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

Reserved on : 06th March, 2018
Date of decision :12th March, 2018

\+ **RFA 150/2007**

CANARA BANK ..... Appellant

Through: Mr. Pradeep Dewan, Senior Advocate and Ms. Anupam Dhingra, Advocate (M:9811422603)

versus

THE DELHI KARNATAKA SANGHA ..... Respondent

Through: Mr. K. R. Gupta and Mr. Nitin Gupta, Advocate. (M:9871252584)

AND

\+ **RFA 183/2007**

THE DELHI KARNATAKA SANGH ..... Appellant

Through: Mr. K. R. Gupta and Mr. Nitin Gupta, Advocate.

versus

CANARA BANK ..... Respondent

Through: Mr. Pradeep Dewan, Senior Advocate and Ms. Anupam Dhingra, Advocate

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

<u>Prathiba M. Singh, J.</u>

1. The Delhi Karnataka Sangh (*hereinafter 'Plaintiff'*) had entered into a lease with Canara Bank (*hereinafter 'Defendant'*) for property ad-measuring 5715.78 Sq. ft. at Sector 12, Rao Tula Ram Marg, R.K. Puram, New Delhi-110022. The initial lease dated 1st November, 1989 was for a period of five

years with a renewal clause at enhanced rent of 35%. The initial five years expired on 31st July, 1993 and the renewed lease expired on 31st July, 1998. The last paid rent was Rs.60,750/- apart from electricity, water charges, property tax, etc., payable by the Defendant. After the tenancy expired on 31st July, 1998, the Defendant continued to occupy the property. It is the Plaintiff's case that despite repeated requests, the Defendant did not vacate the property. Finally, the tenancy was terminated by the Plaintiff by issuing notice dated 24th /31st January, 2000. The same was delivered to the Defendant on 5th February, 2000.

2. The Plaintiff then filed the subject suit for possession as also for mesne profits *pendente lite* and future. The suit was filed on 1st March, 2000. The mesne profits claimed in the suit was at Rs.100/sq. ft. w.e.f. 1st March, 2000.

3. In the written statement, it was claimed that the notice of termination should be deemed to be waived in view of the acceptance of the admitted rent. The relationship of landlord-tenant was however not disputed. An application under Order XII Rule 6 was filed by the Plaintiff which was decided by a Learned Single Judge of this court on 5th August 2002. A decree of possession on the basis of admission was passed to the following effect:

> *"A decree of possession of premises Property No.l, Sector 12, Rao Tula Ram Marg, R.K. Puram, New Delhi in favour of the plaintiff and against the defendant is passed. Since the defendant is a commercial institution it is given three months time to vacate the premises and deliver its possession to the plaintiff provided it files an undertaking within two weeks to that effect. The defendant shall appear before*

the Joint Registrar of the court for filing undertaking on 26.8.2002."

The order was carried in appeal and was disposed of by a Division Bench of this court vide order dated 17th September, 2002 in the following terms:

> *"Heard.*
>
> *Learned counsel for the appellant states that the appeal will not be pressed provided time is allowed to the appellant to vacate the premises in question by 31st May, 2003 on acceptance of the appellants undertaking which will be filed within a period of two weeks from today on the affidavit of a person duly authorised to swear such affidavit on behalf of the appellant agreeing an undertaking to deliver peaceful and vacant possession of the premises to the plaintiff/respondent on or before 31st May, 2003. It is also stated that in so far as the mesne profits are concerned the matter is yet to be decided by learned Single Judge and the defendant/appellant undertakes to pay the mesne profits as will be finally determined by the Court and in the meantime, till delivery of possession the defendant/appellant will continue to pay use and occupation charges at the same rate."*

4. Though the Defendant was given time to retain possession till 31st May, 2003, it handed over possession to the Plaintiff on 31st March, 2003.

