

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

+ **RFA No. 794/2017**

% **18th September, 2017**

UNION OF INDIA & ANR. Appellants

Through: Mr. Rakesh Kumar, CGSC for
appellants.

versus

RASHID M.H. JUNG Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 34104/2017 (delay of 12 days in filing the appeal)

For the reasons stated in the application, delay in filing the
appeal is condoned.

CM stands disposed of.

CM No.34103/2017 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 794/2017 & CM No.34102/2017 (stay)

1. This Regular First Appeal is filed under Section 96 of the
Code of Civil Procedure, 1908 (CPC) impugning the judgment of the

trial court dated 27.4.2017 whereby the trial court has decreed the suit for *mesne* profits at the rate of Rs.33 per sq. ft. The suit premises are Park Mansion, Sir Syed Ahmed Road, Darya Ganj, Delhi-110002 admeasuring 2834 sq. ft. Possession of the suit premises was handed over by the appellants/tenants to the respondent/landlord pursuant to a judgment passed under Order XII Rule 6 CPC. The impugned judgment therefore deals with the remaining aspect of *mesne* profits.

2. The admitted facts are that the appellants were tenants in the suit premises under the respondent/plaintiff. The period in question for determining the rate of *mesne* profits is from 15.3.2010 to 5.9.2015 i.e 65 months and 20 days. The respondent/plaintiff before the trial court to prove this issue of *mesne* profits relied upon the notings in the file of the appellants/defendants itself Ex.PW1/2 dated 11/12.08.2005, and as per which the rate of rent as per the formula of the Municipal Corporation of Delhi was fixed at Rs.33 per sq. ft. This rate of rent was awarded as *mesne* profits at Rs.33 per sq. ft. Though, the appellants/defendants disputed the rate of rent at Rs.33 per sq. ft. as per their written statement, however appellants/defendants did not cross-examine the witness of the respondent/plaintiff that the rate of

rent was not Rs.33 per sq. ft. Also, the appellants/defendants led no positive evidence in the form of lease deeds or other documentary evidence as to if the rate of rent was not Rs.33 sq. ft. then what was that rate of rent. Trial court accordingly on the basis of the document Ex.PW1/2 and also the fact that there was no cross-examination of the witness of the respondent/plaintiff who deposed with respect to rate of rent at Rs.33 per sq. ft., decreed the suit for *mesne* profits taking the rate of rent at Rs.33 per sq. ft. The relevant para 14 of the judgment of the trial court reads as under:-

“14. Affidavit of PW-1 Ex PW-1/A, in para-5 inter-alia embodies the fact that the defendant in the office file notes, dated 11/12.08.2005 Ex PW-1/2, clearly mentioned that MCD determined rent for Darya Ganj @ Rs. 33/- per sq. ft. Same facts were asserted in para-14 of the plaint by the plaintiff. Neither in the written statement nor in the cross-examination of PW-1 there is any denial of the fact of the MCD determined rent of Rs. 33/- per sq. ft. for Darya Ganj area in the year 2005. In the case of ***Smt. Rama Kanta Jain (supra)***, Hon'ble Mr. Justice Mohd. Shamim of High Court of Delhi, inter-alia held that when there is no cross-examination on the fact deposed then such a fact is deemed to be admitted as correct. Therein also, the plaintiff witness PW-1 deposed to the fact that on going market rent of similarly situated properties was more than Rs. 2100/- per mensem and since there was no cross-examination of PW-1 on that point, said rate of rent was deemed to be correct. In the fact of the matter, neither the defendants have disputed the averment of the fact in Ex PW-1/2, the copies of the office notes of year 2005 that MCD rates of rent applicable were Rs. 33/- per sq. ft. in Darya Ganj area nor PW-1 has been given any suggestion contrary to his afore elicited assertion of the MCD rates applicable to be Rs. 33/- per sq. ft. for the relevant period. In this fact of the matter, the plaintiff has been able to prove for being entitled for damages @ Rs. 33/- per sq. ft. for the suit property of area 1810 sq. ft. Suit was filed on 15.03.2010. Plaintiff received possession of the suit property on 05.09.2015. For the said period from 15.03.2010 till 05.09.2015, plaintiff has already received sum of Rs.

17,014/- per month, as per order of date 02.02.2009 of the High Court of Delhi. So, the entitlement of plaintiff for damages is Rs.59,730/- (1810 x 33) per month and out of the same Rs. 17,014/- per month have been received by plaintiff for the period till suit premises had been vacated. Balance payable monthly damages by defendants to plaintiffs are Rs. 42,716/- for period from 15.03.2010 to 05.09.2015 i.e., for 65 months and 20 days, totaling Rs. 28,05,017/-. Plaintiff is held entitled for recovery of sum of Rs. 28,05,017/- from defendants with proportionate costs. The suit is decreed in above terms. Decree sheet be prepared accordingly on payment of requisite court fees on sum of Rs.28,05,017/- by plaintiff. File be consigned to record room.”

3. In my opinion, no fault can be found with the impugned judgment of the trial court once the appellants/defendants failed to cross-examine the witness of the respondent/plaintiff with respect to the rate of rent and also that the appellants/defendants led no positive evidence that if the rate of rent was not Rs.33 per. Sq. ft. then what was the rate of rent.

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

SEPTEMBER 18, 2017
ib

VALMIKI J. MEHTA, J