

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

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Date of decision: 12th May, 2017.

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CS(OS) No.1956/2006
(Old Suit No.3415/1990)

CHANDER MOHAN CHADHA & ORS.

..... Plaintiffs

Through: Mr. Amit Sethi and Mr. Ishan Khanna,
Advs.

Versus

SINGER INDIA LTD. & ANR.

..... Defendants

Through: Mr. Rajiv Nayan and Ms. Ankita
Kausal, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The five plaintiffs namely Chander Mohan Chadha, Chuniawati Chadha, Kamlesh Sawhney, Poonam Sawhney and Archana Mamgain, on 26th October, 1990, instituted this suit against the Indian Sewing Machine Company Limited for recovery of possession of shop no.13 / 14 (Private No.15) situated in Block-C, Connaught Place, New Delhi and for recovery of Rs.2,000/- per day as damages for unauthorised use and occupation by the defendant Indian Sewing Machine Company Limited of the said premises, pleading (i) that the predecessor-in-title of the plaintiffs had let out the subject shop to Singer Sewing Machine Company, USA on a monthly rent of Rs.1,200/- per month; (ii) that Singer Sewing Machine Company, USA left the premises in question; (iii) that the defendant Indian Sewing Machine Company Limited was incorporated under the Indian Companies Act, 1956; (iv) that the defendant Indian Sewing Machine Company Limited is a

different legal entity from Singer Sewing Machine Company, USA; (v) that Singer Sewing Machine Company, USA left the premises in January, 1982 and the defendant Indian Sewing Machine Company Limited came into possession of the premises without the consent, permission or authority of the predecessor-in-title of the plaintiffs; (vi) that the defendant Indian Sewing Machine Company Limited is a trespasser and an unauthorised occupant in the premises; and, (vii) that the defendant Indian Sewing Machine Company Limited is in occupation of the premises *ad measuring* 1200 sq. ft., market letting value whereof was @ Rs.50/- sq. ft. per month.

2. The suit was entertained.

3. The defendant Indian Sewing Machine Company Limited, instead of filing written statement, filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC). However the said application was withdrawn with liberty to take all pleas in the written statement.

4. The defendant Indian Sewing Machine Company Limited contested the suit pleading (i) that the suit for possession was barred by Section 50 of the Delhi Rent Control Act, 1958; (ii) that the jurisdiction to try the disputes relating to tenanted premises lies only with the Rent Controller where the proceedings for recovery of possession under Section 14(1)(b) of the Delhi Rent Control Act were pending between the parties; (iii) that the rent of the premises was being paid to Atma Ram Chadha, being the predecessor-in-title of the plaintiffs; (iv) that the suit of the plaintiffs was liable to be stayed under Section 10 of the CPC as a similar petition under Section 14(1)(b) of the Delhi Rent Control Act between the parties was pending in the Court of the Additional Rent Controller, Delhi; (v) the issues involved in the suit as

well as in the petition under Section 14(1)(b) were directly and substantially the same; (vi) that the plaintiffs, in the petition under Section 14(1)(b) of the Delhi Rent Control Act have pleaded learning about the amalgamation of Singer Sewing Machine Company, USA with Indian Sewing Machine Company Limited in the year 1982 and the suit was barred by limitation; (vii) that the suit had not been properly valued for the purposes of court fees and jurisdiction; (viii) denying that the plaintiffs are the owners of the property; (ix) that the shop in question was let out vide lease dated 11th July, 1966 to Singer Sewing Machine Company, USA which is in occupation or possession of the shop; (x) the defendant Indian Sewing Machine Company Limited is a legal substitute of Singer Sewing Machine Company, USA and there is no change in tenancy; (xi) denying that Singer Sewing Machine Company, USA had left the premises; (xii) Singer Sewing Machine Company, USA was at all material time a branch in India of Singer Sewing Machine Company, USA; (xiii) the said branch in India of Singer Sewing Machine Company, USA, w.e.f. 01.01.1980, under a scheme of amalgamation approved and sanctioned by the High Court of Bombay, was amalgamated with the defendant Indian Sewing Machine Company Limited; (xiv) this was necessitated in pursuance to Central Government Policy; (xv) Singer Sewing Machine Company, USA continues to hold its equity capital in the defendant Indian Sewing Machine Company Limited, to the extent of 40%; (xvi) the entire business, assets, liabilities etc. of Singer Sewing Machine Company, USA stood vested in the defendant Indian Sewing Machine Company Limited; (xvii) the defendant Indian Sewing Machine Company Limited, in pursuance to directions of the Additional Rent Controller was paying the agreed rent of Rs.1,200/- per month to the

plaintiffs; and, (xviii) denying that the market letting value of the premises was @ Rs.2,000/- per day.

5. The plaintiffs filed replication reiterating their case.

6. On the pleadings of the parties, on 30th July, 1993 the following issues were framed in the suit:-

- “1. *Whether the suit of the plaintiff for possession is barred under Section 50 of Delhi Rent Control Act? OPD*
2. *Whether the present suit is liable to be stayed under Section 10 of the Code of Civil Procedure and as stated in para 4 of the preliminary objections? OPD*
3. *Whether the plaintiffs are the owner of the suit premises and as such have locus standi to file the present suit? OPP*
4. *Whether the suit of the plaintiff is barred by time?OPPr*
5. *Whether the suit has been properly valued for the purposes of Court fees and jurisdiction? OPP*
6. *Whether the plaint has been duly verified? OPP*
7. *Whether the defendant is in unlawful and illegal possession as alleged in the plaint? OPP*
8. *Whether the suit has been filed in accordance with the High Court Rules? OPD*
9. *Whether the plaintiff is entitled to damages as alleged in the plaint, if so at what rate? OPP*
10. *Relief.”*

7. The plaintiffs filed IA No.4740/1994 stating that in view of the objections taken by the defendant Indian Sewing Machine Company Limited

of the relationship between the parties of landlord and tenant and the suit for possession being not maintainable, the plaintiffs give up the relief of possession.

