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

\+ **RFA No. 468/2006 & RFA No. 376/2006**

% 10th October, 2018

RFA No. 468/2006

SUBHASH CHANDER ..... Appellant

Through: None.

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr. S.S.Katyal, Mr. Rajesh Katyal and Mr. Naresh Kumar, Advocates (9810643553)

RFA No. 376/2006

PUNJAB NATIONAL BANK ..... Appellant

Through: Mr. S.S.Katyal, Mr. Rajesh Katyal and Mr. Naresh Kumar, Advocates (9810643553)

Versus

SUBHASH CHANDER ….Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 468/2006

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit

impugning the judgment of the Trial Court dated 28.04.2006 by which the trial court has granted *mesne* profits only at Rs.30 per sq. ft. of the carpet area of the ground floor and 28 per sq. ft. of the carpet area of the basement of the suit/tenanted premises being the basement and ground floor of leased property No. 14, Vaishali, Pitampura, Delhi. Appellant/Plaintiff/Landlord claims that the *mesne* profits should have been awarded at Rs.66 per sq. ft. As per the plaint, the appellant/plaintiff/landlord has claimed charges at Rs.60 per sq. ft. per month and Rs.55 per sq. ft. per month for the ground floor and the basement w.e.f. 25.01.2004. For the period from 25.01.2004 till 24.02.2004, the damages calculated at the aforesaid rate came to Rs.1,37,930/-. *Mesne* profits/damages were further claimed for the future period till the respondent/defendant/bank vacated the suit premises. There is no dispute that the respondent/defendant/bank vacated the suit premises on 21.03.2008. The issue therefore is of calculation of the *mesne* profits from 25.01.2004 till 21.03.2008.

2. The suit premises which were leased to the respondent/defendant/bank by the appellant/plaintiff/landlord comprised of an area of 1483 sq. ft. of the carpet area on the ground

floor and 890 sq ft. of the carpet area in the basement. The leased premises are part of the building situated at No. 14, Vaishali, Pitampura, Delhi. To prove the rate of rent for grant of *mesne* profits, evidence was led by the appellant/plaintiff/landlord of one PW-2, Mr. Praveen Kapoor. Mr. Praveen Kapoor is the landlord of the property No. 366, Kohat Enclave, Pitampura, Delhi situated just across the road where the leased premises were located. The basement and ground floor of this property were let out by Mr. Praveen Kapoor to Lord Krishna Bank Ltd. in August 2000. The area let out by the PW-2 Mr. Praveen Kapoor to the tenant Lord Krishna Bank Ltd. was a total area of 4543 sq. ft. The ground floor rent payable by tenant Lord Krishna Bank Ltd. came to Rs.66 per sq. ft. of the carpet area. PW-2, Mr. Praveen Kapoor, has proved and exhibited the Lease Deed dated 14.08.2000 (Ex.CW2/A) entered into with Lord Krishna Bank Ltd. The Lease Deed Ex.CW2/A is a photocopy of the registered Lease Deed. The original of the Lease Deed was brought by the PW-2 in Court and it is recorded on 10.09.2005 at the time of deposition of PW-2, Mr. Praveen Kapoor, that the original of the Lease Deed Ex.CW2/A has been seen and returned.

3. Learned counsel for the respondent/defendant/bank however argues that the Lease Deed Ex.CW2/A which fixes the rent at Rs.66 per sq. ft. of the carpet area is not a correct document to be referred to for proving the rate of rent of the suit leased premises inasmuch as whereas the suit premises were constructed before 1985, the leased premises which were the subject matter of Ex.CW2/A was constructed about 6 to 7 years prior to the witness PW-2 Mr. Praveen Kapoor deposing in the year 2005 i.e in around the year 1998-1999. An argument is also urged on behalf of the respondent/defendant/bank that the suit premises are different than the premises which are subject matter of Ex.CW2/A on account of premises subject matter of Ex. CW2/A having enough parking area.