5. Thus, the only question that remained to be adjudicated in the suit, was in respect of mesne profits. The Plaintiff led the evidence of Sh. S. Krishna Bhatt, PW-1 and Sh. N.K. Dutta PW-2, an officer from Bank of India. The Defendant led the evidence of Sh. M. Jayasheelan DW-1, Chief Manager of Canara Bank.

6. The Trial Court after examining the pleading and evidence passed a

decree for mesne profits in the following terms:

> *"14. In this case the defendant was given time to vacate the premises within three months from 5.8.2000 the date of order of eviction. Therefore, the plaintiff cannot claim mesne profit exceeding Rs. 81000/- p.m upto 5th November 2002. The premises were vacated on 31.3.2003, thus defendant is liable to pay mesne profits on market rate from November 2002 to March 2003 for five months. The plaintiff has led evidence to the satisfaction of this court that the property could fetch rent not less than at the rate of Rs. 53.57 per sq. ft. The premises having area of 5715.78 sq. ft can easily get the rent of Rs. 3,06,194/- p.m. Therefore, the plaintiff is entitled to get mesne profits at the rate of Rs. 3,06,194 p.m. The total amount that is found due from defendant on account of mesne profit is Rs. 15,30,970/-.*
> *15. In view of the above facts and circumstances, suit of the plaintiff is decreed for the amount of Rs. 15,30,970/- subject to payment of additional court fee on additional amount. With cost of the suit. Decree sheet be drawn. Amount paid during pendency or before shall be taken in account. File be consigned to record room."*

Two appeals have been filed challenging the above order. The first appeal RFA 150/2007 is by the Defendant. The basic grievance of the Defendant is that the mesne profits of Rs.53.57/sq. ft. is extremely high. RFA 183/2007 is filed by the Plaintiff challenging the non-grant of mesne profits for the period from 1st March, 2000 as mesne profits were awarded only from November 2002.

7. Thus, the two issues that have to be determined in these two appeals are:

i) What are the mesne profits payable by the Defendant?

ii) For which period is the mesne profits payable?

What are the mesne profits payable by the Defendant?

8. The Plaintiff has claimed mesne profits @ Rs.100 per sq. ft. in support of its claim of mesne profits. The Plaintiff has led the evidence of two witnesses. The Plaintiff relies on a lease agreement between one Sterling Cellular Tower Limited and itself for a space measuring 420 sq. ft. on the roof of the same premises for erecting a cellular tower. The rate in this licence agreement was Rs.71.43/sq. ft. as per PW-1. The second document relied upon by the Plaintiff is a license agreement for a neighbouring building belonging to Sh. Raghvendra Muth bearing No.3, Sector 12 Rao Rula Ram Marg, R.K. Puram, New Delhi with Bank of India *(hereinafter `Bank of India agreement')*. The rate in this license was Rs.53.57/- per sq.ft.

9. It is the submission of Mr. Dewan, Senior Advocate for the Defendant that neither of these two transactions represents the fair rent for the property in question. It is his submission that the agreement of the cellular tower has not been produced or proved. Moreover, the premises for a bank cannot be compared with that of a cellular tower. In so far as the Bank of India agreement is concerned, it is the submission of Mr. Dewan that the agreement was not proved in accordance with law. It was only a marked document. Neither was the lease registered nor was a certified copy produced. The official from Bank of India, PW-2 merely produced an attested copy which was merely attested by the bank officials. He also sought to distinguish the two premises on the ground that the Bank of India premises had an independent entrance and a larger parking space.

10. Mr. K.R. Gupta on the other hand submits that the Bank of India premises is the closest property which could be drawn as a parallel for the suit premises. The premises where the Bank of India had taken the space on rent is adjoining the suit premises and the rent as per the said document was Rs.53.57/sq. ft. He further submits that irrespective of whether the agreement is proved in accordance with law or not, the bank official himself had appeared and cross examined. Thus, the lease transaction of Bank of India can be read into evidence.