8. Vide order dated 27th July, 1994 the said application of the plaintiffs was allowed and the plaintiffs permitted to file amended plaint deleting the allegations qua possession and the relief of possession.

9. The plaintiffs filed amended plaint deleting the relief claimed of possession and instead claiming the relief of recovery of Rs.10.80 lacs as damages / *mesne* profits for the period from 15th May, 1989 to 14th November, 1990 and the relief of recovery of future *mesne* profits / damages for use and occupation @ Rs.2,000/- per day till the date of delivery of actual and vacant possession of the premises in pursuance to the proceedings for eviction of the defendant Indian Sewing Machine Company Limited pending in the Court of the Additional Rent Controller on the ground of unauthorised sub letting to the defendant Indian Sewing Machine Company Limited.

10. The suit, on 14th November, 1995 was dismissed in default for non-appearance of the plaintiffs but on application of the plaintiffs was on 12th August, 1996 restored to its original position.

11. Pursuant to the counsel for the defendant Indian Sewing Machine Company Limited on 4th December, 1996 taking a plea, of the plaintiffs in the amended plaint aforesaid having carried out other amendments than permitted, the plaintiffs filed IA No.2747/1997 for amendment of the plaint.

12. The counsel for the plaintiffs during the hearing has informed that the petition under Section 14(1)(b) of the Delhi Rent Control Act for eviction of Singer Sewing Machine Company, USA from the premises on the ground of

sub letting to the defendant Indian Sewing Machine Company Limited was filed as far back as in the year 1982. It appears that SAO No.17/1996 arising from the decision in the said eviction petition was pending in this Court.

13. On 25th April, 2001, proceedings in this suit were adjourned *sine die* on the joint request of the counsel for the plaintiffs and the counsel for the defendant Indian Sewing Machine Company Limited with liberty to parties to move an application for revival of the suit as and when SAO No.17/1996 is decided.

14. Owing to the enhancement of the pecuniary jurisdiction of this Court, the suit, vide order dated 26th February, 2004, was transferred to the District Court.

15. The plaintiffs applied before the Court of the Additional District Judge for revival of the suit. None appeared for the defendant Indian Sewing Machine Company Limited inspite of service of notice of the application. Vide order dated 25th October, 2004 of the Additional District Judge, the defendant Indian Sewing Machine Company Limited was proceeded against *ex parte* and noticing that not only had SAO No.17/1996 been decided but the SLP preferred thereagainst had also been dismissed vide order dated 13th August, 2004, the application of the plaintiffs for revival of the suit was allowed. Vide the same order, IA No.2747/1997 supra of the plaintiffs for amendment of the plaint was also allowed and the suit listed for *ex parte* evidence of the plaintiffs.

16. The defendant Indian Sewing Machine Company Limited applied for setting aside of the order proceedings *ex parte* against it and which application was allowed.

17. The plaintiffs yet again applied for amendment of the plaint, (i) to correct the name of the defendant Indian Sewing Machine Company Limited to Singer India Limited and to plead the facts regarding; (ii) dismissal of the eviction petition aforesaid under Section 14(1)(b) of the Delhi Rent Control Act by the Additional Rent Controller; (iii) allowing of the appeal by the Rent Control Tribunal and passing of the order of eviction by the Rent Control Tribunal; (iv) dismissal of SAO No.17/1996 by this Court; (v) dismissal of the SLP by the Supreme Court; (vi) dismissal of the review petition by the defendant Singer India Ltd. in the Supreme Court; and, (vii) to claim *mesne* profits / damages for use and occupation @ Rs.3,80,000/- per month, from April, 1996 to March, 1999, @ Rs.4,37,000/- per month from April, 1999 to March, 2002 and @ Rs.5,00,000/- per month from April, 2002 till the vacation of the premises in January, 2005; and, (viii) to make consequential enhancement in the valuation of the suit for the purposes of jurisdiction.

18. The aforesaid application of the plaintiffs for amendment of the plaint was allowed vide order dated 2nd June, 2005 of the learned Additional District Judge.

19. The plaintiffs applied under Section 24 of the CPC for transfer of the suit from the Court of the Additional District Judge to this Court pursuant to enhancement in valuation. The said petition being Transfer Petition (C) No.1-5/2005 was allowed on 13th September, 2006. Resultantly the learned Additional District Judge vide order dated 25th September, 2006 transferred the suit to this Court.

20. The suit on receipt in this Court was re-numbered.

21. The plaintiffs filed IA No.7639/2008 under Order I Rule 10 and Order VI Rule 17 of the CPC to implead Singer Sewing Machine Company, USA as defendant no.2 to the suit and to make necessary pleadings with respect thereto. The said application was allowed vide order dated 18th February, 2008 with the clarification that the impleadment would be relatable only from the date “permitted in view of Section 21 of the Limitation Act”.