4. In my opinion, this appeal deserves to be allowed. Though the argument urged on behalf of the respondent/defendant/bank is partially correct, but limited to the extent that as compared to the suit premises, the premises which are subject matter of Ex.CW2/A were new premises, however, the premises which are subject matter of Ex.CW2/A is situated right across the road where the suit premises are situated, and is therefore

identically situated to the leased/suit premises including with respect to existence of a service road of 12 ft. wide. However, the fact of the matter is that the *mesne* profits have to be calculated not from August 2000, when Ex.CW2/A was entered into but for a period which commences roughly about 3 ½ years later. In this period of 3 ½ years, judicial notice of some increase of rent would have to be taken of approximately about 15% every three years and which also was the agreed rate of increase as between the respondent/defendant/bank and the present appellant/plaintiff/landlord. With respect to the premises being new or old, in my opinion there will not be too much basis for reducing the rent as fixed under Ex.CW2/A because the issue is not of the age of the premises but the usage to which premises are put and age of premises does not really make too much difference, and at best it will make some slight difference. In every case of assessment of *mesne* profits a court has to make a best judgment assessment as per the facts proved in a case, and therefore, considering the premises subject matter of Ex.CW2/A (proved by the witness PW-2 Mr. Parveen Kapoor) is right across the road to where the suit leased premises are situated, and both the premises are more or less identically situated, thus, in my opinion, as on August 2000, the rate of rent of the suit premises instead of being taken at Rs.66 per sq. ft. as fixed in Ex.CW2/A, can be taken as 60 per sq. ft. To this rate of Rs.60 per sq. ft. of the carpet area, a 20% increase will have to be granted as on 25.01.2004 inasmuch as the respondent/defendant/bank had agreed to 15% increase after every three years as per its Lease Deed entered into with the appellant/plaintiff/landlord. Therefore, w.e.f 25.01.2004 the rate of rent for the suit premises would be taken as Rs.72 per sq. ft. of carpet area i.e. 20% higher than Rs.60 per sq. ft. Accordingly, it is ordered that the appellant/plaintiff/landlord is entitled to damages/*mesne* profits at Rs.72 per sq. ft. of carpet area per month for the ground floor portion of the leased premises and Rs.60 per sq. ft. of carpet area for the basement.

5. Accordingly, a money decree is passed in favour of the appellant/plaintiff/landlord for the *mesne* profits from 25.01.2004 till 25.01.2007 at Rs.72 per sq. ft. of carpet area of the ground floor of the suit leased premises and Rs.60 per sq. ft. of carpet area of the basement of the suit leased premises. This aforesaid rate of rent would be till 25.01.2007 and after 25.01.2007 the rate of 72 per sq. ft.

of carpet area of the ground floor will be increased by 15% and would therefore become Rs.83 per sq. ft. of carpet area per month for the ground floor and Rs.60 per sq. ft. per month of carpet area with respect to the basement of suit leased premises. Section 2(12) of CPC defines *mesne* profits to include interest, and therefore on the amount of *mesne* profits payable by the respondent/defendant/bank to the appellant/plaintiff/landlord, interest will be payable at 9% per annum simple from the end of the month for which the *mesne* profits are payable and till the time the *mesne* profits are paid. Interest however will only be payable on the balance due because the respondent/defendant/bank has already deposited in this Court the amount in terms of the impugned judgment and decree. Also, in case, in addition to the amount deposited in this Court, the respondent/defendant/bank has been paying during the subject period from 25.01.2004 to 21.03.2008 the admitted rent of the premises, then the respondent/defendant/bank will also be entitled to adjust such amount or any other amount paid by the respondent/defendant/bank to the appellant/plaintiff/landlord towards the leased premises for this period, and only on the balance due, interest will be payable.

Appellant/Plaintiff/Landlord will also be entitled to costs of this appeal. Decree sheet be prepared. Appeal is allowed and disposed of accordingly.

<u>RFA No. 376/2006</u>

6. Since the appeal of the landlord being ***RFA No. 468/2006*** is allowed, this appeal filed by the lessee bank would be dismissed inasmuch as, the lessee bank would not be entitled to decrease of *mesne* profits granted by the trial court because as held in the judgment allowing ***RFA No. 468/2006,*** the appellant/plaintiff/landlord will be entitled to higher rate of *mesne* profits then as awarded by the trial court. This appeal is accordingly dismissed, leaving the parties to bear their own costs. Decree sheet be prepared.

OCTOBER 10, 2018/ib **VALMIKI J. MEHTA, J**