11. The court has perused the Bank of India agreement. The agreement is duly attested by officials of the bank. The same is marked on the Trial Court record. Oral evidence has also been led in support of the said agreement. PW-1, Mr. S. Krishna Bhatt, has stated in his cross-examination as under:

> *"Premises No.3 Bank of India as far as I think is occupying from 2001 again said 1999 and again said 1998. I have seen the lease deed of Bank of India. I do not know who has signed on behalf of Bank of India . I have just asked about the rate of rent. I do not know its date. I do not know on how much stamp paper it is. 1 had seen this Lease Deed with Chief Manager. I did not make any request in writing to Chief Manager to give me inspection of the lease deed. I do not know it is registered or unregistered document. I do not know the name of the witnesses. I do not know for how much period it was executed. There was a clause of renewal of it. It was a photo copy. I did not asked for copy of Lease Deed. The bank is in the complete first floor of the building. It is incorrect to suggest that Bank of India is not occupying @ Rs.53.57 per sq.feet. In 1998 the total rent was Rs.1.85 lacs. I cannot tell about any premises which may have let out in the same vicinity in the year 2000. I had spoken to property dealer and brokers. Their names are M/s Babli and one or two*

others. They are available for any information now also. It is correct that suit premises was let out on lump sum basis and not as per carpet area. In the year 2000 the rent of the premises could be around Rs.80,000/- per month. It is incorrect to suggest that the property could fetch the similar rent. Vol. It could fetch much more rent."

12. PW-2, Mr. N.K. Dutta upon being questioned by the court has asserted as follows:

"I have not brought the original Lease deed executed between Raghvendera Swamy mutt and Bank of India dated 29.4.1999 as the same is not our possession which is lying with the office of Sub Registrar, Delhi. I have brought a certified copy of the Lease Deed along with photocopy of the same attested by the bank. The attested photocopy is mark-PW-2/A which bears signatures of Mr.D.P.Thakur and R.S.Pithera, who are our constituted attorneys at point X & Y. We are in possession of the 1st Floor of the premises since 18th January 1999.

Court Ques.: *What is the rent being paid by the bank to the landlord for the premises occupied by the bank?*

Ans.: *It is presently Rs. 1,88,125/-. (Objected to by the ld.counsel for the deft, on the ground that the witness is required to produce only the document which he has brought and his oral testimony cannot be accepted).*

Court Ques.: *Are you aware as to how much area is under occupation of the bank of the said premises?*

Ans.: *It is 3,500 sq.ft.*

We are regularly paying rent of the said premises. Originally the rent was Rs. 1,50,500/- p.m. when the *premises was taken on rent. The rent at this rate was being paid, by the bank to the landlord from 18th January 1999 till 17th January 2002, the rate of the rent is Rs. 1,88,125/- p.m. from 18th January 2002 to 17th January 2005. The distance between my bank's branch and the suit premises is around 120 yards. It is correct that the suit premises is situated at number 1 Rao Rula Ram Marg adjacent to it a Petrol Pump and then our premises next to the Petrol Pump is situated.*

XXXXXXXXX Ms.Anupam Dhingra, Advocate for the Defendant...

It is correct that the Mutt had not executed any Lease Deed with the bank but only a license deed. It is correct that the portion under the occupation of the bank is having independent entrance. It is also correct that the specific area has been allotted to the bank for parking of its employees as well as customers. I can not tell the exact area but roughly 10-12 cars or 30-35 two wheelers can be parked at a same. There is no list of furnitures & fixtures provided by the licensor along with the license deed. It is not in my knowledge whether any fittings & furnitures have been provided by the licensor to the bank. I have never worked with or under the persons who are signatories of this license deed. I have never seen them writing & signing. It is correct that the bank is having a strong room which includes lockers, currency chest and documents which are required to be kept in safe custody. I have not brought any document to show that the bank had been paying licensee fee Rs.1,50,500/- p.m. during the period January 1999 to January 2002. I have also not brought any document to show that the bank has been paying or is paying license fee at the rate of Rs. 1,88,125/- w.e.f. 18th January 2002. I can not say whether any fresh license deed had been executed between the Mutt and the bank after the expiry of license on 17th January 2002. It is correct that the area under the occupation of the bank is free from interference of any *kind by the Mutt. It is wrong to suggest that I am deposing falsely."*

