

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

+ **RFA No.718/2017**

% **11th August, 2017**

SH. JAGDISH SINGH Appellant

Through: Mr. Mohan, Advocate.

versus

MS. RACHNA BANSAL Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Nos.28818/2017, 28819/2017 & 28887/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M.s stand disposed of.

C.M. No.28820/2017 (condonation of delay)

2. For the reasons stated in the application, delay of 90 days

in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.718/2017 and C.M. No.28817/2017 (stay)

3. This Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial court dated 4.2.2017 which has decreed the suit for recovery of arrears of rent as also for *mesne* profits for the period after termination of tenancy. I may note that originally the suit was filed by the respondent/plaintiff was for possession, and *mesne* profits and suit for possession was already decreed vide order of the trial court dated 6.12.2016 passed under Order XII Rule 6 CPC and the possession of the suit property already stands handed over by the appellant/defendant to the respondent/plaintiff.

4. The suit has been decreed in terms of paras 11 and 11.1 of the impugned judgment and which paras read as under:-

“11. In view of the foregoing discussion, the plaintiff is entitled:-

(1) for a decree of arrears of rent i.e. total amounting to Rs.2,87,500/- @ Rs.12,500/- per month which is due against the defendant for 23 months i.e. from July, 2012 to May, 2014, when the legal notice terminating his tenancy was served.

(2) for a decree of damages/*mesne* profits at the rate of Rs.16000/- per month in respect of the suit premises. However, the plaintiff would be entitled for Rs.12,500/- for the month of June, 2014 as 30 days time was given to the defendant to vacate the suit property and thereafter the defendant would be liable to pay *mesne* profits/damages @ Rs.16000/- per month from July, 2014 till the vacant and peaceful possession of the suit property is handed over to the plaintiff.

11.1 The suit of the plaintiff is, accordingly, decreed leaving the parties to bear their own cost. Decree sheet be prepared accordingly. File be consigned to record room.”

5. The first issue before the trial court as also before this Court was/is as to what was the rate of rent between the parties. The appellant/defendant claimed that rate of rent was Rs.9,000/- per month whereas the respondent/plaintiff claimed that rate of rent was Rs.12,500/- per month. The respondent/plaintiff in order to prove the rent filed and proved the rent agreement entered into between the parties on 19.12.2009 as Ex.PW1/2. Therefore respondent/plaintiff did lead evidence to prove the rate of rent. Trial court has rightly found no reason to disbelieve the rent agreement Ex.PW1/2. Trial court has also rightly disbelieved the defence of the appellant/defendant that signature of the appellant/defendant were taken on blank papers of the rent agreement. The appellant/defendant led no credible documentary evidence whatsoever though the appellant/defendant claimed that he had deposited rent in the account of the respondent/plaintiff's bank at Punjab National Bank, Sikandrabad till June, 2012 and which was very easy for the appellant/defendant to do and which would have showed that rent was

Rs.9,000/- as was the case of the appellant/defendant. Therefore on the one hand, the respondent/plaintiff led evidence being the rent agreement, but on the other hand the appellant/defendant led no evidence except his oral statement of the rate of rent, and therefore on preponderance of probabilities, the civil court/trial court was entitled to come to a finding that the rate of rent was Rs.12,500/- per month and not Rs.9,000/- per month.

6. The second issue to be addressed is as regards the trial court granting *mesne* profits at Rs.16,000/- per month after terminating the tenancy and which *mesne* profits would be payable from July, 2014 till the appellant/defendant vacated the suit property. This finding of rate of *mesne* profits at Rs. 16000/- per month, in my opinion also cannot be interfered with because Courts can grant reasonable increase in the rent for being paid as *mesne* profits by increasing the rent to a higher figure of *mesne* profits. The admitted rent was Rs.12,500/- per month in terms of the rent agreement of the year 2009, and therefore, there is no illegality in the trial court taking judicial notice of increase of rent and granting *mesne* profits at Rs.16,000/- per month from July, 2014 that is just an increase of

around Rs.3,500/- from 2009 till the year 2014. This Court in the case of *M/s M.C. Agrawal HUF Vs. M/s Sahara India and Ors. 183 (2011) DLT 105* has held that in the absence of any evidence led by the parties as to the increase to the rate of rent courts can ordinarily, depending on facts of each case, grant 15% increase every year to the rent/*mesne* profits. The rate of Rs.16,000/- granted by the trial court is therefore in accordance with the ratio of the judgment in the case of *M.C. Agrawal HUF (supra)*.

7. I may note that in fact the appellant/defendant is lucky because in addition to the directions for payment of arrears of rent and *mesne* profits, respondent/plaintiff is entitled to the interest on the unpaid dues, but the trial court has not granted this relief to the respondent/plaintiff. This aspect therefore already grants sufficient benefit to the appellant/defendant as he has only to pay the principal amount being the arrears of rent and *mesne* profits without payment of any interest.

8. There is no merit in the appeal. Dismissed.

AUGUST 11, 2017
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VALMIKI J. MEHTA, J