



2026:DHC:5550



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 06th April, 2026*
Pronounced on: 09th July, 2026

+ **RFA 73/2023**

SMT. RAJ KUMARI GARG

W/o Late Sh. Bal Kishan Garg,
R/o Flat No.1106, Tower KM-14,
Kosmos, Jaypee Greens Wish Town,
Sector-134, Noida, U.P.

.....Appellant

Through: Mr. G. S. Raghav, Advocate.

versus

STATE BANK OF INDIA

Local Head Office (s) & Zonal Office (s) at
11, Parliament Street, New Delhi;

And

One of its Branch at
A-264, Ground Floor,
Defence Colony Market, New Delhi.

....Respondent

Through: Appearance not given.

+ **RFA 100/2023, CM APPL. 5784/2023**

STATE BANK OF INDIA

Through its Branch Manger,
A-264, Defence Colony Market, New Delhi.

.....Appellant

Through: Appearance not given.

versus

SMT. RAJ KUMARI GARG

W/o Late Sh. Bal Kishan Garg,
R/o C-1469, Wazir Nagar,
Kotla Mubarakpur, New Delhi.

.....Respondent

Through: Mr. G. S. Raghav, Advocate.

CORAM:

RFA 73/2023 & 100/2023

Page 1 of 25



HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two **Regular First Appeals**, i.e. **RFA Nos.73/2023 and 100/2023**, under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) have been filed by the *Plaintiff, Smt. Raj Kumari Garg* as well as *Defendant, State Bank of India* against the Judgment dated **28.10.2022** and Decree dated **01.12.2022**, whereby the Suit for Possession and *Mesne Profits* filed by the Plaintiff has been decreed in her favour, by the learned Additional District Judge.
2. The Plaintiff had filed Suit bearing **CS DJ No.210018/2016 (old No. CS(OS) 1584/2008) for Possession, Use and Occupation Charges and Mesne Profits** against the Defendant Bank.
3. The **brief facts** as narrated in the *Plaint* are that, the Plaintiff is the absolute and exclusive owner of Property bearing Nos. 23-24, admeasuring 1,600 sq. ft. on the First Floor and 1,200 sq. ft. on the Second Floor, Defence Colony Market, New Delhi (*hereinafter referred to as "Suit Property"*).
4. The erstwhile State Bank of Patiala, now merged with State Bank of India (**SBI**), had taken the suit property on lease, *vide* a Registered Lease Deed dated **10.03.2003**, for a period of three years commencing from **01.01.2002** and ending on **31.12.2004**, at a monthly rent of Rs.62,000/-. The parties had agreed that the lease could be renewed for a further period of three years, subject to an enhancement of 20% in the monthly rent, provided the Defendant Bank made a written request prior to the expiry of the subsisting lease. It was also agreed that such renewal would not exceed a

RFA 73/2023 & 100/2023

Page 2 of 25



period of three years and would be governed by the same terms and conditions as contained in the Lease Deed dated 10.03.2003.

5. It was claimed that the aforesaid Lease came to an end on 31.12.2004. However, the Defendant Bank did not exercise its option to seek renewal of the lease, prior to the expiry of the lease period. It was further claimed that notwithstanding the expiry of the said Lease Deed, the Defendant Bank continued to remain in possession of the suit property and, consequently, became a tenant holding, over on a month-to-month tenancy.

6. The Plaintiff thereafter, issued a Legal Notice dated **09.05.2008** terminating the tenancy of the Defendant Bank and demanded the vacant and peaceful possession of the suit property, on or before **31.05.2008**. The Plaintiff also sought *mesne profits* towards unauthorized use and occupation of the suit property, at the prevailing market rate of Rs.4,00,000/- per month with effect from **01.06.2008**.

7. The Defendant Bank, *in the Reply* dated **24.05.2008**, asserted that it had requested the Plaintiff, from time to time, for renewal of the Lease Deed dated 10.03.2003 and lastly, had sought renewal *vide* Letter dated **01.01.2008**. It was further asserted that the Defendant Bank had been regularly paying the enhanced rent to the Plaintiff and it was her obligation to execute a fresh Lease Deed, in favour of the Defendant Bank.

8. The Plaintiff thereafter, gave a Rejoinder dated **09.06.2008** to the Reply of the Defendant Bank, reiterating that the Defendant Bank had never made any written request seeking renewal of the lease, in terms of the Lease Deed dated 10.03.2003. It was further stated that no such request had ever been made *vide* the alleged letter dated 01.01.2008, as claimed by the Defendant Bank.