22. The plaintiffs also preferred FAO(OS) No.154/2008 against the order dated 18th February, 2008 limiting the claim of the plaintiffs against the defendant no.2 Singer Sewing Machine Company, USA with effect from the date permitted under Section 21 of the Limitation Act, 1963. The said appeal was partly allowed vide order dated 20th August, 2008 to the effect that the claim of the plaintiffs against the defendant no.2 Singer Sewing Machine Company, USA to be w.e.f. 9th July, 2007 i.e. when the application for its impleadment was filed and not from 18th February, 2008 when it was allowed.

23. The defendant Singer India Limited filed IA No.7640/2007 under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The said application was allowed vide judgment dated 3rd March, 2008 and the suit, insofar as against Singer India Limited was stayed under Section 22 of the SICA with liberty to the plaintiffs to seek liberty from Board for Industrial and Financial Reconstruction (BIFR) for continuing with the suit against the defendant no.1 Singer India Limited.

24. The plaintiff preferred FAO(OS) No.189/2008 against the order of stay of proceedings in the suit against the defendant no.1 Singer India Limited. The said appeal was dismissed on 20th August, 2008.

25. The last amended plaint dated 26th September, 2008 seeks a decree for recovery of Rs.5,47,94,800/- jointly and severally from Singer India Limited (formerly Indian Sewing Machine Company Limited) and Singer Sewing Machine Company, USA towards damages for use and occupation and *mesne* profits up to 31st January, 2005 together with interest thereon at 16% per annum from 1st February, 2005 till the date of payment.

26. The defendant no.2 Singer Sewing Machine Company, USA could not be served with summons of this suit by ordinary process and was vide order dated 1st March, 2011 permitted to be served by publication in the International Edition of the 'Statesman' newspaper. Publication was effected. None appeared for the defendant no.2 Singer Sewing Machine Company, USA which vide order dated 21st November, 2011 was proceeded against *ex parte*.

27. The plaintiffs led their *ex parte* evidence against the defendant no.2 Singer Sewing Machine Company, USA (the suit proceedings against the defendant no.1 Singer India Limited having been stayed as aforesaid) and examined the plaintiff no.1 as PW1 by tendering his affidavit by way of examination-in-chief and closed their evidence. The defendant no.1 Singer India Limited, proceedings against whom were stayed under Section 22 of SICA, ceased to be a sick company and vide order dated 28th October, 2015 was granted an opportunity to cross-examine PW1.

28. The defendant no.1 Singer India Limited filed IA No.1887/2016 for filing additional documents and IA No.2605/2016 for amendment of the written statement. The said applications came up before me on 8th February, 2017 when, after understanding the chequered history aforesaid of the suit

and after learning that (i) the eviction petition under Section 14(1)(b) of the Delhi Rent Control Act filed by the plaintiffs on the ground of eviction of the defendant no.2 Singer Sewing Machine Company, USA from the premises on the ground of sub letting, assigning, parting with possession of the premises to the defendant no.1 Singer India Limited was dismissed on 6th February, 1985; (ii) the Rent Control Tribunal in appeal passed an order of eviction in favour of the plaintiffs on 8th April, 1996; (iii) SAO No.17/1996 preferred by the defendant no.1 Singer India Limited was dismissed on 25th May, 2001; (iv) SLP preferred before the Supreme Court was dismissed on 13th August, 2004; (v) possession of the premises in execution of the eviction order was recovered on 31st January, 2005, it was observed as under:-

“3. I have enquired from the counsel for the plaintiffs as to how, till the eviction order was upheld by the Supreme Court in or about the year 2004, the plaintiffs can be entitled to mesne profits.

4. To me, it appears that the right of the plaintiffs to mesne profits / damages for use and occupation would accrue only after the eviction order under the Delhi Rent Control Act was upheld by the last Court. If it were to be held that the landlord would be entitled to mesne profit even prior to the period the tenant is evicted from the premises in accordance with the procedure prescribed under the Rent Act, it would amount to defeating the provisions of the Rent Act by, on the one hand protecting the tenant from eviction till the RC is satisfied of a ground of eviction having been made out and on the other hand penalising the tenant with market rate.

*5. Though the Supreme Court in **Atma Ram Properties (P) Ltd. Vs Federal Motors Pvt. Ltd.***

(2005) 1 SCC 705 held that the Appellate Court even in rent control proceedings, as a condition for grant of stay of order of eviction, can direct the tenant to pay during the pendency of proceedings at the market rate but it prima facie appears that the same will not make a civil suit maintainable.

6. *The counsel for the plaintiffs has also been informed that the plaintiffs in the year 1990 when had instituted the suit had not claimed any arrears of mesne profits and had claimed only future mesne profits. As per my understanding, a claim for future mesne profits is maintainable only when accompanied with a relief of recovery of possession of premises. Once the plaintiffs in 1995 gave up the relief of possession, the claim for future mesne profits should not have survived.*

7. *If my said opinion is right, then the counsel for the plaintiffs to look up whether there are any order after that which make the said issue res judicata.*

8. *The counsel for the plaintiffs states that in a three judge judgment subsequent to that of **Atma Ram Properties (P) Ltd.** (supra), a right to file separate civil suit for mesne profits has also been recognized.*

9. *If the plaintiffs are not to be entitled to mesne profits from the date claimed and are entitled to mesne profits only for one year from the year 2004 to the date of delivery of possession, then the matter can be disposed of without any evidence.*

10. *The counsel for the defendants to also seek instructions in this regard.*

11. *List on 20th February, 2017."*

29. Thereafter on 20th February, 2017 the following order was passed:-

“1. This order is in continuation of the earlier order dated 8th February, 2017.

