

\$~16 to 19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
RFA 108/2015, CM No.3132/2015 (for stay) & Crl.M.A.
No.7517/2015 (under Section 340 Cr.P.C.)

RAJ KUMAR DHINGRA Appellant
Through: Mr. Jai Gupta with Mr. Amit Singh &
Ms. Sunita Yadav, Advs.
Versus

MUKESH KUMAR Respondent
Through: Mr. M. Salim, Adv.

AND

RFA 109/2015, CM No.3148/2015 (for stay) & Crl.M.A.
No.7515/2015 (under Section 340 Cr.P.C.)

RAJ KUMAR DHINGRA Appellant
Through: Mr. Jai Gupta with Mr. Amit Singh &
Ms. Sunita Yadav, Advs.
Versus

SUNIL KAMBOJ Respondent
Through: Mr. M. Salim, Adv.

AND

+ RFA 114/2015, CM No.3178/2015 (for stay) & Crl. M.A.
No.7516/2015 (under Section 340 Cr.P.C.)

RAJ KUMAR DHINGRA Appellant
Through: Mr. Jai Gupta with Mr. Amit Singh &
Ms. Sunita Yadav, Advs.
Versus

DEEPAK KUMAR Respondent
Through: Mr. M. Salim, Adv.

AND

RFA 171/2015 & CM No.4898/2015 (for stay)

RAJ KUMAR DHINGRA Appellant
Through: Mr. Jai Gupta with Mr. Amit Singh &
Ms. Sunita Yadav, Advs.
Versus

ISHA BEDI & ANR Respondents
Through: Mr. Rajeev Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **02.02.2016**

1. The four appeals impugn the judgments and decrees for recovery of arrears of rent and *mesne profits* with respect to four premises in occupation of the same tenant i.e. the appellant, though under different landlords who are the respondent in the four appeals.
2. Notice of the appeals was issued and subject to deposit in this Court of the decretal amount, execution of the decrees was stayed.
3. The appellant is informed to have deposited the decretal amount in RFA No.108/2015, RFA No.109/2015 and RFA No.114/2015. No deposit is reported to have been made in RFA No.171/2015.
4. The counsel for the respondents appears.
5. Considering the limited nature of the controversy in these appeals and with the consent of the counsels the appeals are taken up for hearing.
6. The counsel for the appellants states that the grievance against the judgments and decrees is twofold. Firstly, that the learned Additional District Judge has notwithstanding the counsel for the respondents/plaintiffs having not led any evidence as to the prevalent letting value of the premises and merely on the basis of a clause in the Lease Deed held the appellant to be liable to pay *mesne profits*, in RFA No.108/2015, RFA No.109/2015 and RFA No.114/2015 at the rate of Rs.2,000/- per month and at the rate of double the rent in RFA No.171/2015; it is further contended that interest on arrears of rent/*mesne profits* has also been decreed. The second contention is

that though the appellant during the pendency of the suit and as per interim orders therein was making monthly payments to the respondents/plaintiffs but the same amount has been decreed while passing the final decree, without giving adjustment for the amounts paid during the pendency of the suit.

7. The rent of the premises subject matter of RFA No.108/2015, RFA No.109/2015 and RFA No.114/2015 was Rs.25,500/-, Rs.25,500/- and Rs.12,500/- per month and the rent of the premises subject matter of RFA No.171/2015 was Rs.18,000/- per month. The registered lease deeds with respect to each of the premises contained *inter alia* the following clause:

“II) That it is further agreed that the present Lease is for a period of Two years only commencing from 01/09/2005. The Lease cannot be renewed after the expiry of Two years w.e.f. 1/9/2005. That in case the Lessee fails to handover the possession to the Lessor on determination of this Lease, the Lessee shall be liable to pay penalty to the tune of Rs.2000/- per day, which shall be over and above the rent herein reserved, till such time, the demised premises is handed over back to the Lessor.”

The date of commencement of lease is informed to be different in different cases.

8. The contention of the counsel for the appellant is that the award of *mesne profits* at the rate of Rs.2,000/- per day on the basis of the aforesaid clause is contrary to Section 74 of the Indian Contract Act, 1872. It is contended that the clause aforesaid in the registered lease deeds imposing

penalty on the appellant for over staying in the premises at the rate of Rs.2,000/- per day could not have been enforced without the respondents establishing having suffered the said damage and which they have not. Similarly, it is contended that *mesne* profits, in RFA No.171/2015, at double the rent, have been awarded without any basis.

9. The counsel for the respondent in RFA No.108/2015, RFA No.109/2015 and RFA No.114/2015 as well as counsel for respondents in RFA No.171/2015 fairly admit that no evidence of the prevalent rate of rent was adduced before the learned ADJ and the decree for *mesne profits* at the rate of Rs.2,000/- per day is only on the basis of the clause aforesaid of the lease deed.

10. I may notice that the award of *mesne profits* at the rate of Rs.2,000/- per day has also resulted in the premises which were fetching rent of Rs.25,500/- per month and the premises which was fetching rent of Rs.12,500/- per month being entitled to the same *mesne profits* and which is clearly incongruous.

11. The same cannot be permitted.

12. A perusal of the impugned judgment and decree does not show the learned ADJ to have considered the said aspect.

13. After some parleys it has been agreed between the counsels representing the parties who are also stated to be present in the Court, that the judgments and decrees be modified, to provide for payment of *mesne profits* at the rate of one and half times the rate of the last paid rent inclusive of interest.

14. The counsel for the respondents also state that whatever payments

have been made during the pendency of the suit be directed to be deducted out of the decretal amount found due.

15. The aforesaid compromise is found to be lawful and is allowed and the appeals are disposed of in terms thereof.

16. Accordingly, the judgments under appeals are modified by, (a) changing the rate of *mesne profits* from that decreed to one and half times the last paid rent in each case, inclusive of interest; and, (b) directing that the amounts already paid by appellant to each of the respondent will be deducted from arrears of rent and *mesne profits* so due.

17. No costs.

18. Decree sheet be drawn up.

19. The counsels to submit their respective computation of the amount due under the decree and to appear before the worthy Registrar General for determining the amount due under each of the decrees.

20. Thereafter, out of the amounts lying deposited in this Court, the amount due to the decree holder / respondent shall be released to the decree holder and the balance if any remaining shall be refunded to the appellant.

21. The appellant to, within 15 days of today pay to respondent in RFA No.171/2015 the decretal amount due according to the appellant. If the respondent controverts the same, the said aspect be gone into before the Registrar General as aforesaid.

22. The parties to appear before the worthy Registrar General for the aforesaid purpose on 22nd February, 2016.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 02, 2016/‘gsr’/pp..

RFA Nos.108/2015, 109/2015, 114/2015 & 171/2015

Page 5 of 5