9. Consequently, **the Plaintiff filed the present Suit** seeking recovery of possession, user and occupation charges amounting to Rs.12,00,000/- for the period from June, 2008 to August, 2008, and further mesne profits towards unauthorized use and occupation of the Suit Property at the rate of Rs.4,00,000/- per month from September, 2008 till handing over the possession of the Suit Property.

10. The **Defendant Bank**, in its **Written Statement**, took the preliminary objection that no Notice under Section 80 of the CPC had been served upon the Defendant Bank, before instituting the Suit.

11. It was claimed that the Plaintiff had sent a Letter dated **26.12.2007**, wherein she was willing to renew the lease for a further period of three years commencing from **01.01.2008** to **31.12.2010**. Consequently, the rent was increased by 20% that is from Rs.74,400/- to Rs.89,280/-.

12. It was asserted that the Defendant Bank, *vide* its Letter dated 01.01.2008 gave its consent for renewal of the lease for a further period of three years commencing from 01.01.2008 till 31.12.2010, though no fresh Lease Deed was executed by the Plaintiff, in favour of the Defendant Bank for the said renewed period.

13. It was further asserted that the Plaintiff has falsely claimed that the said Lease got expired in the absence of any written request by the Defendant Bank. On the contrary, the Plaintiff herself had readily given her unilateral consent to continue the lease in favour of the Defendant Bank *vide* letters dated **06.01.2005** and **26.12.2007**, for a period of three years.

14. It was further claimed that the Defendant Bank had been regularly paying the rent, which was duly accepted by Plaintiff without any



reservation. Consequently, the Legal Notice dated 09.05.2008 became infructuous, due to appropriation of monthly rent by the Plaintiff.

15. It was asserted that the Plaintiff had deliberately concealed the material fact that the suit property had been mortgaged by her, in favour of the Defendant Bank as security for repayment of a term loan of Rs.25,00,000/-, sanctioned under the Rent Scheme, *vide* Sanction Letter dated **02.02.2007**. It was claimed that the said loan was repayable in 60 monthly instalments of Rs.55,925/- each, with the condition that the monthly instalments were to be adjusted from the rent received by the Plaintiff from the Defendant Bank, after deduction of applicable taxes.

16. It was further asserted that the said loan was secured by a third-party guarantee of *Sh. Bal Krishan Garg*, husband of the Plaintiff. The Plaintiff had executed a notarized *Undertaking dated 02.02.2007*, in favour of the Defendant Bank. As per the said Undertaking, the Plaintiff undertook to extend the lease in favour of the Defendant Bank, as per the Lease Deed dated 10.03.2003.

17. **On Merits**, the Defendant denied the averment as made in the Plaint and prayed that the present Suit be dismissed.

18. The **Plaintiff** in her **Replication** reaffirmed the assertions made in the Plaint and denied the averments made by the Defendant Bank in its Written Statement.

19. During the pendency of the proceedings, **Defendant Bank vacated the Suit Premises on 31.12.2017. In view of the aforesaid, relief of possession stood satisfied.**

20. The learned Additional District Judge framed following Issues on **08.06.2018**:



“I. Whether the plaintiff is entitled to recovery of mesne profit as prayed in clause B and C? OPP

II. Relief.”

21. Additional Issue was framed vide Order dated **03.10.2018**:

“1. Whether the plaintiff is entitled to the costs of the suit and interest on the arrears of occupation charges/mesne profit if so, at what rate and for which period?”

22. The Plaintiff, *Smt. Raj Kumari Garg* examined herself as **PW-1** who reiterated the assertions as made in the Plaint. She relied upon the documents exhibited as **Ex. P1** to **Ex. P9**.

23. **PW-2** *Sh. Ved Prakash Bansal* proved the document exhibited as **Ex. PW2/1**, in order to prove the prevailing rate of rent.

24. **PW-3**, *Sh. Jagdish Gupta* also proved the document exhibited as **Ex. PW3/1**, in proof of the prevailing market rate.

25. The Defendant Bank examined **DW-1**, *Sh. Manish Kumar Singh*, Branch Manager, who deposed on similar lines, as the defence taken by the Defendant Bank, in its Written Statement. He relied on the documents exhibited as **Ex. DW1/1** to **Ex. DW1/9**.

26. The **learned Additional District Judge**, on appreciation of the rival contentions and evidence led by the parties, held that in terms of the Lease Deed dated 10.03.2003 **Ex.P-1**, though it talked about renewal of the Lease Deed, but also mentioned the word ‘extension’. which sidelined the argument of the Plaintiff that the lease in question could be extended only by executing a written Lease Deed.