*2. The counsel for the plaintiffs contends that the landlord, after the passing of the eviction order, whether it be by the Rent Controller or by the Rent Control Tribunal or by the High Court, becomes entitled to the mesne profits for the period till the possession is recovered, even if an appeal against the eviction order is pending consideration. Reliance in this regard is placed on **Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.** (2005) 1 SCC 705 where, though in the context of the Appellate Court in a proceeding under Delhi Rent Control Act, 1958 directing payment of ad-interim mesne profits as a condition for grant of stay of order of eviction, it was held that since under Section 2(l)(ii) of the Delhi Rent Control Act, 1958 the definition of tenant does not include a person against whom an eviction order has been passed, such a direction can be made.*

3. The counsel for the plaintiffs fairly states that the plaintiffs would not be entitled to mesne profits at market rate till the eviction order in the present case was passed by the Rent Control Tribunal on 8th April, 1996. However, it is contended that the plaintiffs herein are entitled to mesne profits from 9th April, 1996 till 31st January, 2005 when possession was delivered.

*4. The counsel for the plaintiffs, in response to the other query recorded in the order dated 8th February, 2017, as to how a claim for future mesne profits could be maintained without claiming the relief of possession, which in this case was given up in the year 1994, relies on **Crompton Greaves Ltd. Vs. State of Maharashtra** (2005) 11 SCC 547.*

However, a perusal of the said judgment shows that the same is not by way of precedent but by way of interim arrangement between the parties in that matter. There is no discussion in the judgment on, whether in the face of the language of Order XX Rule 12 of the Code of Civil Procedure, 1908, a claim for future mesne profits can be permitted to be filed, without a claim for possession. Ordinarily, the rule is that in a suit those reliefs for which cause of action has already accrued can be claimed and not the reliefs for which cause of action is yet to accrue.

5. *For the same reason, para 13 of **Bharat Sales Ltd. Vs. Lakshmi Devi** 2002 (5) SCC 629 granting liberty to the landlord therein to sue the erstwhile tenant for realisation of compensation, damages or mesne profits for misuser of the property which had been assessed in that case in a proceeding under Section 14(11) of the Delhi Rent Control Act and had not been paid, would not come to help the plaintiffs.*

6. *The counsel for the plaintiffs to look up, whether there is any precedent permitting a landlord to sue for future mesne profits, without claiming the relief of possession.*

7. *List on 27th March, 2017.”*

30. On 27th March, 2017, on request of counsel for plaintiffs, the hearing was adjourned to today. The counsels have been heard further today.

31. The counsel for the defendant no.1 Singer India Limited, in response to the query made from him in paras 9 and 10 aforesaid of the order dated 8th February, 2017, states that if the plaintiffs are entitled to *mesne* profits for one year only i.e. from the year 2004 to the date of delivery of possession,

then the suit be disposed of on the basis of material on record, without any further evidence.

32. The counsel for the plaintiffs of course contends that subject to this Court being satisfied with respect to the entitlement of the plaintiffs to *mesne* profits from 9th April, 1996 till 31st January, 2005, the plaintiffs be permitted to prove entitlement to *mesne* profits at the rates claimed in the plaint.

33. On the aspect of entitlement to the plaintiffs to *mesne* profits with effect from 9th April, 1996, the counsel for the plaintiffs, in addition to the judgments relied upon earlier and as noted in paras 4 and 5 of the order dated 20th February, 2017 supra, has referred to *Shyam Kishore Vs. Roop Saree Kendra* 105 (2003) DLT 422, *Anderson Wright & Co. Vs. Amar Nath Roy* (2005) 6 SCC 489, *Dhulabhai Vs. The State of Madhya Pradesh* AIR 1969 SC 78 and *M/s Today Homes and Infrastructure Pvt. Ltd. Vs. South Delhi Municipal Corporation* (2015) 222 DLT 182 (DB).

34. Per contra, the counsel for the defendant no.1 Singer India Limited has referred to *Gulamhusain Asgaraly Vahanvaty Vs. Allahabad Bank, Mumbai* 2011 SCC OnLine Bom 488.

35. I have again considered the controversy in the light of the issues framed on 30th July, 1993.

36. Issue no.(1) and issue no.(2), viz.:

- “(1). Whether the suit of the plaintiffs for possession is barred under Section 50 of Delhi Rent Control Act? OPD
- (2). Whether the present suit is liable to be stayed under Section 10 of the Code of Civil Procedure

and as stated in para 4 of the preliminary objections? OPD”,

with the plaintiffs having given up the relief of possession, these issues ought to have been deleted as far back as in the year 1994 and having not been deleted are now deleted.

37. Issue no.(3), viz.:

“(3). Whether the plaintiffs are the owner of the suit premises and as such have locus standi to file the present suit? OPP”

The relationship of landlord and tenant between the plaintiffs on the one hand and defendant no.2 Singer Sewing Machine Company, USA on the other hand has been upheld in the eviction proceedings under Section 14(1)(b) of the Delhi Rent Control Act. The plaintiffs, in the said proceedings, have so recovered possession of the premises. The defendant no.1 Singer India Limited has not pleaded that if not the plaintiffs, who else is the owner of the premises of which the defendant no.1 Singer India Limited earlier claimed to be tenant and of which the defendant no.1 Singer India Limited in the eviction proceedings under the Delhi Rent Control Act has been held to be a unauthorized sub-tenant / person to whom the tenant defendant no.2 Singer Sewing Machine Company, USA had unauthorizedly assigned possession of the tenancy premises. The said facts are relevant to entitle the plaintiffs to *mesne* profits, if otherwise entitled to in law. The counsel for the defendant no.1 Singer India Limited also has fairly not raised any argument on this aspect. The issue is thus decided in favour of plaintiffs and against the defendants.

