA 373/2012, CM Appl. Nos. 4965/2013 (O 41 R 5(2) CPC) and
16955/2012 (for filing Addl. Documents)

INTERNATIONAL COLLEGE OF
FINANCIAL PLANNING LTD Appellant
Through : Ms. Garima Prashad, Adv.

versus

VIJAY KUMAR MAGOO Respondent
Through : Mr. Akhil Sachar, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. By the judgment and decree impugned in the above noted appeals, trial court has disposed of four suits filed by the respondents. Facts are similar, inasmuch as, common evidence had been led before the trial court, thus, the appeals are disposed of together.

2. Arguments heard and the entire material placed on record has been perused.

3. Trial court has awarded mesne profits @ ₹150/- (Rupees One Hundred Fifty Only) with effect from termination of tenancy, that is, 11th November, 2010 till one month beyond handing over the possession in

Court, together with damages of ₹1 lac towards repairs in each case; pendent elite and future interest @ 8% per annum, besides costs of the proceedings have also been granted.

4. Briefly stated, facts are that respondents had filed suits for possession and mesne profits against the appellant in respect of their respective premises bearing Flat Nos. 311, 312, 313 & 314, 3rd Floor, Naurang House, 21, Kasturba Gandhi Marg, New Delhi, which were leased out by them to appellant vide separate registered lease deed(s) all dated 12th July, 2004. Lease was made effective from 6th June, 2004 and was for a period of three years. Appellant was given option to renew the lease for a further two terms of three years each on same terms and conditions but subject to 20% escalation in the prevalent rentals for every renewed term. It was specifically provided in the lease deed that with every renewal parties shall execute a fresh lease deed duly registered with the office of Sub-Registrar. Lease period in terms of initial lease deed expired on 5th June, 2007. Thereafter, no fresh lease deed was got registered in the office of Sub Registrar. However, appellant continued to occupy the suit premises on enhanced rent and the tenancy became on month-to-month basis. All the four flats were adjacent to each other. Respondents had given permission to

the appellant to break the intervening walls as also to carry out renovations to suit its requirement but on its own costs. Respondents terminated the monthly tenancy by issuing notice dated 11th November, 2010 thereby called upon the appellant to vacate the suit premises. Despite service of notice suit premises were not vacated, hence, the suits for possession and mesne profits @ ₹250 (Rupees Two Hundred Fifty Only) per square feet per month were filed.

5. As regards possession is concerned, decrees were passed by the trial court in three suits. Appellant preferred appeals in this Court. However, subsequently appellant decided to vacate the suit premises and deposited the keys in Trial Court since respondents did not accept possession. As per the respondents suit premises were in damaged condition. Local Commissioner was appointed who gave his report, relevant portions whereof reads as under:-

“4. That main gate was opened with the help of Asstt. Clerk of Shri D.K. Aggarwal. There was no separate door existed of the flat, actually there were five flats but no internal wall and door of these flats were existed. All internal walls have been removed. It was an open hall. The clear segregation and demarcation of flats are missing because internal walls are removed.

5. That the hall (five flats) was totally damaged as it was mishandled or somebody intentionally damaged the property.

6. That I found flooring has been completely damaged

broken at many places. At some place tile flooring has been removed also and kept in pieces. Bathroom of flat no. 311 has been completely broken and it is being used as storage. In flats Nos. 313-314 bathroom fittings are completely broken, tiles damaged, pipeline has been broken in such a way that they cannot be used now.

Electrical wiring and switches has been completely taken off in very rough manner and all the connections have been shifted at one place with one control. False ceiling has been ripped apart in a very unprofessional manner due to which structure damage has been done to the roof.

Glass panes have been broken, even the main glass has also been broken at places

Due to the damage caused to the property, I suggest it will take more than 75 days to rectify the above defects and to bring the whole premises into usable space.

7. That order/direction dated 16.09.2011 is annexed along with this report as Annexure 'A' and original proceeding sheet dated 17.09.2011 is also annexed as Annexure 'B'.

Note: Photographs and two CDs are filed in Suit No. 99/2011."

6. Thereafter, respondent took over the possession of the suit property by collecting keys. It may be noted that appellant withdrew the appeals. Only question involved in these appeals is with regard to the quantum of mesne profits.