27. It was further observed that instead of executing a fresh Lease Deed, the Plaintiff vide Letters dated 06.01.2005 **Ex.PW-1/D1** and 26.12.2007 **Ex.**



D1 had expressed her intention to extend the lease in favour of the Defendant Bank for a period of three years on payment of increased rent by the Defendant Bank. Furthermore, the Plaintiff had taken a loan of Rs.25,00,000/- from the Defendant Bank and had signed an Undertaking dated 02.02.2007 **Ex. D8** in its favour.

28. It was held that admittedly the Plaintiff had repaid the loan in May, 2012 and therefore, the Defendant Bank cannot be said to be an unauthorized occupant of Suit Property till May, 2012.

29. However, it was further observed that though the aforesaid loan was availed by the Plaintiff, however, such Undertaking cannot injunct the Plaintiff from issuing a Notice under Section 108 of Transfer of Property Act, 1882 to terminate the lease.

30. In so far as, *mesne* profits were concerned, ***the Plaintiff was granted mesne profits @ Rs.163/- per square foot per month*** with effect from May, 2012 to December, 2015 subject to enhancement by 15% thereafter, till the date of vacation of the Suit Property i.e. 31.12.17, along with the interest at the rate of 6% per annum.

31. *Aggrieved* by the Judgment dated 28.10.2022 and Decree dated 01.12.2022, the **Plaintiff has preferred RFA 73/2023 seeking modification of the Judgment dated 28.10.2022 and sought mesne profits from 05.08.2008 to April, 2012, which had been denied to her.**

32. *Similarly, aggrieved by the impugned Judgment dated 28.10.2022 and Decree dated 01.12.2022, the Defendant Bank has preferred RFA 100/2023, challenging the mesne profits granted vide this Judgment dated 28.10. 2022.*



33. The ***grounds of challenge*** by the ***Plaintiff Smt. Raj Kumari Garg in RFA No. 73/2023*** are that **the denial of mesne profits to the Plaintiff from 05.08.2008 till May, 2012 is unjust, unfair and contrary to the law.**

The learned District Judge admitted that the month-to-month tenancy of the Defendant Bank stood legally terminated w.e.f. 01.06.2008 vide Legal Notice dated 09.05.2008, despite which the *mesne profits* have been granted for a limited period from May 2012 till 31.12.2017.

34. The learned Additional District Judge had erroneously declined to grant *mesne profits* for the period 05.08.2008 till April 2012, on the ground that the Plaintiff had availed a term loan of Rs.25,00,000/- had given an Undertaking dated 02.02.2007, to extend the lease in favour of the Defendant Bank.

35. The Undertaking dated 02.02.2007, has been wrongly given the status of a registered Lease Deed. It is wrongly held that the was sufficient to create a lease in favour of the Defendant Bank for a fixed period of five years, commencing from 02.02.2007 till April, 2012. It was contended that on the basis of the aforesaid erroneous assumption, she has been wrongly declined the Plaintiff *mesne profits* for the requisite period.

36. It was contended that the settled legal position under Section 107 of the Transfer of Property Act, 1882 that a lease of immovable property from year to year, or for any term exceeding one year, or receiving a yearly rent, can be created only by a registered instrument, has not been appreciated. It was asserted that, admittedly, no Registered Lease Deed was executed between the parties after the expiry of the initial Lease Deed on 31.12.2004. Consequently, the occupation of the Suit Property by the Defendant Bank thereafter, was only as a tenant holding over on a month-to-month tenancy,



which was terminable by a notice of 15 days. It was further contended that the said tenancy stood validly terminated with effect from 01.06.2008 *vide* Legal Notice dated 09.05.2008.

37. It was submitted that the Undertaking dated 02.02.2007, by itself, was not a registered instrument and, therefore, was incapable of creating a lease for a term exceeding one year. It was asserted that, notwithstanding the execution of the said Undertaking, the Plaintiff, being legally entitled to do so, had expressly revoked the tenancy, *vide* Legal Notice dated 09.05.2008 and had validly terminated the month-to-month tenancy of the Defendant Bank. It was contended that the revocation of the Undertaking as well as the termination of the tenancy, has not been taken into consideration.

38. It was submitted that though, the contention of the Plaintiff that the Undertaking dated 02.02.2007 could not estop her from terminating the tenancy, despite which an erroneous conclusion has been drawn that all the objections *qua* the said Undertaking were hollow, as the Plaintiff herself had admitted that the loan was availed under the *Rent Scheme*; in fact, the Undertaking dated 02.02.2007 was only *qua* the loan that she had taken.