38. Issue no.(4), viz.:

“(4). *Whether the suit of the plaintiff is barred by time? OPPr*”

(i). The plea in the written statement of the defendant no.1 Singer India Limited on which the said issue was framed was in relation to the relief of possession claimed in the suit as originally filed and which was given up way back in the year 1994. Since 1994, the only relief in the suit is of *mesne* profits and which in the last amended plaint dated 26th September, 2008 in this suit instituted on 26th October, 1990 is with effect from April, 1996 and the question of the same being barred by time does not arise.

(ii). However the defendant no.2 Singer Sewing Machine Company, USA was added as defendant to the suit subsequently and as per order dated 20th August, 2008 in FAO (OS) No.154/2008 supra, the suit insofar as against it, is deemed to have been instituted on 9th July, 2007. The Schedule to the Limitation Act, 1963 does not contain any specific Article providing for limitation for a suit for recovery of *mesne* profits / damages for use and occupation. Thus the residuary Article 113 providing limitation of three years commencing from the date when the right to sue accrues for any suit for which no period of limitation is provided elsewhere in the Schedule, would apply.

(iii). The cause of action for recovery of *mesne* profits / damages for unauthorized use and occupation of a property would accrue at the end of each month for which the defendant continues in unauthorized use and occupation of the premises and not from each day for which the

defendant continues in unauthorized use and occupation of the premises. I say so because, Article 52 of the Schedule to the Limitation Act provides limitation of three years for a suit for recovery of arrears of rent, commencing from the date when the arrears become due, Article 87 provides for limitation of three years for a suit for compensation for trespass upon immovable property, commencing from the date of the trespass; and, Article 104 provides limitation of three years commencing from the date when the plaintiff is first refused the enjoyment of the right, for a suit to establish a periodically recurring right. Rent is generally and as per the Transfer of Property Act, 1882 payable either monthly or annually and never really on a daily basis. Thus, when a tenant or a sub-tenant overstays in the premises also, *mesne* profits would be recoverable on a monthly or annual basis and not on a daily basis. Applying Article 113 of the Schedule to the Limitation Act, the limitation for filing the suit for recovery of *mesne* profit is three years from the end of the month for which the *mesne* profits are claimed.

(iv). The suit of the plaintiffs, as per the last amended plaint dated 26th September, 2008, against the defendant no.2 Singer Sewing Machine Company, USA is within time for *mesne* profits only with effect from three years prior to 9th July, 2007 i.e. w.e.f. 10th July, 2004 and not for any period prior thereto.

(v). The issue is decided accordingly.

39. Issue no.(5), viz.:

“(5). Whether the suit has been properly valued for the purposes of Court fees and jurisdiction? OPP”

(a). Neither has the counsel for the defendant no.1 Singer India Limited pressed this issue nor do I find any error in the valuation of the suit for the purposes of court fees and jurisdiction.

(b). Again, the plea in the written statement of the defendant no.1 Singer India Limited on which this issue was framed was in relation to the relief claimed of possession and which as aforesaid was given up in the year 1994.

(c). The suit as it now stands is for recovery of Rs.5,47,94,800/- and for future *mesne* profits and appropriate court fees has been paid thereon.

(d). This issue is decided in favour of the plaintiffs and against the defendants.

40. Issue no.(6) and issue no.(8), viz.:

“(6). Whether the plaint has been duly verified? OPP

(8). Whether the suit has been filed in accordance with the High Court Rules? OPD”

(i) Not only has the counsel for the defendant no.1 Singer India Limited not pressed this issue, even otherwise I find the plaint to be verified in accordance with law.

(ii) These issues are decided in favour of the plaintiffs and against the defendants.

41. Issue no.(7) and issue no.(9), viz.:

“(7). Whether the defendant is in unlawful and illegal possession as alleged in the plaint? OPP

(9). Whether the plaintiff is entitled to damages as alleged in the plaint, if so at what rate? OPP”

42. These issues, for the sake of convenience are taken up together for consideration.

43. As is obvious from the earlier orders quoted hereinabove, the hearing revolved around the said aspects only.

44. *Mesne* profits, as defined in Section 2(12) of the CPC, mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits. Thus, to be entitled to *mesne* profits, the plaintiffs have to prove the defendants to have been or to be in wrongful possession of the premises.

45. The plaintiffs / their predecessor in title, admittedly had inducted the defendant no.2 Singer Sewing Machine Company, USA into the premises as a tenant. Though the plaintiffs in the plaint in the present suit have pleaded the defendant no.2 Singer Sewing Machine Company, USA to have vacated / left the premises but the case on which the plaintiffs have succeeded in the Delhi Rent Control Act proceedings is of the defendant no.2 Singer Sewing Machine Company, USA having illegally, without consent in writing of the plaintiffs, having sub-let, assigned or parted with possession of the premises to the defendant no.1 Singer India Limited. The plea of the defendant no.1 Singer India Limited, of the Indian undertaking of the defendant no.2 Singer Sewing Machine Company, USA having amalgamated with the defendant No.1 Singer India Limited, has been negated in the Delhi Rent Control Act

proceedings where an order of eviction under Section 14(1)(b) of the Delhi Rent Control Act has been passed. Section 14(1)(b) of the Delhi Rent Control Act is as under:-

