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

+ RFA 530/2015

SHYAM SUNDER SINGH Appellant
Through: Mr R.P. Shukla, Adv.

versus

SHAHIN AKHTAR Respondent
Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **11.08.2015**

CM No. 14414/2015 (Exemption)

1. Allowed subject to just exceptions.

RFA 530/2015 & CM No. 14415/2015 (condonation of delay of 167 days in filing)

2. At the very outset learned counsel for the appellant has said that the delay in filing the appeal is to the extent of 167 days. To be noted, since in the application for condonation of delay, the period of delay was shown as 77 days, this was put to the learned counsel for the appellant. Accordingly, the learned counsel for the appellant made the correction, in hand, in the application seeking condonation of delay, to reflect, what, according to him, was the period of delay i.e. 167 days. The said correction has been made by the appellant's counsel, in court, under his signatures.

3. By virtue of this appeal, the appellant seeks to impugn the judgement and decree dated 11.02.2015, to a limited extent, which is, the non-grant of penal damages which was set out in clause 18 of the registered lease deed

dated 07.09.2007.

3.1 According to the appellant as per clause 18, he was entitled to receipt of penalty in the sum of Rs. 1000 per day, in addition to the monthly rent, till the possession of the demised premises was handed over to him. The trial court has rejected this plea on the ground that no evidence was led in respect of the damages, if any, incurred by the appellant.

4. Learned counsel for the appellant concedes that no evidence was led on the aspect of damages. The only contention of the learned counsel for the appellant, is that, in his testimony, the appellant, had indicated that the demised premises was the only source of income.

5. Learned counsel for the appellant submits that in terms of Section 74 of the Indian Contract Act, 1872 (in short the Contract Act), he was entitled to payment of penal damages.

6. According to me, this submission is completely without merit. A bare reading of Section 74 of the Contract Act makes it clear that damages provided for in a contract can only be paid to the extent found reasonable. It would be trite to say that damages under Section 74, whether liquidated or un-liquidated, are a recompense for an injury suffered by an aggrieved party and, the damages, stipulated, in a contract are the maximum amount that the aggrieved party can hope to receive. It is only when actual loss or damage cannot be proved, that the stipulated sum is awarded, which in any event is the maximum amount, that could be paid to an aggrieved party. [See *Maula Bux vs UOI* (1969) 2 SCC 554; *Bhai Panna Singh vs Firm Bhai Arjan Singh* AIR 1929 Pc 179; *Fateh Chand vs Balkishan Dass* (1964) 1 SCR 515 and *UOI vs Raman Iron Foundry* (1974) 2 SCC 231]

7. In this particular case, it cannot be said that appellant could not have

proved the damages that he could have suffered or was likely to suffer on account of the demised premises not being handed over to him on completion of the tenure of the lease in issue.

7.1 The record shows that the period of lease came to an end on 31.08.2010. The demised premises was handed over to the appellant on 18.12.2012. For the intervening period i.e. 01.09.2010 to 18.12.2012, the trial court, enhanced the use and occupation charges by 10% per year by taking the base figure as Rs. 26,000/- per month; which was the rent payable under the lease.

8. Furthermore, it is to be noticed that the area of the demised premises was reduced from 300 sq. ft. to 200 sq. ft. in view of the appellant's entreaties that the extent of area covered by the lease (which was for commercial purpose), would violate the extant guidelines / regulations framed by the MCD, and could, thus, possibly lead to imposition of misuser charges etc.

8.1 The point to be noted is that despite the fact that there was a reduction in the area of the demised premises, the respondent continued to pay the agreed rent at the rate of Rs. 26,000/- per month; albeit under protest. Therefore, looked at even from this angle, the appellant, has been compensated, in my view, more than adequately.

8.2 This, however, is only an attendant circumstance, the main aspect is that no evidence was led qua damages; which is a finding of fact returned by the trial court. Nothing has been shown to me which would persuade me to hold a contrary view. According to me, there is no merit in the appeal.

9. Even in so far as the plea for condonation of delay is concerned, the same is bereft of any substance. The impugned judgement and decree was

passed on 11.02.2015. The appellant, apparently, moved an application for grant of decree sheet and waiver of court fee. The said application was rejected vide order dated 06.05.2015. Review qua the said order was filed which, evidently, was rejected on 25.05.2015. The present appeal was filed on 28.07.2015.

9.1 There is no explanation for delay between 11.02.2015 and 06.05.2015. There is also no explanation for delay between 25.05.2015 and 28.07.2015. The only explanation which is given, is set out in paragraph 3 of the application, which is, to the effect that the appellant is a senior citizen belonging to SC category and has no income except the income derived from the demised premises.

9.2 According to me, these are not averments which explain the delay of 167 days, in filing the appeal.

10. Thus the appeal and the application are dismissed both on the ground of delay as also on merits.

RAJIV SHAKDHER, J

AUGUST 11, 2015

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