13. The DW-1, Mr. M. Jayasheelan, the Chief Manager of the Defendant bank has stated in his evidence-in-chief as under:

> *"6. The deponent submits that the defendant bank, after vacating the premises in suit, shifted to property bearing No. 12, Aradhana Enclave, Sector-13, R.K. Puram, New Delhi. The defendant is occupying the entire property comprising of basement, ground floor and first floor and paying a monthly rent of Rs. 1,87,000/-. The use by the defendant of the new premises at Aradhana Enclave, New Delhi for its banking business is an authorised commercial use whereas the suit property though situated in residential area, its use for any commercial activity was not permissible. The premises under the tenancy of the defendant at Aradhana Enclave is better located and situated on the main Ring Road. The said premise has an independent access and parking area. Parking facilities are available at the said premises besides other facilities like customer lounge, better cross ventilation spacious parking area, double lock to the strong room etc. which facilities were not available to the bank in the suit premises."*

The premises taken by the Defendant bank after vacating the suit premises was about 8000 sq. ft. at a monthly rent of Rs.1,87,000/-.

14. This court is of the opinion that the cellular tower agreement is not a comparable agreement. However, the Bank of India license does give an idea as to the fair rent in the area. From the evidence which is lead between the parties, the square feet rate as per the Bank of India is approximately Rs.53.57/sq. ft. and the square feet rate for the Aradhana Enclave property

taken by the Defendant is approximately Rs.23/- for 8000 sq. ft. The Defendant has been paying a sum of Rs.81,000/- on the basis of the 35% escalation clause in the agreement itself. The total space occupied by the Defendant bank is approximately 5715.78/sq. ft and thus the rate of rent paid was Rs. 14.17 per sq ft, which is very low in comparison with the prevalent rent in the market. Keeping in mind the differences in the nature of the premises in question and the two premises i.e. Bank of India premises and the Aradhana Enclave premises, this court holds that Rs.45/- per sq. ft. is a fair rent for the suit premises.

For which period the mesne profit is payable?

15. The tenancy was terminated w.e.f. 1st March, 2000. The date of handing over of possession is 31st March, 2003. The Trial Court vide order dated 5th August, 2002 came to the conclusion that since the Defendant was given three months time to vacate the premises in August 2002, damages are liable to be paid only after the expiry of the three months period i.e. w.e.f. November, 2002 till 31st March, 2003.

16. Mr. K.R. Gupta, learned counsel submits that this is a completely erroneous finding by the Trial Court inasmuch as the judgment relied upon by the Trial Court in ***Union of India v. Banwari Lal and sons (P) Ltd. (2004) 5 SCC 304***, is not applicable to the facts of the present case. He submits that the judgment of the Supreme Court in ***Atma Ram Properties Pvt Ltd v. Federal Motors Pvt Ltd 2005 1 SCC 705(hereinafter Atma Ram Properties)*** is squarely applicable in cases where there is a determination of lease under Section 111 of the Transfer of Property Act.

17. Mr. Dewan on the other hand relies upon ***Chandra Kali Bail v. Jagdish Singh Thakur AIR 1977 SC 2262***, ***Bhagwati v. Chandramaul AIR***

1966 SC 735(hereinafter Chandra Kali Bail) and ***Union of India v. Banwari Lal and sons (P) Ltd. (2004) 5 SCC 304(hereinafter Banwari Lal)***. He submits that there are three types of tenancy. Firstly, a contractual tenancy. Secondly, though the contract has ended, a tenant is in lawful possession unless declared as in unauthorised occupation and thirdly, a trespasser. He submits that though the tenancy had come to an end, his client continues to pay the rent as per the escalation clause in the agreement which was duly accepted by the Plaintiff and hence no damages are liable to be paid for the period during which the Defendant was in occupation. It is his further submission that the Ld. Single Judge granted three months time to vacate the suit premises and hence the period prior to the expiry of the time given cannot be counted for the purpose of awarding mesne profits or damages.