39. It was further submitted that the term loan of Rs.25,00,000/- in June, 2007 was given to the Plaintiff on tough commercial conditions, namely:

“(i) an equitable mortgage of the suit property by depositing its original title deeds with the Respondent Bank;

(ii) on a personal guarantee bond Ex.D-7 executed by her husband for repayment of loan; and

(iii) the loan carried an interest of 12.25% p.a.”



40. Most importantly, it was specifically provided under the loan contract that in case of any default in repayment of loan instalments, the Defendant Bank was given a right to initiate appropriate legal proceedings to recover the outstanding dues, including auction under Section 13 of the SARFAESI Act, 2002. Therefore, the loan amount granted by the Defendant Bank was otherwise also fully secured, similar to the loan granted to any other borrower. The grant of loan to the Plaintiff was thus, *de hors* of the Undertaking dated 02.02.2007.

41. It was contended that the Defendants Bank took an additional advantage of being in actual use and occupation of the suit property. Therefore, the payment of 60 EMIs were to be deducted from the monthly rent payable by the Defendant Bank to the Plaintiff, making the said loan more secured and safer.

42. The Defendant Bank by way of its *Counterclaim No. 72/2011* had sought specific performance of *Clause 2 of Lease Deed dated 10.03.2003*, which clearly indicates that the Defendant Bank admitted the tenancy in their favour; however, the same ended on 31.12.2004. Thereafter, its month-to-month tenancy was validly terminated *vide* Legal Notice dated 09.05.2008. More importantly, the Defendant Bank itself was aware that the Undertaking dated 02.02.2007, was not capable of extending the lease in its favour for the period beyond one year.

43. It was further submitted that, the learned Additional District Judge has erred by granting interest at the rate of 6% per annum and has ignored the law laid down by this Court in the case of *M/s P.E.C. Limited v. Samir Prakash*, MANU/DE/2781/2011. It was asserted that the learned Additional District Judge ought to have awarded interest at the rate of 12% per annum.



44. It was lastly contended that the *mesne profit* at the rate of Rs.163/- per sq. foot are erroneous, considering the evidence led by the Plaintiff to prove the prevailing market rate at the relevant time was Rs.216/- per sq. foot.

45. It was therefore, prayed that the impugned Judgment dated 28.10.2022 be modified to the extent, of enhancing the mesne profits at the rate of Rs.216/- per sq. foot, and it be also granted for the denied period.

46. The ***grounds of challenge by the Defendant Bank – SBI in RFA 100/2023*** are that the quantum of *mesne* profits have been decided on the higher side, without considering the evidence led by the parties and the documents produced therein.

47. The Defendant Bank further submitted that the learned Additional District Judge has considered that the Defendant Bank had been requesting the Plaintiff to execute and register a fresh Lease Deed in its favour, however, she kept on delaying the execution of the same on one pretext or the other. She kept on assuring the Defendant Bank that the Lease Deed for renewal would be executed and there was nothing to worry. It all clearly implies that the tenancy had been renewed to month-to-month basis, in terms of Section 116 of Transfer of Property Act, 1882.

48. The Defendant Bank thus, continued to be a lawful tenant in the suit property and had been regularly paying enhanced rent, which was duly accepted by Plaintiff. *There was no question of any unauthorized occupation or misuse of the premises, by the Defendant Bank.*

49. The Plaintiff had admittedly taken a loan of Rs.25,00,000/- lakhs from the Defendant Bank, which was sanctioned *vide* Letter dated 27.01.2006. It has also not been considered that she, in her cross-examination, had



admitted that 1st and 2nd Floors of Suit Property were not authorized for commercial use and they were sealed by the Committee in December, 2017 and are still lying sealed.

50. **PW-2, Sh. Ved Prakash Bansal**, in his cross-examination, had admitted that the shops on the 1st and 2nd Floors in Defence Colony Market, had been sealed by the Authority and are lying sealed since December, 2017. He further admitted that the suit property of the Plaintiff is an old construction, whereas his property was a new construction. Therefore, it could not have been made a basis for grant of *mesne profits* @ Rs.163/- per square foot, per month.

51. It was further submitted that *the interest at the rate of 6% per annum has been erroneously granted.*

52. *It is therefore, prayed that the impugned Judgment and Decree granting mesne profits, be set aside.*

53. **Written Submissions have been filed on behalf of both the parties, asserting similar facts, as narrated above.**

Submissions heard and record perused.

54. The Plaintiff had filed the present Suit for **Possession, user and occupation charges and mesne profits**. During pendency of the Suit, Possession of the Suit Property has been handed over by Defendant Bank on 31.12.2017.

