

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

+ **RFA No. 314/2018**

% **22nd November, 2018**

M/S SUSHI ENTERPRISES PVT. LTD

..... Appellant

Through: Mr. Shyam D. Nandan,
Advocate (M. No.9654848621).

versus

CEAT LTD

..... Respondent

Through: Mr. Arvind Kumar, Advocate
(M. No.9878001254).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff/landlord impugning the Judgment of the trial court dated 22.11.2017 by which the trial court while passing a decree for *mesne* profits for the period from 01.06.2008 till 14.07.2011 has granted *mesne* profits only at Rs.60/- per sq. ft. per month, and the case of the appellant/plaintiff is

that higher *mesne* profits should have been decreed on the average rate between the rates of rent proved by the appellant/plaintiff in terms of the Lease Deeds Ex.P-2 (Rs. 230/- per sq. ft.), Ex.P-3 (Rs. 160/- per sq. ft.) and Ex.P-4 (Rs. 165/- per sq. ft.). The premises in question are flat bearing no. 12-B, 'Vandhna', 11, Tolstoy Marg, New Delhi in an area comprised in 1420 sq. ft. Admittedly the premises are in Connaught Place, New Delhi and the last admitted rate of rent paid was Rs. 64,255/- per month and which was the rate of rent payable by the respondent/defendant as per agreement with the earlier owner/landlord for the period from 2006 to 2009, noting that there was no registered lease deed for this period from 2006 to 2009 i.e. the tenancy was a monthly tenancy.

2. The subject suit as originally filed was for the reliefs of possession and *mesne* profits, and in view of allowing of the application under Order XII Rule 6 CPC of the appellant/plaintiff seeking a decree for possession against the respondent/defendant vide Order dated 03.09.2010, the respondent/defendant vacated the suit premises on 14.07.2011. Therefore, the trial court, as also this Court,

has to determine the rate of *mesne* profits from 01.06.2008 to 14.07.2011.

3. The relevant para of the trial court which deals with the aspect of *mesne* profits is para 10, and which reads as under:-

“10. PW1 has relied upon lease Ex.P2, P3 and P4. Ex.P2 is a lease deed in respect of flat no.108 admeasuring 460 sq. feet situated on 1st floor of the Prakash Deep Building at the rate of Rs.230/- per sq. feet Plus Service Tax, Ex.P3 is a lease deed executed with respect to flat bearing no.301 admeasuring 760 sq. feet at the rate of Rs.160/- per sq. feet at Tolstoy House. Ex.P4 is a lease deed executed with respect to a flat situated at Atma Ram House on the 11th floor admeasuring 1058 sq. feet at the rate of Rs.165/- per sq. feet plus Service Tax. None of these lease deed can be relied upon as they are of different buildings. The claim of the plaintiff that the rate of rent is Rs.350/- sq. feet is also not tenable in the eyes of law by his own evidence. All the lease deeds which have been placed on record although of the different buildings shows that rate of rent is less than Rs.350/- per sq. feet. The suit property is situated in a commercial building, therefore, it is not possible that there is no lease deed which was registered in the said building during the said period. Plaintiff has failed to prove the prevailing market rent on the date of termination of the tenancy. The reliance on the lease executed between LIC and UIDAI Ministry of Planning is also misplaced as the said building is one of the iconic building in the area of Connaught Place, hence, testimony of PW2 is of no relevance.

Therefore, it has to be seen whether judicial notice can be taken with respect to the market rent or not.

The Hon'ble Delhi High Court in ***M.C. Aggarwal HUF Vs. Sahara India & Ors. 183 (2011) DLT, 105*** has held that even though the Landlord has not been able to lead any evidence regarding the prevalent rent in the area still judicial notice of increase of rent in the urban areas can be taken by applying the provisions of Section 114 & 57 of the Evidence Act, 1872. The SLP bearing no.4104/12 against the said judgment was dismissed on 21.03.2012 as noted in ***Marudhar Services Ltd. Vs. Ved Prakash RFA 374/04*** decided on 04.05.2012.

Similarly, the Hon'ble High Court of Delhi in ***Suman Verma Vs. Sushil Mohini Gupta, 2014 (140) DRJ 595*** has distinguished the judgment of ***National Radio and Electronics Company Vs. Motion Pictures Association, 2005 (122) DLT 659*** and has observed that it cannot be lost sight of the fact that the courts are for doing justice between the parties and not for, on hyper technicalities, allowing the parties to suffer injustice. Reliance can also be placed upon the judgment of ***Binod Khanna Vs. Bakshi Sachdev AIR 1996 Delhi 32, S.Kumar Vs. B.K.Kathpalia 1991 (1) RCR 431*** which were also relied by the Hon'ble Delhi High Court in the case of ***Suman Verma (supra)*** wherein even when the landlord had not led any documentary evidence, the decree of *mesne* profits was unpaid. In the judgment of ***Suman Verma (Supra)*** it was also laid down that Section 2(12) of the CPC 1908 includes award of interest.

