

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

+ **RSA No. 45/2017**

% **31st July, 2017**

STATE BANK OF INDIA Appellant

Through: Mr. Bheem Sain Jain, Adv. for
Mr. Sanjiv Kakra, Adv.

versus

DR. MEERA LUTHRA & ORS. Respondents

Through: Ms. Geeta Luthra in person.
Ms. Jhum Jhum Sarkar, Ms.
Shivani Luthra and Ms. Parul
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant impugning the concurrent judgments of the courts below; of the trial court dated 16.8.2012 and the first appellate court dated 5.10.2016; by which the courts below have awarded *mesne* profits to the respondents/plaintiffs at a particular rate, and which is

pleaded as being excessive. In order to understand the rate of *mesne* profits granted, let me reproduce para 26 of the judgment of the trial court which gives the relief to the respondents/plaintiffs and which reads as under:-

“26. In view of the finding given on issues no 2,3 and 4, the suit of the plaintiff is partly decreed with costs. The defendant bank is liable to pay damages, mesne profits @ Rs. 875/- per month from 1.6.1993 to 30.6.1994, deficit of damages @ Rs.43 per sq. feet per month i.e. from 01.07.1994 to 30.11.1995 and deficit of Rs. 53 per sq. feet per month from 01.01.1996 to 31.12.1999, Rs.63 per sq. feet per month from 01.01.2000 till 03.04.2004, along with interest @ 95 p.a. Decree sheet be prepared. The Decree shall come into operation on filing of deficit Court fees. The file be consigned to Record Room.”

2. The issue in the present case is that the tenancy of the appellant/defendant was terminated by a legal notice dated 14.6.1994. The premises in question is an area of 250 sq. yds situated at 17, Vijaya Bank Building, Barakhamba Road, New Delhi. The period with respect to *mesne* profits being payable is from 1.7.1994 till filing of the suit on 31.5.1996, and thereafter till the appellant/defendant vacated the suit premises on 3.4.2004.

3. The issue with respect to what are the *mesne* profits payable with respect to a tenanted premises after termination of tenancy is an issue of fact. The issue of fact of *mesne* profits depends upon either of the parties proving the rate of rent in the year(s) for the

relevant period. Let us examine what was the evidence led by the respective parties with respect to the rate of rent for the period from 1.7.1994 to 3.4.2004.

4. Appellant/defendant has placed reliance upon lease deeds Ex. DW1/2 to Ex.DW1/5 and which are lease deeds pertaining to different areas in the same premises and which were let out to the appellant/defendant by other landlords. The respondents/plaintiffs have relied upon two lease deeds Ex.PW1/A1 and Ex. PW1/Y. The first lease deed Ex.PW 1/A1 is dated 1.12.2006 and the second lease deed Ex.PW1/Y is dated 30.4.2007.

5. In my opinion, the respondents/plaintiffs can place no reliance upon lease deeds of the later years 2006-2007 with respect to the prevalent market rent for the period from 1.7.1994 to 3.4.2004. Accordingly, it is seen that no evidence, which will carry weight being the documentary evidence in the form of lease deeds, have been led by the respondents/plaintiffs to prove the prevalent rate of rent in the relevant period.

6. The appellant/defendant has on the other hand relied upon four lease deeds from the years 1995 to 2000 with respect to the

very same premises and in fact in the same floor being the ground floor. Normally there cannot exist any reason to discard these lease deeds of the relevant period of the years 1995 to 2000, however, the first appellate court has rightly rejected these lease deeds because these lease deeds have been executed as extension lease deeds in terms of the first lease deed which began in the year 1989. These lease deeds Ex.DW1/2 to Ex.DW1/5 are thus not the lease deeds entered into for the first time with respect to the period 1.7.1994 till 3.4.2004 because it is seen that once the lease deeds are of the earlier years than the relevant period hence the lease deeds proved as Ex.DW1/2 to Ex.DW1/5 are only extension lease deeds. Once Ex. DW1/2 to Ex.DW1/5 are only the extension leases really the rentals of these leases cannot be said to be rentals with respect to actual letting out in the years 1.7.1994 till 3.4.2004. Therefore, the documents and evidence led on behalf of the appellant/defendant also cannot be relied upon because lease deeds of the year 1989 cannot be relied upon for the rate of rent for 1.7.1994 to 3.4.2004.

7. The courts below are courts of facts and law. Once the courts below arrived at findings of facts and arrived at conclusions,

this Court sitting in second appeal under Section 100 CPC ordinarily cannot interfere. The first appellate court has relied upon the judgment of this Court in the case of *M.C. Agarwal HUF Vs. M/s Sahara India & Ors. 2011 (183) DLT 105* and which states that unless evidence is led to the contrary, courts can award/ordinarily grant 15% increase per year for the rate of rent/*mesne* profits from the last admitted rate of rent. Once both the parties have not led evidence, the court below has rightly relied upon the ratio of the judgment of this Court in the case of *M.C. Agarwal HUF (supra)*.

8. In view of the above, no substantial question of law arises. Dismissed.

JULY 31, 2017/ib

VALMIKI J. MEHTA, J