“14. Protection of tenant against eviction. –

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

- (a)
- (b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;”

46. As would be obvious from the language of Section 14(1)(b) set out hereinabove, irrespective of the period for which the plaintiffs / their predecessor in title may have let out the premises to the defendant no.2 Singer Sewing Machine Company, USA at a rent of Rs.1200/- per month having come to an end, the plaintiffs / their predecessor in title were prohibited from recovering the possession of the premises from defendant no.2 Singer Sewing Machine Company, USA save in the manner provided under the proviso to Section 14(1) supra. Once that is so, a tenant whose possession was protected as aforesaid could not be said to be in wrongful possession on the expiry of the period for which the premises were let out to him. The question of the landlord thus being entitled to recover *mesne*

profits would not arise. The provision in Delhi Rent Control Act of protection of possession of the tenant cannot be permitted to be defeated by making such tenant liable for *mesne* profits.

47. The question which arises is, whether the possession of a tenant who has incurred a ground of eviction under the proviso to Section 14(1) supra can be said to be unauthorized from the date when he has so incurred a ground for eviction. Applied to the present case, the question would arise, whether the tenant defendant no.2 Singer Sewing Machine Company, USA, with effect from the date of sub-letting / assignment of the tenancy premises to the defendant no.1 Singer India Limited became liable for *mesne* profits.

48. The answer to the said question also does not pose a problem. The language to the proviso to Section 14(1) supra provides that even such tenant will incur the liability of eviction only after the Controller established under the Delhi Rent Control Act is satisfied of such ground for eviction having been made out and orders recovery of possession. Thus, the possession of the tenant cannot be said to be wrongful from the day on which according to the plaintiffs, the tenant has incurred a ground of eviction provided under the Delhi Rent Control Act. This Court, in ***Ashok Mehta Vs. Kanwal Nain Kaur*** (1993) 51 DLT 212 held that the landlord could not treat as a trespasser, a person in whose favour tenancy was created after obtaining permission under Section 21 of the Rent Act, on the expiry of period for which tenancy was created and cannot approach the Civil Court for recovering possession from him and such a person continues to be a tenant till order for recovery of possession from him is passed by the Controller.

49. The ancillary question which arises is, whether the unauthorized sub-

tenant / assignee, whom the tenant has unauthorizedly inducted into the tenancy premises, if not the tenant, would be liable for *mesne* profits to the landlord / owner from the date of so coming into unauthorized possession of the premises.

50. In ***Chitra Garg Vs. Surinder Kumar Bansal*** (2009) 112 DRJ 545, I was concerned with the question whether a suit for recovery of possession of property from a person unauthorizedly / illegally inducted into the premises by the tenant is barred by Section 50 of the Delhi Rent Control Act. *Prima facie*, it was felt that the remedy for eviction of a person who had come into possession of the property through the tenant in the premises is only under Section 14 of the Delhi Rent Control Act and the jurisdiction of the Civil Court would be barred under Section 14 read with Section 50 of the Delhi Rent Control Act. However the need to finally decide the said question did not arise in that case because it was found that the defendant had taken the plea only after the defendant had successfully obtained dismissal of the petition for eviction filed by the plaintiff in that case under the provisions of the Delhi Rent Control Act by setting up a title as owner of the property by adverse possession. It was thus held that the defendant, after having the petition for eviction under the Delhi Rent Control Act dismissed could not have the suit for recovery of possession also dismissed thereby depriving the plaintiff from any remedy under the law. Though I am in this case not concerned with the relief of possession but the question still remains of significance to determine whether the unauthorized sub-tenant / assignee in possession of the tenancy premises can be held to be liable for *mesne* profits inasmuch as if the possession of such a person is not wrongful till an order for recovery of possession is passed by the Controller under Section 14 of

the Rent Act, he cannot be liable for *mesne* profits.

51. Having considered the matter in the light of the judgments set out in ***Chitra Garg*** supra and need to reproduce which here is not felt, I am of the view that the bar contained in Section 14(1) read with Section 50 of the Delhi Rent Control Act applies equally to a suit for recovery of possession of immovable property from a person unauthorizedly inducted into the premises by the tenant. The only course for dispossessing such a person from a premises covered by the Rent Act is through the avenue of the Controller under the said Act and not before the Civil Court.

52. The reason therefor is that a decree of a Civil Court, for recovery of possession from an unauthorised sub-tenant/ assignee, also affects the tenant. A tenant of a premises within the ambit of the Rent Act cannot be sued for eviction / recovery of possession before a Civil Court. If it were to be held that a decree for recovery of possession of the premises can be passed by a Civil Court in a proceeding impleading the unauthorized / illegal sub-tenant / assignee only, the same will also ultimately result in an order of eviction of a tenant from the tenancy premises and which is prohibited by law. Tenant, as per definition in Section 2(1) of the Rent Act, includes a sub-tenant. The jurisdiction to determine, whether the sub-tenancy or assignment was done without consent in writing of landlord has been conferred on Controller. The jurisdiction of Civil Court with respect to any matter which the Controller is empowered by the Act to decide, is barred by Section 50 of Rent Act. Thus an unauthorized / illegal tenant / assignee from a tenant of a premises within the ambit of the Rent Act can be removed from possession of the premises only in a proceeding in accordance with the Delhi Rent Control Act and not

in a proceeding before the Civil Court.