55. The plaintiff/Smt. Raj Kumari Garg is aggrieved by the of denial of mesne profits from 05.05.2008 to May, 2012 and also the rate of mesne profits which should have been Rs. 216/- per sq. foot per month; while SBI is aggrieved by the rate of mesne profit mesne profits @ Rs.163/- per square foot, per month and also the rate of interest.



I. Whether the Mesne Profits have been rightly denied to the plaintiff from 05.05.2008 to May, 2012:

56. The **first challenge** in the Appeal filed by the Plaintiff, is in respect of the denial of *user and occupation charges/mesne profits* from 05.05.2008 to May, 2012, to the Plaintiff.

57. Admittedly, Defendant Bank was inducted as a tenant in the suit premises *vide* registered Lease Deed dated 10.03.2003 **Ex.P1**. Relevant Clause, i.e. 1, 2, 7, 8(c), 8(d) and 8(f) are as under:

“1. That the monthly rent shall be Rs. 62,000/- (Rupees sixty two thousand only) with effect from 1-1-2002 payable by the Bank to the Lessor on before 5th day of every month in advance after deduction of the income-tax payable by the lessor at source as applicable at the time of payment of rent.

2. That the lease period shall stand renewed for a period of three (3) years computed from 1-1-2002, whereafter the Bank shall have five renewal options of three years each; however, every option shall be subject to an increase of 20% in the monthly rent calculated on the basic rent of Rs.62,000/- (Rupees sixty two thousand only).

.....

7. That notwithstanding any other clause in this agreement, the Bank shall have the option to determine the lease and vacate the demised premises after giving one month's notice to the Lessor of its intention of doing so.

8. That the Lessor hereby covenant with the bank as under:-

(a)

(b)



(c) *That the Lessor will ensure to the Lessee/Bank a peaceful and uninterrupted use and enjoyment of the demised premises during the term or this lease or extension thereof without any interruption by the Lessor or any of her agents.*

(d) *That the Lessor will grant to the Bank a renewed lease of the demised premises on the bank's written request to be made at any time before the expiration of this lease for such. further period not exceeding three years at a time on the same terms as contained in this Lease and at the increase of 20% of the basic rent. The Lessor hereby expressly agrees that she would grant five options of renewal of lease each for a period of three years.*

(e)

(f) *That the Lessor shall provide water meter/s and electricity meter/s at her own cost but the consumption charges of water supply and electricity consumed shall be paid by the Bank.”*

58. It was further an admitted fact that after expiry of first lease period on 31.12.2004, the Defendant Bank did not make any written request for renewal of the Lease, as was contemplated in Clause 8(d) of the Lease Deed dated 10.03.2003, and therefore, did not exercise its option for renewal of the lease period.

59. The Plaintiff had asserted that because the Defendant Bank did not exercise its option for renewal of Lease Deed dated 10.03.2003, it became an unauthorized occupant w.e.f. 21.12.2004, and therefore, was liable to pay unauthorized user and occupation charges at the rate of Rs.4,00,000/- per month and also *mesne profits*.



60. While it is established that no renewal was sought by the Defendant Bank, the question arises as to what was the status of the Defendant Bank after expiry of first lease period on 31.12.2004. It is pertinent to note that the Plaintiff in her evidence, admitted sending Letter dated 06.01.2005 **Ex.PW-1/D1**, stating that in terms of Lease Deed dated 10.03.2003, the Defendant Bank is informed that rent has been increased from Rs.62,000/- to Rs.74,400/-, w.e.f. 01.01.2005.

61. Another significant aspect is the Letter dated 26.12.2007 **Ex.D1**, sent by the Plaintiff to the Defendant Bank seeking enhancement of rent by 20% making it Rs.89,280/- from Rs.74,400/- w.e.f. 01.01.2008, as per the Clause 2 of the Lease Deed dated 10.03.2003.

62. In this context, it becomes pertinent to consider the distinction between the terms '*renewal*' and '*extension*'.

63. The distinction between '*renewal*' and '*extension*' has been considered in the case of Provash Chandra Dalui vs. Biswanath Banerjee, 1989 Supp. (1) SCC 487, wherein it was observed that the words '*extension*' and '*renewal*' do not connote the same meaning. To **extend** means to enlarge, expand, lengthen, prolong or to carry out further than its original limit. Extension, according to *Black's Laws Dictionary*, means enlargement of the main body, in addition to something smaller than that to which it was attached; to lengthen or to prolong. The extension ordinarily implies the continued existence of something to be extended. *The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new Lease Deed is required, while in the case of 'extension' the same Lease Deed continues in force during additional period by performance of the stipulated act.*