In the light of the authoritative pronouncement of the Hon'ble Delhi High Court, judicial notice of the increase of rent can be taken. So far as the date from which the plaintiff will be entitled to concerned the same would be 01.06.2008, as the tenancy was month to month as no lease deed was excluded in the year 2004. Hence, the arguments of the Ld. counsel for the defendant that date should be taken as 01.10.2009 is liable to be rejected. The plaintiff would thus be entitled to the enhanced rate of rent from 01.06.2008 till 14.07.2011. The plaintiff is thus entitled to enhanced rent @ Rs.60/- per sq. feet with effect from 01.06.2008 till 14.07.2011 i.e the rate of rent would be Rs.60/- per sq. feet from 01.06.2008 till 14.07.2011 and shall also be entitled to interest @ 10% p.a. on the balance amount."

4. In my opinion, the trial court has seriously erred in granting *mesne* profits at only Rs. 60/- per sq. ft. per month, inasmuch as the Lease Deeds Ex.P-2, Ex.P-3 and Ex.P-4 are for the very same road of Tolstoy Marg where the suit premises are located, and these proved lease deeds for the relevant period show rentals at a rate much higher than Rs. 60 per sq. ft. per month. Once for the very same road, the lease rentals in terms of the Lease Deeds Ex.P-2 dated 16.10.2007,

Ex.P-3 dated 22.02.2008 and Ex.P-4 dated 14.07.2008 are proved at Rs. 230/-, Rs. 160/- and Rs. 165/- per sq. ft. per month, surely the trial court therefore could not have granted the *mesne* profits at Rs. 60 per sq. ft. per month.

5. In my opinion, even if we take the lowest rate of rent as proved vide Ex.P-3, the rate of rent is Rs. 160/- per sq. ft. per month, and this Court is thus inclined to grant such rate of rent to the appellant/plaintiff and against the respondent/defendant. It may be noted that while determining and assessing the *mesne* profits figure, some amount of honest guess work, if I can say so making a 'guesstimate' is involved, but once that assessment is based and has nexus to some relevant documentary evidence on record, and which exists in the present case in the form of the Lease Deeds Ex.P-2 to Ex.P-4, then the *mesne* profits have to be granted in terms of such existing evidence on record.

6. Learned counsel for the respondent/defendant argued that the conditions of the premises which are subject-matter of the Lease Deeds Ex.P-2 to Ex.P-4 are not the same as that of the subject premises and thus rates of rent in the proved lease deeds cannot be

taken into account, however it is noted that the respondent/defendant has led no documentary evidence of any other lease deeds showing/proving rents being lower, with the fact that a self-serving statement that the suit premises are different than the premises which are subject matters of Ex.P-2 to Ex.P-4 is not sufficient in law to hold that the suit premises are in a worse-off condition than the premises which are subject matters of Ex.P-2 to Ex.P-4. Learned counsel for the respondent/defendant did rely upon the cross-examination of Mr. Sanjay Jain (PW-1) conducted on 03.08.2012 wherein Mr. Sanjay Jain (PW-1) stated that he had not verified the age of the building, basic amenities, and availability of lifts in the flats which are subject matter of Ex.P-2 to Ex.P-4, however at best this statement would only mean that it cannot be held that the position of all the premises may not be identical at best, but really in multistoried buildings, except the ground floor portion which is used as a showroom and thus which has much higher rent, the other floors of multistoried buildings have more or less the same rate of rent per sq. ft. It is not the case of the respondent/defendant, much less proved by the evidence, that the suit premises are in a dilapidated condition or in a completely damaged

condition as compared to the Lease Deeds Ex.P-2 to Ex. P-4. Even while considering the aspect that the suit premises were in completely dilapidated condition, then there was no reason why the respondent/defendant would have continued in the suit premises despite of termination of its tenancy.

7. Learned counsel for the respondent/defendant also then placed reliance upon the admissions made by Mr. Rajesh Kumar (PW-2), the officer of LIC, who was called by the appellant/plaintiff for leading evidence as to rate of rent, that this witness in his cross-examination on 05.04.2013 stated that ONGC in 2011 had taken on rent the premises in the same area at LIC Building at Jeewan Bharti, Connaught Place at Rs. 112 per sq. ft. per month, but this argument has to be rejected because surely the rate of rent at Rs. 112/- per sq. ft. per month cannot be fixed to be the rate of rent of the suit premises, inasmuch as the suit premises are situated at a considerable distance away from Jeewan Bharti Building in Connaught Place area which is a

very large area and the lease deeds which are proved by the appellant/plaintiff are however of the very same road and just two/three buildings away from the suit premises. Once therefore there is evidence with respect to rates of rent of nearby buildings, then there is no reason why the lease rent with respect to a building which is far away from the suit premises should necessarily be taken note of while determining the *mesne* profits in the facts of the present case. As already stated above, some amount of honest guess work is always involved in determining the *mesne* profits.

8. In view of the aforesaid discussion, this appeal is allowed by granting rate of rent at Rs. 160/- per sq. ft. per month of the suit premises which comprises of an area of 1420 sq. ft. Whatever amount the respondent/defendant has already paid to the appellant/plaintiff for the period from 01.06.2008 to 14.07.2011, such amounts will be adjusted from the total dues payable in terms of the present judgment, and it is only on the balance amount payable would the

appellant/plaintiff be entitled to interest as granted by the impugned judgment of the trial court.

9. The appeal is accordingly allowed and disposed of in terms of aforesaid observations, leaving the parties to bear their own costs.

NOVEMBER 22, 2018
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VALMIKI J. MEHTA, J