53. Once that is so, the possession of such a person also cannot be said to be wrongful till an order of eviction is passed, to make such a person liable for *mesne* profits from prior thereto.

54. Applying the aforesaid, the defendant no.1 Singer India Limited also was not liable for *mesne* profits from the date of its unauthorized possession and till its order of eviction.

55. The next question which arises is, whether the liability for *mesne* profits commences from the date the Controller established under the Delhi Rent Control Act makes an order for recovery of possession.

56. Though the claim for *mesne* profits in the plaint, on 8th February, 2017 was argued to be with effect from the year 1990 and on 20th February, 2017 by way of a concession, the counsel for plaintiffs confined the claim to with effect from 9th April, 1996 but I find that as per the last amended plaint dated 26th September, 2008, the claim for *mesne* profits is with effect from 9th April, 1996 only i.e. when the order of eviction was passed by the Rent Controller Tribunal and till 31st January, 2005.

57. The Rent Act, vide Section 38 thereof as it stood at the time of institution of petition for eviction, provided for an appeal to the Rent Control Tribunal from every order of the Controller made under the Act and vide Section 39 thereof provided for a second appeal to the High Court against the order the Rent Control Tribunal, though on a question of law only.

58. Accordingly, the second appeal, being SAO No.17/1996 supra was preferred against the order of eviction under Section 14(1)(b) passed by the

Rent Control Tribunal.

59. The question which arises is, whether the possession of a tenant / unauthorized sub-tenant could be said to be unauthorized while their first appeal to the Rent Control Tribunal or the second appeal to this Court were pending consideration.

60. In the present case of course, the order of eviction was not passed by the Controller but by the Rent Control Tribunal on appeal by the plaintiffs.

61. The second appeal under Section 39 of the Rent Act filed by the defendants against the order of eviction passed by the Tribunal was admitted for consideration though ultimately dismissed. Such second appeal being a statutory appeal, in my view, the principles as applicable to a proceeding for eviction before the Controller would also apply to the pendency of a second appeal under Section 39 which is but a continuation of the proceedings before the Controller. For this reason, till the decision of the said second appeal also, neither the tenant nor the sub-tenant, in my view can be said to be in wrongful possession, to be liable for *mesne* profits. Thus, neither of the defendants could be said to be in unauthorized possession till the dismissal of SAO No.17/1996 of this Court on 25th May, 2001 and the plaintiff cannot be held entitled to *mesne* profits from either of them till then. Moreover, in this case the eviction petition having been dismissed by the Controller and the order of eviction having been passed by the Tribunal only, the second appeal to this Court was in the nature of first appeal. Supreme Court in ***Hasmat Rai Vs. Raghunath Prasad*** (1981) 3 SCC 103 held that notwithstanding the provisions in the Madhya Pradesh Accommodation Control Act, 1961, with which it was concerned in that case, that tenant does

not include a person against whom an order of eviction has been passed, and as is the position under Section 2(1)(A) of the Delhi Rent Control Act also, once the Rent Act itself confers a right of appeal against the order of eviction and in exercise of that right an appeal is preferred, the order of eviction ceases to be final. It was held that the tenant against whom an order of eviction is passed does not lose protection of the Rent Act if he files an appeal because if appeal is allowed, the umbrella of statutory protection shields him.

62. The further question for adjudication is, whether the same principle applies to the period for which the proceedings remained pending in the Supreme Court. The judgment of the Supreme Court in *Singer India Ltd. Vs. Chander Mohan Chadha* reported as (2004) 7 SCC 1 shows the same to be in Civil Appeal No.387-388/2004 indicating that the Special Leave Petition preferred by the defendant no.1 Singer India Ltd. was granted. That being the case, the appeal before the Supreme Court would enjoy the same privilege as a statutory appeal and the principles aforesaid would apply and the defendants cannot be said to be in unauthorized possession till the said appeal was dismissed by the Supreme Court.

63. The legal process having provided for several tiers of appeal, an order of the first Court cannot be said to have attained finality till the person prejudiced therefrom has availed of the legal process provided. To hold otherwise would amount to deprivation of a person of the legal remedies provided in law, by threatening such person with consequences from availing of such legal remedies. Such consequences unless provided for in law cannot thus be inferred. The legislature wherever has deemed it appropriate

to make the right of appeal conditional has done so as in the case of making the right to appeal subject to mandatory deposits or other conditions. No such provision having been made under the Delhi Rent Control Act, the liability of a tenant / illegal sublettee for *mesne* profits under the civil law cannot be imposed on a tenant as a condition for availing of statutory and legal remedies.

64. However, I find that though I had in orders dated 8th February, 2017 and 20th February, 2017 observed that ***Atma Ram Properties (P) Ltd.*** supra was in the context of the powers of the Appellate Court to impose conditions while granting interim stay of order of eviction but on further consideration thereof I find the Supreme Court to have nevertheless also gone into the aspect of liability of a tenant protected under the Rent Act for *mesne* profits and to have held (i) that under Section 2(1)(ii) of the Delhi Rent Control Act, the tenancy terminates with the passing of the order of eviction; (ii) that 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; (iii) that the landlord is not bound by the contractual rate of rent effective for the period preceding the date of decree; (iv) that the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the order of eviction stands merged with the order passed by the superior forum at a later date; (v) that it would not make any difference if the order of eviction has been put in issue in appeal and is confirmed by the Appellate Court at a later date; (vi) that the date of termination of tenancy would not be postponed to the date of order of the Appellate Court.

