

Court No. - 17

Case :- S.C.C. REVISION No. - 33 of 2021

Revisionist :- Bata I Ltd. Lucknow Thru. Chairman

Opposite Party :- Smt. Kumud Kumar

Counsel for Revisionist :- Mohammad Aslam Khan, Ashish Raman Mishra

Counsel for Opposite Party :- Ashok Pratap Singh Gaur, Prashant Singh Gaur

Hon'ble Manish Mathur, J.

1. Heard Mr. Mohd. Arif Khan learned Senior Counsel assisted by Mr. Mohd. Aslam Khan and Mr. Ashish Raman Mishra learned counsel for revisionist and Mr. Prashant Singh Gaur learned counsel for opposite parties.

2. Revision under Section 25 of the Provincial Small Cause Courts Act has been filed assailing judgment and decree dated 24th August, 2021 passed by Special Judge (P.C. Act-1)/Additional District Judge in SCC Case No. 42 of 2010 (Smt. Kumud Kumar versus Bata (India) Limited whereby suit filed for arrears of rent and ejectment and mean profits has been decreed.

3. Learned counsel for revisionist submits that during pendency of present revision, vacant possession of the premises in question has already been handed over to opposite parties along with arrears of rent due in accordance with judgment rendered. At present on the basis of instructions, he restricts his prayer with regard to mean profits which have been awarded to the tune of Rs. 88,550/-.

4. It is submitted that the trial court has awarded the aforesaid mean profits primarily on the basis of exemplars produced by the plaintiff as List No. C-19 and C-20 which were certified copies of list agreements of buildings in the surrounding area of the premises in question. It is submitted that aforesaid documents have been believed on face value without the plaintiff being required to prove the same. It has also been submitted that there is no discussion or reasoning indicated in the judgment with regard to determination of the mesne profits on some substantive basis. It has also been submitted that issue No.4 has been decided primarily in favour of plaintiff without adjudicating upon the reasons or evidence for determining the value of mesne profits which has been arrived at only in the operative portion of the judgment.

5. Learned counsel has further placed reliance on judgment rendered by Hon'ble Supreme Court in the case of Fateh Chand versus Balkishan Dass, A.I.R. 1963 Supreme Court 1405 to submit that mesne profits are required to be determined as per value of user of land and as a compensation for profits which he actually received or with ordinarily diligence might have received.

6. It has also been submitted that the revisionist as defendant was under burden of an order passed under Order 15 Rule 5 of the Code of Civil Procedure due to which he was not able to produce any evidence in order to rebut the claim of plaintiff but such a factor has been taken as adverse to the defendant, which is an error committed by the trial court.

7. Learned counsel appearing for opposite party has refuted submissions advanced by learned counsel for petitioner with submission that a perusal of the order assailed will make it evident that cogent reasons have been indicated for calculation and grant of mesne profit. It has been submitted that certified copies of lease agreements pertaining to buildings in the vicinity had been brought on record, two of which were taken into consideration as List No. C-19 and C-20. It is also submitted that ample opportunity was given to the defendant to rebut the said evidence but since the defendant failed to do so, the same were admitted as evidence and rightly relied upon by the trial court. He has also adverted to the definition of mesne profits as indicated in Section 2 of the Code of Civil procedure and has adverted to section 61 and 79 of the Evidence Act to submit that genuineness of certified copies is presumed. Learned counsel has also placed reliance on various judgments i.e. (i) Indian Council for Enviro-Legal Action versus Union of India and others 1996 AIR 1446 (ii) Vishwa Gaurav Pandey versus Dr. Smt. Sangeeta Agarwal and another 2021 SCC OnLine All 408 (iii) Raghunath Goel versus Yogendra Singh Nehra 2015 SCC OnLine All 8490, (iv) M/S. Sahara India & others versus M/s M.C. Agrawal HUF 2011 SCC OnLine Del 3715 (v) The Food Corporation of India and another versus M/s Durga Shakti Enterprises 1995 SCC OnLine All 776 (vi) Humayun Dhanrajgir and others versus Ezra Abody 2008 SCC OnLine Bom 420 & (vii) Sumer Corporation versus Vijay Anant Gangan and others 2022 SCC OnLine SC 1548 to submit that scope of interference under Section 25 of the Provincial Small Causes Court Act is limited to the extent of examining any perversity in the order impugned and not to a situation where only a different opinion can be taken.

8. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is

evident that as on date, the judgment impugned has been substantially complied with by the revisionist itself since the property in question has admittedly been vacated and possession thereof has been handed over to the opposite party-land lord. The outstanding rent as directed by means of impugned order has also been paid to the opposite party-land lord. The only question therefore arising for adjudication is as to whether the trial court has erred in calculation and grant of mesne profits ?

9. With regard to aforesaid, it is also evident that the trial court has framed issue No.4 pertaining to arrears of rent and damages. With regard to aspect of mesne profits, the trial court has adverted to same in paragraphs 24 and 30 of the impugned judgment and has placed reliance on certified copies of lease agreements pertaining to other buildings in the vicinity whereafter it has been observed that in all the lease agreements, the rent of at least Rs. 50 per square feet stands established. The judgment also records that despite opportunity having been granted, the defendant has failed to avail itself of an opportunity to rebut the same. The judgment also indicates that compliance of Order 15 Rule 5 of the Code has not been made by the defendant. It therefore is established that calculation of mesne profit has been made solely dependent on the certified copies of lease agreements pertaining to other buildings of the vicinity whereafter Rs. 88,550/- has been granted taking damages to be at the rate of Rs. 50 per square feet. Although learned counsel for revisionist has laid much emphasis on the fact that the trial court has erred in placing reliance on the aforesaid certified copies of sale deeds (sic lease agreements) since the same were not proved by the plaintiff and at first glance, the submission seems attractive but upon closer scrutiny, the provisions of Section 79 of the Evidence Act pertaining to presumption regarding genuineness of certified copies definitely comes into play.

