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

\+ **RSA No.250/2017**

% **27th October, 2017**

VIJAY PAL SINGH ..... Appellant

Through: Mr. Vijay Pal Singh, Adv., Appellant in person.

versus

BHARAT BHUSHAN GULATI ..... Respondent

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/tenant in the suit impugning the concurrent judgments of the courts below; of the Trial Court dated 21.11.2016 and the First Appellate Court dated 4.7.2017; by which the courts below have decreed the suit to the extent of relief of arrears of rent from April, 2014 till June, 2015 and has also granted *mesne* profits at

Rs.15,000/- per month from July, 2015 till the appellant/tenant vacated the suit premises.

2. On the aspect of grant of *mesne* profits, it is argued by the appellant/defendant, who appeared in person and who is an Advocate, that the *mesne* profits could only be granted *pendente lite* and till delivery of possession and not prior to the filing of the suit. The argument urged on behalf of the appellant/defendant is completely misconceived because *mesne* profits are granted on termination of tenancy and when the legal entitlement of the person to stay in the tenanted premises as a tenant comes to an end. Once tenancy comes to an end then charges which are payable are *mesne* profits as per Section 2(12) CPC. Therefore, the argument that *mesne* profits cannot be granted prior to filing of the suit is misconceived and is rejected noting that as per limitation *mesne* profits can be granted up to three years prior to the filing of the suit . I may also note that the case of the respondent/plaintiff/landlord was that the tenancy was terminated with effect from 30th June, 2015 inasmuch as the appellant/defendant/tenant had agreed to vacate on 30.6.2015, and since that was not done, the period after 30th June, 2015 is the period of illegal possession of the

suit premises by the appellant/defendant. The first argument of the appellant/defendant is therefore rejected.

3. The second argument which is urged on behalf of the appellant/defendant is that the courts below have erred in granting arrears of rent at the admitted rate of Rs.10,500/- per month from April 2014 till June 2015 inasmuch as the undertaking dated 11.4.2016 filed by the appellant/defendant before the SHO, and which document is relied upon by the respondent/plaintiff himself as document Ex.PW2/3 (colly), the appellant/defendant had stated in this document Ex.PW2/3 (colly) that rent was paid till 30.6.2015 except balance of Rs.21,000/-. It is argued that this undertaking once is used for holding illegal occupation of the appellant/defendant from July, 2015 then the same argument has to be read as a whole and not in part.

4. Though the argument of the appellant/defendant did carry some weight at the first blush, however, it is seen that the court below has relied upon the bank pass-books not only of the respondent/plaintiff but also of the appellant/defendant himself and which pass-books showed that rent which was payable was being paid by the cheque and such payment of rents by cheques was only till

March, 2014. The relevant bank transactions were as per the pass-books; Ex.PW1/5 being of the respondent/plaintiff and Ex.DW1/5 being of the appellant/defendant. I may note that the appellant/defendant thereafter in desperation took a plea that the rent has been paid after March, 2014 in cash, however, no such plea was taken in the written statements besides the fact that no proof whatsoever has been filed of payment of cash including any receipt of payment allegedly made in cash, and accordingly, the courts below were justified in believing the plea that arrears of rent were due from April, 2014.

5. Lastly it was argued on behalf of the appellant/defendant that courts below have erred in granting *mesne* profits of Rs.15,000/- however, once again there is no substance in this argument for two reasons. Firstly, the admitted rate of rent of Rs.10,500/- was fixed in the year 2012 and *mesne* profits which are calculated are from July, 2015, i.e, about more than three years later. This aspect has also to be taken with the fact that the appellant/defendant himself admitted that when he took alternative premises in the year 2015 at a distance of just half a kilometer and that he has paid Rs.15,000/- for that alternative

premises, and therefore this figure of Rs. 15,000/- has been taken by the courts below as the rate of *mesne* profits for the suit premises, and with respect to which I do not find any illegality whatsoever.

6. No such substantial question of law arises. Dismissed.

OCTOBER 27, 2017 **VALMIKI J. MEHTA, J**
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