65. Though the aforesaid dicta is of a two Judges Bench and the dicta in *Hasmat Rai* supra was of a Bench of three Hon'ble Judges but I may notice that though *Hasmat Rai* is not noticed in *Atma Ram Properties (P) Ltd.* supra but *Atma Ram Properties (P) Ltd.* is based on another earlier dicta in *Chander Kali Bai Vs. Jagdish Singh Thakur* (1977) 4 SCC 402. Moreover, the observations in *Hasmat Rai* supra were not in the context of award of *mesne* profits, while the observations in *Atma Ram Properties (P) Ltd.* supra are directly in the context of *mesne* profits. I am thus bound by *Atma Ram Properties (P) Ltd.* supra.

66. I may however observe that I find that just like I, in orders dated 8th February, 2017 and 20th February, 2017 supra had observed that *Atma Ram Properties (P) Ltd.* supra is only in the context of powers of the Appellate Court to impose conditions while granting interim stay of order of eviction, a learned Single Judge of the High Court of Bombay also in *Central Bank of India, Mumbai Vs. Anil Puranmal Bansal* 2016 SCC OnLine Bom 274 held *Atma Ram Properties (P) Ltd.* supra to be concerning the conditions that can be imposed at the time of granting interim stay of the order of eviction and cannot be invoked to fix the date from which the landlord would be entitled to *mesne* profits. SLP(C) No.19320/2016 preferred thereagainst is however found to be pending.

67. Accordingly, I hold entitlement of the plaintiffs to *mesne* profits from the date next to the order of eviction i.e. w.e.f. 9th April, 1996.

68. I may also mention that a subsequent three Judges Bench of the Supreme Court in *State of Maharashtra Vs. Super Max International Private Limited* (2009) 9 SCC 772 affirmed *Atma Ram Properties (P) Ltd.*

supra, though in the context of the power of the Appellate Court to make the interim order of stay of the order of eviction conditional to payment of compensation.

69. However the decision of Issues No.(7) & (9) also requires adjudication of the question, whether the claim for future *mesne* profits can be made without a claim for recovery of possession of immoveable property and which was also raised during the hearing from 8th February, 2017 onwards.

70. I have, speaking for the Division Bench in ***Santosh Arora Vs. M.L. Arora*** 2014 SCC OnLine Del 3005 held a suit for recovery of future *mesne* profits without the relief of possession of immovable property to be not maintainable.

71. The counsel for the plaintiffs has drawn attention to ***Bharat Sales Ltd. Vs. Lakshmi Devi*** (2002) 5 SCC 629 particularly to observations in para 7 thereof. However, the said judgment is in the context of Section 14(1)(k) of the Delhi Rent Control Act and damages for breach of conditions of the lease of the land underneath the premises and stray observations qua *mesne* profits therein cannot be said to be binding precedent. Moreover, the same does not deal with the aspect of a suit for future *mesne* profits without the relief of possession.

72. The counsel for the plaintiffs also referred to ***Crompton Greaves Ltd. Vs. State of Maharashtra*** (2005) 11 SCC 547 particularly to para 3(4) thereof but the same is also an order and would have no binding precedent. Supreme Court, recently in ***Pratap Kishore Panda Vs. Agni Charan Das*** (2015) 17 SCC 789 held that with exponential increase in the decisions delivered by the Supreme Court it has become imperative for Advocates to

distinguish between orders and judgments and to correctly cull out the ratio of a judgment.

73. The counsel for the plaintiffs also referred to *Shyam Kishore* supra negating the contention of the counsel for the defendants that a simpliciter suit for future *mesne* profits, without claiming the relief of possession, would not lie. However, ultimately the suit was dismissed holding that the landlord was not entitled to recover *mesne* profits. I also find that a Division Bench of this Court in *Virender Singh Vs. State Bank of India* (2012) 127 DRJ 54 to have held *Shyam Kishore* supra to be not correct. I may mention that I have subsequently also in *Sham Lal Kapoor Vs. Joginder Lal Kuthiala* 2017 SCC OnLine Del 9130 and earlier in order dated 22nd February, 2017 in RFA No.384/1999 titled *Jagdish Vs. Fateh Singh* and in *Cosmos Infra Engineering (I) Ltd. Vs. Tirupati Buildings & Offices (P) Ltd.* 2016 SCC OnLine Del 6378 dealt with the said aspect.

74. Per contra, the counsel for the defendant No.1 has drawn attention to *Gulamhusain Asgaraly Vahanvaty* supra but which is not found applicable.

75. The Counsel for the plaintiffs has also referred to *Dhulabhai* supra and to *Today Homes and Infrastructure Pvt. Ltd.* supra to buttress that since there is no provision in the Delhi Rent Control Act for *mesne* profits, independent suit is maintainable.

76. The question here is not of maintainability of a civil suit for recovery of *mesne* profits but of maintainability of a suit for future *mesne* profits without the relief of possession.

77. Thus, following *Santosh Arora* supra, this suit for recovery of future *mesne* profits only has but to be held to be not maintainable.

78. Though I find the aforesaid outcome to be quite iniquitous and unjustified but I am bound by law. I may record that I have toyed with the idea of awarding *mesne* profits for one year, to which the counsel for the defendants has also agreed; I am however unable to find justification therefor also, once suit is held to be not maintainable.

The suit is accordingly dismissed, however no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 12, 2017

‘pp/gsr/bs’..

(Corrected and released on 14th September, 2017).



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