

THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.49 OF 2006

Ghorawath Properties,
D.N.V. Road, Dharmanagar,
Police Station-Dharmanagar,
District-North Tripura,
Represented by its attorney
Shri Tikam Chand Ghorawath,
S/O. Lt. Sujanmal Ghorawath,
Resident of D.N.V. Road, Dharmanagar,
Police Station-Dharmanagar,
District-North Tripura.

..... **Plaintiff-Appellant.**

- V e r s u s -

1. M/s. Birla Corportio Ltd.
(Durgapur Cement Works),
Having its Registered office at
"Birla Building"
9/1, R.N. Mukherjee Road,
Calcutta-700001,
Represented by Anand Dalmia,
The Dy. Manager (Marketing & Export).
2. M/s. Tarakeswar Enterprise
(C & F Agent),
Birla Corporation Ltd.
(Durgapur Cement Works),
120/4, Motorstand Road,
Agartala-799001, West Tripura.
3. Shri Ashok Chowdhury,
(Godown-in-charge), Dharmanagar,
Under M/s. Tarakeswar Enterprise
(C & F Agent), Birla Corporation Ltd.
S/O. Lt. Arindam Chowdhury,
Nayapara, Nutan Patti,
Dharmanagar, Police Station-
Dharmanagar, Dist.-North Tripura.

..... **Defendant-Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Mr. D. Chakraborty, Sr. Advocate, Mr. H. Laskar, Advocate.
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For the respondents : Mr. S.M. Chakraborty,
Sr. Advocate,
Mr. S. Bhattacharji, Advocate.

Date of hearing and : 05.02.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This second appeal is directed against the judgment and decree dated 30-08-2006 passed by the learned Additional District Judge, North Tripura, Dharmanagar in Title Appeal No.12 of 2006 whereby he partly allowed the appeal and cross appeal filed by both the parties.

2. Briefly stated, the admitted facts of the case are that the plaintiff was the owner of a godown which they had rented out to defendant Nos.1 and 2 and defendant No.3 was the Manager of defendant Nos.1 and 2. Admittedly, the rent fixed as per the terms of the agreement entered into between the parties was Rs.7,560/- per month and the lease was valid for a period from 01-04-2001 to 31-03-2004. The lease expired on 31-03-2004.

3. The case of the plaintiff is that at the time of expiry of the lease deed, the defendants had not paid arrears of rent for four months, i.e. a sum of Rs.30,240/-. They also claimed that the defendants wanted to get the lease extended and negotiations were going on but finally, the defendants wrote a letter on 04-06-2004 which was received by the plaintiff on 19-06-2004 that the defendants did not want to extend the lease and, therefore, they

are ready to handover vacant possession of the premises. The fact, however, remains that vacant possession of the premises was not handed over. It appears that the plaintiff insisted that the entire arrears be paid and then they would take over the possession. The suit was filed on 02-03-2005 and in this suit, the plaintiff claimed arrears of rent of Rs.30,240/- and also prayed for compensation/damages @ Rs.1,000/- per day w.e.f. 01-04-2004 till the possession was handed over to the plaintiff. During the pendency of the suit, the defendants claimed that they were in arrears of rent for only three months and accordingly paid rent for three months amounting to Rs.22,634/- which was accepted by the plaintiff without objection. The keys of the premises were handed over to the plaintiff on 24-08-2005. The learned trial Court held that the plaintiff was entitled to damages @ Rs.100/- per day w.e.f. 01-04-2004 till 24-08-2005.

4. Both the parties filed appeal against this portion of the order. The learned lower appellate Court held that since the plaintiff had admittedly received the letter on 19-06-2004 in which it was stated that the defendants were willing to handover the possession of the premises to them, they were entitled to damages only for a period of three months but assessed the damages at Rs.500/- per day or Rs.15,000/- per month for a period of three months and, therefore, decreed a sum of Rs.45,000/- in favour of the plaintiff and against the defendants as damages.

5. The plaintiff has filed the present appeal claiming that the damages to them should have been decreed from 01-04-2004.

6. Sri S.M. Chakraborty, learned Sr. Counsel for the defendant-respondents, has raised a preliminary submission that the plaintiff did not quantify the damages till the date of filing of the suit.

7. It is well established law that if a plaintiff claims damages, then he has to quantify the damages up to the date of filing of the suit and thereafter, he can claim mesne profits or unliquidated damages and can pay Court fees on the same after the suit is decreed. However, it is the duty of the plaintiff to assess the damages or compensation till the date of filing of the suit and pay Court fees on the same. This has not been done. Therefore, I am clearly of the view that no decree for damages in favour of the plaintiff could have been passed prior to 02-03-2005, the date of filing of the suit. From 02-03-2005 the plaintiff would have been entitled to damages and the agreed rate of rent was Rs.7,560/- and if no other evidence was led, this would be the damages which the defendants would be liable to pay. This amount from 02-03-2005 to 24-08-2005 would work out to less than Rs.45,000/- which has been decreed in favour of the plaintiff.

8. Therefore, I find no merit in the appeal which is accordingly rejected. No costs.

9. Send down the lower court records forthwith.

CHIEF JUSTICE