18. Firstly, it is to be noticed that the Division Bench order of this court dated 17th September, 2002, clearly records the undertaking of the Defendant that though time is being extended for handing over of vacant and peaceful possession, it would pay the mesne profits as to be determined by the court finally. It was only in the mean time that the defendant would continue to pay the use and occupation charges. This order is clear to the effect that the Defendant was conscious of the fact that the mesne profits determined could be much higher than the use and occupation charges which it was paying. The undertaking also clearly means that time was being granted to the Defendant to vacate only keeping in mind the nature of activities of the bank. The said discretionary order which granted time to vacate the premises cannot be in any manner be construed as absolving the Defendant from paying mesne profits nor is the Defendant to be considered

as a tenant during the period after termination. The judgment in ***Chandra Kali Bail(supra)*** would not be applicable in view of the fact that the said judgment was rendered in the context of M.P. Accommodation Control Act, 1961, the provisions of which are different from the provisions of Transfer of Property Act. The Judgment in ***Banwari Lal(supra)*** was also in the context of the requisitioning and acquisition of Immovable Property Act, 1952. However, even ***Banwari Lal(supra)*** is clear to the extent that fair rent is payable.

19. The judgment which would have complete application in the facts of this case is ***Atma Ram Properties(supra)*** which, after discussing the entire law and after distinguishing the judgment in ***Chandra Kali Bail(supra)*** holds as under:

> *"11. Under the general and law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act, 1882, <u>once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant</u>."*

20. Thus, what is important is the amount that the property would have fetched if the landlord had let out the property when the tenancy terminated. The Supreme Court further holds:

> *"13. In Shyam Charan v. Sheoji Bhai this Court has upheld the principle that <u>the tenant continuing in</u>*

occupation of the tenancy premises after the termination of tenancy is an unauthorised and wrongful occupant and a decree for damages or mesne profits can be passed for the period of such occupation, till the date he delivers the vacant possession to the landlord. *With advantage and approval, we may refer to a decision of the Nagpur High Court. In Bhagwandas v. Mst. Kokabai the learned Chief Justice of Nagpur High Court held that the Rent Control Order, governing the relationship of landlord and tenant, has no relevance for determining the question of what should be the measure of damages which a successful landlord should get from the tenant for being kept out of the possession and enjoyment of the property.* *After determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the Rent Control Order. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value. We find ourselves in agreement with the view taken by the Nagpur High Court."*

21. The legal position as applicable to the fact of the present case is therefore as laid down in ***Atma Ram Properties(supra)***. Thus, the Defendant is not right in contending both in view of the Division Bench order as also the legal position that it is not liable to pay mesne profits. The Defendant is liable to pay mesne profits w.e.f. 1st March, 2000 i.e. when the termination took effect till the date of handing over of the possession. Accordingly, the impugned judgment and decree for mesne profits is modified. The suit is decreed for mesne profits @ Rs.45/sq. ft. calculated for the period of 1st

March, 2000 to 31st March, 2003. Adjustment for the money already paid shall be given. On the outstanding amount, simple interest @ 6% p.a. would be payable. Decree sheet be drawn accordingly.

22. This court had vide order dated 25th May 2007 directed deposit of 50% of the decretal amount. The Defendant had deposited a sum of Rs.7,69,913/- pursuant to the said order. The amount deposited was already released to the Plaintiff subject to furnishing of security. The Bank Guarantee furnished as security by the Defendant shall stand discharged.

23. After calculating the total decretal amount based on the decree passed above, the sum of Rs.7,69,913/- which was the amount already released would be deducted. The remaining amount shall be payable with 6% simple interest p.a. within a period of four weeks.

24. Both appeals are disposed of with no orders as to costs.

PRATHIBA M. SINGH, J.
Judge

MARCH 12, 2018
Rahul