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

+ **Date of Decision: 17.08.2015**

% **RSA NO. 370/2014**

Smt. Sandhya Adlakha Appellant
Through: Mr. Atul Nigam, Advocate with Ms.
Nazoo Sharma, Advocate

versus

M/s Kew Precision Parts(P) Ltd. Respondent
Through:

+ **RSA NO. 371/2014**

Shri Saroop Lal Adlakha Appellant
Through: Mr. Atul Nigam, Advocate with Ms.
Nazoo Sharma, Advocate

versus

M/s Kew Precision Parts(P) Ltd. Respondent
Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The RSA No. 370/2014 has been preferred with delay of three days. Accordingly, the CM Appln. No. 19778/2014 has been preferred to seek condonation of delay in filing RSA No.370/2014. CM Appln. No.15579/2015 has been preferred to bring on record the LRs of appellant No.1, who died during the pendency of appeal on 19.06.2015. The original death certificate issued by North Delhi Municipal Corporation has been placed on record along with amended memo of parties. Accordingly, the CM Appl. No. 15579/2015 is allowed and the amended memo of parties is taken on record.

2. I have heard learned counsel for the appellants on merits in both the appeals, and since I am not inclined to interfere with the impugned judgments, I do not consider it necessary to issue notice on the application seeking condonation of three days' delay in filing the second appeal.

3. These second appeals have been preferred to partially assail the judgment and decree dated 26.07.2014 passed in RCA Nos. 51 & 52 of 2013. The said appeals have been preferred by the respondent-defendant to assail the judgment and decrees rendered by the learned Civil Judge-09 (Central), Delhi, in the suits bearing Nos. 295/13/00 & 297/13/00.

4. The trial court had decreed both the suits in favour of the appellants herein in the two appeals, thereby directing ejectment of the respondent-tenants/defendants and also granted mesne profits. So far as the judgments and decrees pertaining the ejectment of the respondents is concerned, the First Appellate Court has upheld the same. It appears that the same have attained finality. Learned counsel informs that in respect of the premises covered by suit No. RCA No. 52/2013, the possession already stands delivered to the concerned appellant, and the possession in respect of the premises covered by RCA 51/2013, is scheduled to be delivered on 31.08.2015.

5. The appellants are aggrieved by the judgments and decrees passed by the First Appellate Court insofar as it set aside the decrees for mesne profits and remanded the suits back to the Trial Court for quantification of the damages/mesne profits after granting due opportunity to the parties to lead evidence on the said aspect. It appears that this Court expressed doubts with regard to the maintainability of the present second appeals against the order

remanding the issue regarding determination of the damages/mesne profits to the Trial Court in its order dated 17.04.2015. Learned counsel for the appellant has, therefore, placed reliance on the judgment of the Supreme Court in *Jegannathan Vs. Raju Sigamani and another* (2012) 5 SCC 540 to submit that the present second appeals would be maintainable. On a perusal of the said decision, it appears that the present second appeals would be maintainable against the impugned judgments of the First Appellate Court, insofar as it set aside the relief of mesne profit/damages granted in favour of the appellants and remanded the cases back to the Trial Court for re-determination on the basis of evidence to be led by parties.

6. On merits, the submission of Mr. Nigam, learned counsel for the appellants is that the First Appellate Court has interfered with the determination of damages/mesne profit as passed by the Trial Courts, only on the premise that no evidence has been led by the plaintiffs-appellants herein, in support of their claim for damages @ Rs. 40/- per sq. ft. The Trial Court had granted mesne profit/damages from the year 1999 onwards – since the leases of the respondent had been terminated on 16.05.1999 vide Ex.PW1/2, by granting increment of only 10% each year over the damages assessed for the previous year. The defendant had paid rent @ Rs. 8320/- in the year 1999. The Trial Court took judicial notice of the fact that an industrial property in Delhi, which was yielding rent of Rs. 8320/- per month in the year 1999, could reasonably be expected to yield 10% escalated rent in the following year i.e. 2000. Similarly, for the next year 2001, the same property could be expected to fetch another 10% increase over the rent assessed for the year 2000. Thus, a compounded increase of

10% was granted each year till final recovery of possession. In this regard, reliance was placed on the judgment of this Court in ***MC.Agrawal HUF Vs. Sahara India & Ors.*** 183(2011) DLT 105.