64. Similar view was reiterated by the Supreme Court in the case of State of U.P. vs. Lalji Tandon, 2004 (1) SCC 1, wherein it was observed that there is a difference between *extension of lease* or *renewal of lease*, in accordance with the covenant contained in the principal lease. In the case of *extension*, it is not necessary to have a fresh Lease Deed executed, as the extension for the term agreed upon shall be a necessary consequence of the clause for extension. However, *option of renewal* consistent with the covenant for renewal, has to be exercised within the terms thereof and, if exercised, *a fresh Lease Deed shall have to be executed between the parties*. Failing the execution of fresh Lease Deed, another lease for a fixed period shall not come into existence, though the principal lease in spite of the expiry of the term thereof, may continue by holding over for year by year or month by month, as the case may be.

65. The aforesaid Judgments were reaffirmed in the case of Hardesh Ores Pvt. Ltd. vs. M/s Hede and Company, 2007 (5) SCC 614.

66. In the case of Shanti Prasad Devi vs. Shankar Mahto, (2005) 5 SCC 543, wherein a tenant had an option of seeking renewal, subject to similar terms of giving prior Notice in writing, it was held that in case, these twin conditions, as stipulated in the Lease Agreement are not satisfied, there would be no implied renewal, especially when the landlord has given no consent. It was further held that the Suit for Specific Performance of such condition in the Lease Deed, was not tenable.

67. Applying the aforesaid principles, the facts in hand may be examined. The Defendant Bank in terms of Clause 8(d) of the Lease Deed dated 10.03.2003, could have asked *for renewal of the lease* on payment of enhanced rent of 20% subject to two conditions, i.e. *firstly* a written request;



and *secondly*, it must be made before the expiration of lease period. Admittedly, no written request for renewal of lease was made by the Defendant Bank. Also, no fresh lease Deed was admittedly, executed. **Therefore, there was no renewal of the Lease.**

68. The next question is: *whether the Lease Deed dated 10.03.2003 was extended*, in view of two Letters dated 06.01.2005 **Ex.PW-1/D1** and 26.12.2007 **Ex.D-1** respectively. The Plaintiff herself had sought an increase of rent by 20%, for the next three years, by these two Letters, which was accepted by the defendant, who regularly paid the enhanced rent, in terms of the Lease Deed. ***This definitely would amount to an extension and it also tantamount to tenancy of the Defendant Bank having been continued to month to month, on the basis of the enhanced rent.***

69. In the present case, as discussed above, there was no renewal of the lease in terms of the Registered Lease Deed 10.03.2003. However, from the Letters of the Plaintiff dated 06.01.2005 **Ex. PW1/D1** and 26.12.2007, **Ex.D-1** respectively, it is evident that the Plaintiff herself had granted extension of the Lease Deed dated 10.03.2003 with an enhanced rent by 20%. Since there was no Lease Deed executed, this tenancy was extended to month to month.

70. In view of the aforesaid, *the continued possession of the Defendant Bank till 31.12.2010 cannot be said to be that of an unauthorized occupant.* Therefore, learned Additional District Judge rightly denied any *mesne profits*, user and occupation charges for unauthorized occupation from 01.01.2008 till 31.12.2010.

71. Another aspect of significance is the status of the defendant till April, 2012. Admittedly, the Plaintiff had taken a loan of Rs.25,00,000/-



from the Defendant Bank and had signed an undertaking dated 02.02.2007 **Ex. D8**, wherein it was agreed by her *that she would continue to extend the lease period as per Lease Deed dated 10.03.2003*.

72. From a bare perusal of this Undertaking, it clearly emerges that the Plaintiff had undertaken to accept the tenancy of the Defendant Bank till the entire repayment of the loan amount, which was admittedly paid on 05.05.2012. The Plaintiff herself, having permitted the Bank to continue in possession as a tenant till 05.05.2012, cannot assert their occupation, as unauthorized or claim the unauthorized occupation charges.

73. The contention of the plaintiff that the Undertaking was only for the purpose of Loan, is absolutely fallacious. *Firstly*, admittedly, the loan was taken under the Rent Scheme. *Secondly*, the language of the Undertaking extending the Lease, was unambiguous and unequivocal and binding on the Plaintiff.

74. The next contention of the Plaintiff was that the ***Undertaking being unregistered***, could not have been read as extending the Lease for five years. This again, is a contention without merit, since it was valid extension, though on month-to-month basis, being an unregistered document.

75. Therefore, the learned ***Additional District Judge rightly declined the claim of the Plaintiff for mesne profits amounting to Rs.4,00,000/- per month for the period commencing from 05.08.2008 till May, 2012***.

