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

RFA No.111/2016

PUNJAB NATIONAL BANK ..... Appellant

Through: Mr. Ram Bhushan Pandey and Mr. Govind Ballabh Pandey, Advs.

Versus

MOHIT GUPTA ..... Respondent

Through: Mr. Mahesh K. Chaudhary and Mr. Maneesh Goyal, Advs.

\+ RFA No.113/2016

PUNJAB NATIONAL BANK ..... Appellant

Through: Mr. Ram Bhushan Pandey and Mr. Govind Ballabh Pandey, Advs.

Versus

MOHIT GUPTA ..... Respondent

Through: Mr. Mahesh K. Chaudhary and Mr. Maneesh Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% 10.05.2016

1. These appeals under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugn the similar judgments and decrees both dated 10th November, 2015 and both of the Court of Additional District Judge (ADJ)-09 Central, Tis Hazari Courts, Delhi in Suit No.367/14 (Old Suit No.63/08), Unique Case ID No.02401C0176912008 and in Suit No.366/14 (Old Suit No.64/08), Unique Case ID No.02401C0176862008 respectively awarding *mesne* profits/damages for use and occupation for the period from 12th October, 2006 to 31st August, 2011 to the respondent/plaintiff against the appellant/defendant with respect to Flats No.202 and 201 respectively

having super area of 1029 sq. ft. each on the mezzanine floor of commercial building known as Sharp Bhawan at B-2/3, Naniwala Bagh, Azadpur, Delhi.

2. The appeals came up first before this Court on 2nd March, 2016 when the same were admitted for hearing, notice issued to the respondent/plaintiff, trial Court record requisitioned and stay of execution granted without imposing any condition, the appellant/defendant being a Bank and observing that interest can always be awarded if ultimately the appeals fail.

3. The counsel for the respondent appears. Considering the limited nature of the controversy, the counsels have been heard finally on the appeals.

4. Though the counsel for the appellant/defendant/Bank has sought to also challenge the finding in the impugned judgments as to the liability of the appellant/defendant/Bank for *mesne* profits by contending that the respondent/plaintiff had agreed to renewal of the lease and thereafter refused therefrom but considering the fact (i) that the judgments and decrees earlier passed for the relief of recovery of possession have attained finality; and, (ii) that the suits for specific performance of the Agreement for renewal of the lease filed by the appellant/defendant/Bank already stand dismissed, the question of the appellant/defendant/Bank being in authorised occupation of the flats for the period aforesaid and being not liable for *mesne* profits/damages for use and occupation cannot be re-opened.

5. Thus the hearing of the appeals has been confined only to the aspect of correctness of the rate at which *mesne* profits have been awarded.

6. What emerges is (i) that the appellant/defendant/Bank under an Agreement of the year 2001 and which was valid till 18th April, 2006 was a

tenant in the premises at the rate of Rs.17,000/- per month; (ii) and, the appellant/defendant/Bank w.e.f. 1st September, 2011 has been re-inducted as a tenant in the premises at a rent of Rs.34,287.30p per month and which rent is valid for a period of five years i.e. till 31st August, 2016 and the said lease is renewable fro another five years w.e.f. 1st September, 2016 at a rent increased by 20% of the last paid rent.

9. The learned ADJ has awarded *mesne* profits to the respondent/plaintiff for the period from 12th October, 2006 to 31st August, 2011 also at the rate of Rs.34,287.30p being the rent which the appellant/defendant/Bank had agreed to pay w.e.f. 1st September, 2011 for a period of five years.

10. I have enquired from the counsel for the respondent/plaintiff that when according to the respondent/plaintiff also the rent for five years w.e.f. 1st September, 2011 was/is Rs.34,287.30p how could the rent for nearly five years prior thereto also be the same and would not be lesser.

11. The counsel for the respondent/plaintiff has fairly stated that though the rate of rent which is the measure of *mesne* profits has been fluctuating but the respondent/plaintiff is agreeable to *mesne* profits for the period from 12th October, 2006 to 31st August, 2011 at a rate lesser than Rs.34,287.30p.

12. In my view, the contract entered into by the parties of their own volition w.e.f. the very next date of the day till when the *mesne* profits are due, is indice of the market rent for the previous about five years as well. Since the parties have agreed to the rent of Rs.34,287.30p to be increased by 20% after five years, according to me the rent for previous five years should be 20% lower than what was agreed w.e.f. 1st September, 2011 i.e. at the

rate of Rs.27,429.84p per month instead of Rs.34,287.30p per month.

13. Accordingly, the appeals are partly allowed and the decrees under appeals are partly modified by reducing the rate of *mesne* profits from that decreed of Rs.34,287.30 per month to Rs.27,429.84p per month with the period for which *mesne* profits are due remaining the same i.e. 12th October, 2006 to 31st August, 2011.

14. The learned ADJ has also awarded interest on *mesne* profits at the rate of 9% per annum from the date of filing of the suit till realisation. In my view there is no basis for the learned ADJ so awarding the interest. The interest on *mesne* profits for each month would accrue at the end of each month for which *mesne* profits would fall due and till the date of payment.

15. Accordingly, it is further directed that the appellant/defendant/Bank shall also be liable to pay interest on arrears of *mesne* profits at the rate of 8% per annum from the end of each month for which *mesne* profits are due and till the date of payment.

16. Needles to state that out of the amount so falling due, the amounts already paid month by month by the appellant/defendant/Bank to the respondent/plaintiff shall stand reduced.

17. It is also the contention of the respondent/plaintiff that though the appellant/defendant/Bank had deducted tax at source from the payments made to the respondent/plaintiff but not furnished the certificates therefor but the learned ADJ has failed to grant relief to the said effect for the reason of there being no specific prayer therefor.

18. In my view if the appellant/defendant/Bank has deducted any amount towards tax at source and has not issued the certificate therefor or has

though deducted the amount and not deposited therefor that is an offence under Section 272A(2)(g) of the Income Tax Act, 1961 and there was no need for express prayer on behalf of the respondent/plaintiff in this respect.

19. The appellant/defendant/Bank is accordingly further directed to while computing the amount due under the decrees, if has deducted any amount towards tax at source from the payments made to the respondent/plaintiff either furnish the certificate of deposit of the said amount with the authorities concerned or make up the said deficiencies.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 10, 2016
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