7. The First Appellate Court, however, held that the plaintiff did not lead any evidence in support of its claim of market rate of Rs. 40/- per sq. ft. The First Appellate Court held that the principles applied in ***M.C.Agrawal HUF*** (*supra*) were not applicable to the case in hand as the principles of standard rent could not be followed in the instant case since the property was out of the purview of the Delhi Rent Control Act. It was held that there was no basis to arrive at a calculation of mesne profit by granting 10% escalation year after year.

8. The submission of Mr. Nigam, learned counsel for the appellant is that the rent of Rs. 8320/- per month had been fixed way back in the year 1978. The increase of 10% year after year was granted only from the year 1999 onwards, and the Trial Court was justified in making its own assessment in this regard. He placed reliance on the judgment of a Division Bench of this Court in ***S.Kumar Vs. G.R.Kathpalia***, 1999 Rajdhani Law Reporter 114. In this case, the plaintiff had sought damages @ Rs. 10,000/- per month till the filing of the suit. The District Judge had assessed the damages @ Rs. 50,000/- per month *pendente lite*. The Division Bench observed that the Trial Court had considered the evidence on the aspect of determination of damages/mesne profits, while reaching its conclusion with regard to determination of mesne profits/damages. The respondent-landlord had conceded that the court itself may assess the mesne profit/damages and conceded that the decree of the Trial Court could be modified accordingly.

On that basis, the Division Bench expressed its view that a sum of Rs. 25,000/- per month would be a just and fair amount by way of damages/mesne profits from the date of institution of the suit, till delivery of possession of the premises. The decree of the Trial Court was modified accordingly.

9. In *M.C.Agrawal HUF* (supra), the court specifically considered the issue as to what should be the mesne profit which should be awarded to the landlord in the absence of any evidence having been led by the landlord with respect to the rent prevalent in the area. This Court had referred to earlier precedents wherein the court had taken judicial notice of increase of rent in urban areas by applying the provisions of Section 114 and 57 of the Evidence Act. This Court had then expressed its opinion, that since the premises are situated in one of the most centrally located commercial localities of Delhi, namely, Connaught Place, an increase of 15% every year should be awarded during the period for which the tenants have overstayed in the tenanted premises. Reference was made to *S.Kumar* (supra).

10. Mr. Nigam submits that the mesne profits/damages assessed by the Trial Court were very reasonable. Considering the fact that the initial rent had been fixed in the year 1978 and the increase of 10% was granted only from 1999 onwards, it could not be said that the increase was unreasonable or on the higher side. He submits that with a view to cut short litigation, and to prevent further expense to the parties, the impugned judgment be set aside insofar as it disturbed the finding on the aspect of damages/mesne profit, and the judgment of decree of the Trial Court be restored.

11. The aspect of determination of mesne profit / damages has to

normally proceed on the basis of evidence led by parties as is provided under Order 20 Rule 12 (1)(C) CPC. There is no general principle emerging from the cited decisions that in every case where no evidence is led by the parties on the aspect of determination of mesne profit/damages, the court is entitled to make its own assessment. Even if the courts were to make an assessment, it would depend upon the facts of each case and such assessment would have to be made in the light of the surrounding circumstances. An assessment made in an environment when the property prices are booming cannot be relied upon during periods when the property prices are going through a depression. Moreover, each case may present its own peculiarities which may have a bearing on the determination of mesne profit/damages. In my view, to interfere with the impugned judgment and uphold the judgment of the Trial Court on the aforesaid aspect, would lead to setting a dangerous precedent, where the Trial Court would get invested with unguided and unbridled power in the matter of assessment of mesne profits/damages. The determination of mesne profit/damages has necessarily to be founded upon some cogent evidence. It cannot be said that the First Appellate Court has committed any perversity, or illegality, in arriving at its opinion that the assessment of damages/mesne profits in the present case - which admittedly was not premised on any evidence, deserves to be set aside.

12. Accordingly, I find no merit in these appeals and the same are accordingly dismissed.

VIPIN SANGHI, J

AUGUST 17, 2015

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