II. Whether the Defendant Bank was not liable to Pay Mesne Profits:

76. The Defendant Bank is aggrieved by the grant of user and occupation charges, on the ground that lease period as per the original Lease Deed dated 10.03.2003, was subject to five renewal and thus, the Defendant Bank could



not have been considered as unauthorized occupant. However, it is evident that the Defendant Bank was a month-to-month tenant till **May, 2012, but thereafter, became the unauthorized occupant, and thus, liable to pay the Mesne Profits, as rightly allowed by the learned Additional District Judge.**

III. Whether the Tenancy of the Defendant Bank was validly terminated:

77. The Defendant had opposed the grant of *mesne* profits also on the ground that the Legal Notice dated 09.05.2008 was issued by the Plaintiff during valid subsistence of tenancy till May, 2012 in terms of the Undertaking dated 02.02.2007. Since, there was no termination of tenancy by the Plaintiff, therefore, no *mesne* profits could have been awarded to her.

78. The question which thus arises is, whether the Defendant Bank became an unauthorized occupant since May, 2012, as has been held by the learned Additional District Judge.

79. It is pertinent to refer to Section 111 of Transfer of Property Act, 1882 which provides for Determination of Lease. The relevant portion reads as under:

“111. Determination of lease: - A lease of immoveable property determines-

(a) by efflux of the time limited thereby;

(b) where such time is limited conditionally on the happening of some event-by the happening of such event;

... ”



80. The Transfer of Property Act, 1882, therefore, envisages that a tenancy stands determined either by efflux of time or where the duration of the tenancy is limited upon the happening of a specified event.

81. In this regard while it may be accepted that the Legal Notice had been issued by the Plaintiff on 09.05.2008, however, in terms of the Undertaking dated 02.02.2007, the Plaintiff had already conceded and bound herself to extend the tenancy of the Defendant Bank till May, 2012 by taking a loan of Rs.25,00,000/- under the Rent Scheme.

82. Having availed the benefit of the aforesaid loan and agreeing specifically to extend the tenancy till May, 2012, the Plaintiff cannot now summersault and assert that she had a ground to terminate the tenancy *vide* Legal Notice dated 09.05.2008.

83. Having already committed herself to an extension, she cannot turn around and deny the same. As has already been discussed above, even though there was no registered document, however, the Undertaking dated 02.02.2007 clearly reflected an extension of tenancy of the Defendant Bank for a period of five years.

84. Therefore, on the happening of the event and by efflux of time, the tenancy stood validly terminated.

85. The learned Additional District Judge, thus, validly granted *mesne profits* since the date when the user and occupation of the Defendant Bank became unauthorized i.e. from May, 2012 till vacation of the Suit Property on 31.12.2017. There is no infirmity in the grant of *mesne profits* against the Defendant Bank.



IV. Whether the Mesne Profits @ Rs.163/- per sq. ft. per month from May, 2012 till December, 2015 along with enhancement at the rate of 15%, was justified:

86. The Defendant Bank was aggrieved by the grant of *mesne profits* at the rate of Rs.163/- per sq. ft. per month from May, 2012 till December, 2015 along with enhancement at the rate of 15% thereafter, till date of vacation of tenanted premises, i.e. 31.12.2017. It was asserted that the Plaintiff was entitled to mesne profits @ Rs. 216/- per sq. ft. per month, as was duly proved on record.

87. The Plaintiff, in support of proving the prevailing market rate at examined **PW-2**, *Sh. Ved Prakash Bansal*, who deposed that he was the owner of the commercial property Bearing Shop No.16 admeasuring 92.78 Sq. Yards at Defence Colony Market, which he had rented out, *vide* Lease Deed dated 19.08.2009.

88. He further deposed that he had given the First Floor and Second Floor to M/s Amalgamated Coffee Trading Company Limited for setting up a retail outlet namely '*Cafe Coffee Day*', for a period of nine years at a monthly rent of Rs.2,45,000/-, i.e. @ of Rs.163.33/-, per sq. ft. per month, *vide* Lease Deed dated 19.08.2009. ***The enhanced monthly rent for the period 19.08.2015 to 18.08.2018 was Rs.3,24,012/-, i.e. Rs.216/- per sq. ft. per month.***

89. **PW-2**, in his cross-examination admitted that for the purpose of installing a generator, he had given an area of 10x12 sq. ft. on the terrace. However, he denied that the rate of rent was higher since he was providing additional facilities. He denied that the Suit Property was not similarly



placed, as his property, though he admitted that the Suit Property was an old construction, while his property was a new construction.

