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

+ CM(M) 1104/2015 and CM No. 26201/2015 (stay)

M/S WENGER & CO Petitioner
Through Mr.Ankit Jain, Advocate.

versus

M/S NIRMAL VIJAY AND COMPANY & ANR..... Respondents
Through Mr.Arun Kumar Verma, Sr. Advocate
with Mr. Abhay Raj Varma, Mr. Ashish Joshi, Mr.
Nikhil Arya and Mr.Himanshu Pal, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
05.10.2016

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1. By the present petition, the petitioner seeks to impugn the order dated 15.10.2015 by which the appellate court relying upon the judgment of the Supreme Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd., (2005) 1 SCC 705* directed the respondents to pay a sum of Rs.200 per square feet per month as occupation/user charges.
2. The background facts are that by an order dated 09.05.2014 an eviction order has been passed against the respondents under Section 14(1)(b) of the Delhi Rent Control Act by the ARC.
3. Against the said order, the respondents filed an appeal before the District Judge. The eviction order was stayed pending final hearing of the appeal. On an application moved by the petitioner for grant of mesne profits/user charges at the market rate in terms of the judgment of the

Supreme Court in the case of ***Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd.(supra)***, the present order was passed.

4. Learned counsel appearing for the petitioner has heavily relied upon a lease deed executed for an adjoining property according to which the rent, he submits, would be Rs. 755 per sq. ft. He also points out that in terms of the said lease a sum of Rs.1.02 crores has also been given as interest free security deposit. He further submits that interest of this security could also be a part of the rental consideration.

5. Learned senior counsel appearing for the respondents has submitted that this court is exercising powers under Article 227 of the Constitution and there are no errors of jurisdiction in the orders passed by the trial court to warrant interference by this Court.

6. The Supreme Court in the case of ***Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd.(supra)*** passed the following relevant directions:-

“xxx

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;”

7. Hence, with effect from the date of the order of eviction that is passed, the tenant is liable to pay mesne profits or compensation for use and

occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent.

8. Obviously, this is an interim order pending final adjudication of the appeal which is pending. Market rate of rent would be determined based on a summary procedure and cannot involve a detailed trial for adjudication of the market rent. Such an exercise could not have been envisaged as it would side track the main issue, namely, adjudication of the appeal which is pending before the court.

9. In the present case, the appellate court has fixed the user charges at Rs.200 per sq. ft. per month. A perusal of the lease deed relied upon by the petitioner would show that it comprises 4500 sq. ft. area including ground floor and mezzanine floor. The lease is for a period of 15 years with the civil work being carried out by the lessor. The lessee has been allowed to carry out detailed repairing in the interiors, flooring, alterations, etc. In contrast, in the present case the subject matter of the present petition the area leased is only 100 sq. ft area. It is situated under a stair case.

10. It cannot prima facie be said that the two premises are comparable.

11. There are no reasons to interfere with the orders passed by the appellate court. The petition is accordingly dismissed.

JAYANT NATH, J

OCTOBER 05, 2016
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