7. Appellant as well as respondents had led evidence with regard to the prevalent market rate of rent in respect of the suit premises as also the extent of damages. Trial court scrutinized the evidence led by the parties meticulously and has come to the conclusion that mesne profits @ ₹150/-

(Rupees One Hundred Fifty Only) per square feet would be just and proper compensation. As regards damages, trial court has returned a finding that the claim of ₹2 lacs each was excessive even though architect's report had been produced by the respondents. As per trial court, reasonable expenses towards electrification, re-plastering of the walls, tiling and sanitary work etc. would be about ₹ 1 lac in respect of each of the premises.

8. Learned counsel for the appellant has vehemently contended that rate of rent in respect of similarly situated premises in the same area was much less than ₹150/- (Rupees One Hundred Fifty Only) per square feet. As per the reports of Government approved valuers rent of the suit premises was around ₹75/- (Rupees Seventy Five Only) per square feet only. According to two registered lease agreements, photocopies of certified copies whereof were annexed with the affidavit of DW1 as ExDW1/E, collectively rent of similarly situated premises in Connaught Place area during the period November, 2010- January, 2011 was ₹30/- (Rupees Thirty Only) per square feet and in January, 2012 it was ₹35/- (Rupees Thirty Five Only) per square feet. Despite above evidence produced by the appellant, trial court has committed a grave error in accepting the certified copy of Lease Agreement dated 22nd April, 2010 (Ex. PW1/7) of the plaintiff to determine the mesne

profits at the rate of ₹150/- (Rupees One Hundred Fifty Only) per square feet. Trial court has also overlooked the fact that Ex. PW1/7 involves a fully furnished premises, inasmuch as, the lessor had agreed to bear the maintenance charges etc. Accordingly, rent @ ₹200/- (Rupees Two Hundred Only) per square feet as disclosed in Ex. PW1/7 could not have been made the basis for fixing the market rate of rent in respect of suit premises. I do not find any force in this contention of the learned counsel. Ex. PW1/7 is a Lease Agreement in respect of a flat in the same building where the suit premises are situated. The lease agreement is in respect of Naurang House, Kasturba Gandhi Marg, New Delhi, where the suit premises are situated. Thus, Ex. PW1/7 is best evidence to assess the market rate of rent in respect of the suit premises and in my view trial court has rightly accepted the same. It is not the case that trial court has fixed same rate as has been mentioned in Ex. PW1/7. The rate of rent in respect of the suit premises has been taken much lower than that mentioned in Ex. PW1/7 and it appears that the lesser rate has been fixed keeping in mind that premises, involved in Ex. PW1/7, was a furnished accommodation. As regards the valuation reports, same do not indicate prevalent market rate of rent in the area. Valuers have assessed the market value of the flats and have taken 4%

of the total value as fair/standard rent. Valuers have not taken into consideration the actual prevalent market rate of rent in respect of the premises in the same building or for that matter similarly situated premises. Copies of the registered lease deed placed on record by the appellant are in respect of different buildings and have rightly been not preferred as against Ex. PW1/7, inasmuch as, a Family Trust appears to have leased out its properties to the family members. Accordingly, contentions of learned counsel for the appellant on this point are rejected.

9. Learned counsel has next contended that trial court has erred in awarding damages to the tune of ₹1 lac to each of the respondents. As per the lease deeds, appellant was permitted to break the intervening walls between the flats as also to carry out renovations in the suit premises to suit its requirements. Accordingly, appellant had broken the intervening walls and was using the entire area as a hall wherein partitions were made. While vacating the suit premises partitions were removed. In terms of the lease deed, appellant was not required to handover the suit premises in the same condition in which same were handed over to appellant, thus, appellant was not required to pay any damages to respondents. I do not find any force in this contention of the learned counsel either. Trial court had appointed the

Local Commissioner to visit the suit premises to verify the extent of damage. Report of the Local Commissioner has remained unchallenged as no objections to the said report were filed by the appellant. A perusal of report of the Local Commissioner makes it clear that it is not the case of only removal of intervening walls but that apart extensive damage has been caused to the suit premises, inasmuch as, flooring and bathrooms were broken electrical wiring, switches etc. were removed and false ceiling was also ripped apart. In view of the overwhelming evidence having come on record trial court has rightly awarded ₹1 lac each to the respondents and no fault can be found with such an approach.

10. For the foregoing reasons, I do not find any material irregularity, illegality or perversity in the impugned judgment and decree, thus, appeals are dismissed. No order as to costs. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

APRIL 25, 2013

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