

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

+ **RFA No.653/2017**

% **26th July, 2017**

SHRI LAL CHAND AHUJA AND ORS. Appellants

Through: Mr. Amit Dhankar, Advocate.

versus

ALLAHABAD BANK Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.26235/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.26236/2017 (for condonation of delay)

2. For the reasons stated in the application, delay of 18 days
in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.653/2017

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the judgment of the trial court dated 10.3.2017 by which the trial court has granted *mesne* profits by 15% increase every year over the last rent being paid w.e.f 21.1.2002. The appellants/plaintiffs claim that they should get *mesne* profits according to prevalent market rate of Rs.40/- or Rs.50/- per square feet.

4. Entitlement to *mesne* profits by the appellants/plaintiffs/landlords is only on proving to the satisfaction of the court, especially if possible by leading documentary evidence, as to what is the prevalent rate of rent in the area for the relevant period, and only on that being done, *mesne* profits can be calculated as per the market rate of rent prevalent in the area.

5. Admittedly the appellants led no documentary evidence to show rate of rent and appellants only wanted to rely upon the oral statement of the property dealer who deposed as PW-5. Trial court therefore was justified in ignoring the oral testimony once there was no reliable evidence, much less documentary evidence to show the

rate of rent payable in the area for the relevant period. In fact, the appellants have been lucky because inspite of not leading any evidence, yet the trial court has by placing reliance upon the judgment of this Court in the case of ***M.C. Aggarwal vs. M/s Shahra India & Ors. 2011 (183) DLT 105*** granted 15% increase every year over the last paid rent, and but for which judgment the appellants would not have got any higher *mesne* profits except the admitted rent.

6. There is no ground to interfere with the impugned judgment. Dismissed.

JULY 26, 2017
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VALMIKI J. MEHTA, J

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