90. From the testimony of **PW-2**, it emerges that the rate of rent during the year 2009 was Rs.163/- per sq. ft. per month, which got enhanced to Rs.216/- per sq. ft. per month, in August 2015, for a similarly located property.

91. The Plaintiff had also examined **PW-3**, *Sh. Jagdish Gupta*, who had deposed that he was the owner of commercial property bearing Shop No.43, Defence Colony Market, New Delhi, which he had given on rent *vide* Registered Lease Deed dated 28.04.2015 to Standard Chartered Bank for a period of five years from 28.04.2015 to 27.04.2020 at a monthly rent of Rs.4,95,000/-, i.e. Rs.396/- per sq. ft. *The enhanced monthly rent for the period from 28.04.2018 to 27.04.2020 was Rs.5,94,000/- i.e. Rs.475.20/- per sq. ft.*

92. In his cross-examination, **PW-3** admitted that the entrance of his tenanted premises cannot be compared with the entrance of the Suit Premises, which was from the back side, however, he admitted that the frontage of his tenanted premises was same as that of the Suit Property.

93. Even, if the admissions of **PW-2** and **PW-3** in the cross-examination, are considered, then too, the rate of damages at the rate of Rs.163/- per sq. ft. per month w.e.f. May, 2012 to December, 2015 with 15% enhancement till 31.12.2017, cannot be considered unreasonable after discounting the distinguishable factors, as pointed out by **PW-2** and also considering that no evidence whatsoever, to the contrary, has been led by the Defendant Bank.

94. The learned Additional District Judge has rightly *granted mesne profits at the rate of Rs.163/- per sq. ft. per month w.e.f. May, 2012 to*



December, 2015 with 15% enhancement thereafter, up to 31.12.2017, when the suit premises was vacated along with interest @ of 6% per annum.

V. Whether the Interest awarded at the rate of 6% per annum on Mesne Profits Excessive?

95. The Defendant Bank is also aggrieved by the grant of Interest at the rate of 6% per annum on the *mesne profits* as directed by the learned Additional District Judge.

96. In this regard, it is significant to refer to *Section 34 of the CPC*, which pertains to the grant of interest. The Section reads as follows:

97. “34. Interest.

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent, per annum, as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.”

98. A bare reading of *Section 34 of the CPC* indicates the power of Courts to award interest and such power, is a **discretionary power**, *de hors* the contract between the parties.

99. The Supreme Court in the case of *Central Bank of India v. Ravindra & Ors.*, MANU/SC/0663/2001 held that,

*“In a given case if the Court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced, **the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a***



lower rate or may even decline to award such interest. The discretion shall be exercised fairly, judiciously, and for not arbitrary or fanciful reasons.”

100. Likewise, in the case of Tomorrowland Limited vs. Housing and Urban Development Corporation Limited and Ors., MANU/SC/0206/2025; 2025: INSC:207, it was held that the power to award interest ought to be exercised judiciously, in alignment with equitable considerations and also ensuring neither undue enrichment nor unfair deprivation. Courts are duty-bound to assess the facts and circumstances of each case, applying the principles of fairness and justice. This discretion must reflect a balanced approach, grounded in reason, and guided by the overarching objective of equity.

101. A similar observation was made in Small Industries Development Bank of India v. M/s. Sibco Investment Private Limited, Civil Appeal No. 8 of 2022, wherein it was observed that the award of interest under *Section 34 of the CPC is a discretionary remedy, steeped in equitable consideration.*

102. Similar observations were also made in K. Ramaswamy, Gomathi Bhawan vs. SBI, Madurai City Branch, 1984 Supreme (MAD) 478, that *Section 34 of the CPC* provides for a reasonable rate of interest, to be normally decided by the Court on the facts and circumstances of each case, and that such discretion has to be exercised judicially.

103. In the present case, the learned Additional District Judge after appreciating the evidence led by the parties, has exercised his discretion under Section 34 of the CPC and awarded interest at the rate of 6% per annum on the *mesne profits*.



2026:DHC:5550



104. In view of the aforesaid discussion, the interest at the rate of 6% granted by the Additional learned District Judge cannot be termed as excessive. The same has been awarded after having due regard to the prevailing market trends. The challenge of the Defendant Bank on the rate of interest is, therefore, not tenable.

Conclusion:

105. In view of the aforesaid discussion, both the Appeals i.e. **RFA 73/2023** filed by the Plaintiff and **RFA 100/2023** filed by the Defendant Bank are hereby **dismissed**. Pending Application(s), if any, also stand disposed.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 09, 2026/R