10. Section 79 of the Evidence Act clearly stipulates that a court shall presume to be genuine every document pertaining to a certificate/ certified copy or other documents, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer duly authorized. The section also provides that court shall also presume that any officer by whom any such documents purports to be signed and certified held, when he signed it, the official character which he claims in such paper.

11. The other relevant section pertaining to proving a document has been indicated in Section 68 of the Evidence Act, the proviso for which indicates that it shall not be necessary to call

an attesting witness to prove execution of any document, not being a will, which has been registered in accordance with provisions of Indian Registration Act, unless its execution by the person by whom it purports have been executed is specifically denied.

12. Upon conjoint reading of provisions of Sections 68 and 79 of the Evidence Act, it is evident that genuineness of certified copies of the lease agreements submitted by the plaintiff were required to be presumed unless specifically denied.

13. The material on record does not indicate in any manner any rebuttal of the documents brought on record as List No.C-18, C-19 and C-52-C.

14. The aforesaid documents have also been considered in the impugned judgment with the fact indicated that in all the aforesaid lease agreements, the minimum rental value of the properties in question is Rs. 50/- per square feet. The plaint has also indicated the calculation of damages at the rate of Rs.88550/- on the basis of rental value of Rs.50/- per square feet as indicated in paragraphs 7 and 9 of the plaint.

15. With regard to concept of mesne profits, it would be relevant to advert to Section 2 (12) of the Code of Civil Procedure in which mesne profits have been defined as follows:-

" 'Mesne profits' of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person, in wrongful possession."

16. The said aspect has been dealt with in the case of Fateh Chand versus Balkishan Dass, A.I.R. 1963 Supreme Court 1405 in the following manner:-

" The normal measure of mesne profits is therefore the value of the user of land to the person in wrongful possession. The assessment made by the High Court of compensation at the rate of five per cent of what they regarded as the fair value of the property is based not on the value of the user, but on an estimated return on the value of the property, cannot be sustained. The Attorney- General contended that the premises were governed by the Delhi & Ajmer-Merwara Rent Control Act XIX of 1947 and nothing more than the 'standard rent' of the property assessed under that Act could be awarded to the plaintiff as damages. Normally a person in wrongful possession of immovable property has to pay compensation computed on the basis of profits he actually received or with ordinary diligence might have received. It is not necessary to consider in the present case whether mesne profits at a rate exceeding the rate of standard rent of the house may be awarded, for there is no evidence as to

what the 'standard rent' of the house was."

17. In the case of Dalhauji Properties Limited versus Suraj Mal Nagar Mal, AIR 1977 Supreme Court 223 also the concept of mesne profit has been defined as present rental value.

18. Upon examination of the aforesaid term 'mesne profit' therefore it is evident that mesne profits are to be ascertained with regard to value of user of land and the compensation so computed is to be based on the profits which are actually received or can be received with due diligence. The rate of standard rent of house has no applicability with regard to grant of mesne profits.

19. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is evident that trial court has calculated mesne profits taking the rental value of property in question to be at the rate of Rs. 50/- square feet in accordance with exemplars brought on record by the plaintiff and which were unrebutted. This court therefore does not find any error in the calculation of mesne profits as determined by the trial court.

20. Learned counsel for petitioner has greatly emphasized the facts that once the an order against defendant under Order 15 Rule 5 of the Code was present, there was no way in which he could have brought forth any evidence for rebuttal.

21. With regard to aforesaid submission, a bare perusal of provisions of Order 15 Rule 5 of the Code will make it evident that although the defence of a defendant is struck off but his liability to rebut or participation in cross examination is not shut out. In such circumstances, once the plaintiff had discharged her burden of proof, the onus was definitely upon the defendant to have rebutted the same even if he could not have produced any additional evidence. The defendant not having taken advantage of this proposition of law, can not resile from the same particularly at the revisional stage.

22. For the aforesaid proposition, learned counsel for petitioner has placed reliance upon judgment rendered by Division Bench of this Court in the case of Babita Kasaudhan versus State of U.P. and others (2016) 5 ALL LJ 215 however an examination of the aforesaid judgment makes it evident that it is completely inapplicable in the facts and circumstances of the case since the said mater pertained to removal of a pradhan from the allocated post ceasing her financial and administrative powers. The order under challenge was clearly administrative in nature and therefore the concept of following principles of natural justice and for recording reasons in administrative orders clearly was

passed. However in the present case, we are examining the aspect of evidence to be led in small cause court proceedings which are judicial in nature as removed from quasi judicial proceedings. The principles of natural justice do not operate in a vacuum particularly in judicial proceedings which are governed by the procedures required to be followed by trial courts particularly in the present case where the code of civil procedure is admittedly applicable.

23. So far as submission of learned counsel for petitioner is concerned that the trial court has not recorded any reasons for passing the judgment. The said fact also is not established upon scrutiny of the judgment under challenge. The trial court has clearly recorded reasons as evident in paragraphs 26, 29 and 30 of the judgment and therefore the mesne profit awarded is clearly based on the calculation which in its turn is based on exemplars provided by the plaintiff.

24. In view of aforesaid, it is quite evident that the impugned order has been passed keeping in terms with the admissible evidence supplied by the plaintiff and its non rebuttal by the defendant.

25. In view of aforesaid, this Court does not find any occasion to interfere with the judgment impugned.

26. Consequently the revision being devoid of merits is dismissed. Parties to bear their own cost.

Order Date :- 5.4.2024

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