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

Date of Decision: 21st February, 2018

\+ **RFA 270/2017 & CM No.9389/2017 (stay)**

PUNJAB & SIND BANK ..... Appellant

Through: Mr. Harish Katyal and Ms. Pratyasha Kunj, Advocates. (M:9560917866)

versus

M/S GANESH BUILDERS PVT LTD ..... Respondent

Through: Mr. F. Hasan and Mr. Varun Kapur, Advocates. (M:9910032035)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This is an appeal against the impugned judgement and decree dated 26th December, 2016 passed by the learned Additional District Judge awarding *mesne* profits to the Respondent/Plaintiff (*hereinafter 'Plaintiff'*). Relevant portion of the judgment is as under:

> "*In view of above said discussion, the suit of the plaintiff is decreed and the plaintiff is entitled to mesne profits with respect to 4039.80 sq. ft. carpet area of the demised premises @ Rs.15/- sq. ft. per month for the period from 01.08.2001 till 31.07.2004 and same is calculated at Rs.21,81,492/- (4039.80 sq. ft. X Rs.15/- per sq. ft. per month X 36 months) and Rs.18/- per sq. ft. per month for the period from 01.08.2004 till 05.08.2005 i.e. date of handing over of possession by the defendant to the plaintiff, and the same is calculated at Rs.8,72,596.80 (4039.80 sq. ft. X Rs.18/- per sq. ft. per month X 12 months). The amount of rent which has already been paid by the defendant shall be adjusted from the mesne profits as calculated above.*

The payable amount shall carry interest @ 6 % per annum from 01.08.2005 till the date of payment. Decree shall be executable only on payment of deficient court fees, if any. Cost of the suit is also awarded in favour of the plaintiff."

2. The Appellant Bank/Defendant (*hereinafter 'Defendant'*) had taken on rent premises bearing no. Plot No.9, Block-C, Community Centre, Janakpuri, New Delhi (*hereinafter, 'suit property')*. A registered lease deed dated 1st June, 1987 was executed between the parties on a monthly rent of Rs.14,948/-. Tenure of the lease was initially for a period of 5 years renewable for a further period of 5 years by increasing the rent @ 15% for each extension.

3. Last rent paid was Rs.19,769/- and the lease expired by a efflux of time on 1st August, 2001. The lease was terminated vide legal notice dated 7th July, 2001, which was served on the Defendant on 10th July, 2001. The Plaintiff, in the said notice, claimed *mesne* profits @ Rs.25/- per sq. feet i.e., Rs.1,00,995/- per month with effect from 1st August, 2001. Since the Defendant neither replied to the legal notice, nor vacated the suit property, the Plaintiff filed the suit for possession and *mesne* profits on 5th July, 2004. Admitted position is that the Defendant has vacated the premises on 5th August, 2005.

4. The Plaintiff led the evidence of its director Shri Krishan Madan as PW-1 and official from the Sub-Registrar Office, Janak Puri as PW-2. The main document, which the Plaintiff has relied upon in its evidence, was the certified copy of the lease deed between Shri Pushkar Mahatta and ICICI Bank Ltd dated 9th February, 2000. This document was relied upon by the Plaintiff to prove that in the period between 2001 to 2005, there has been an

increase in the rentals in the area and ICICI Bank has taken the property on rent where per sq. feet rent was approximately Rs.38/-. The rental, as per the lease deed in the present case, was Rs.3.70 per sq. feet with 15% increase in every 5 years.

5. On the other hand, the Defendant examined the retired Chief Manager of the Bank and two other officials from Syndicate bank and Indian Bank to prove that rentals are not so high. The main plank of the Defendant's arguments is that the Plaintiff failed to lead its best evidence i.e. the lease deed of the suit property entered into in the year 2005 with M/s. Sarc Softech Pvt. Ltd. According to the defendant, the new lease deed relating the very property which was in issue would have been the best evidence. The Defendant, therefore, argued that since the Plaintiff has failed to produce the relevant evidence, it should only be granted 15% increase on the last paid rent as per terms mentioned in the lease deed itself and recognized by this Court in ***RFA No.6/2004 and RFA No. 36/2004 titled as SBI vs. H.C. Takyar decided on 13.02.2012***. The Trial Court, however, granted *mesne* profits @ Rs.15/- per sq. feet. for the period from 2001 to 2004 and @ Rs.18/- per sq. feet from 2004 to 2005.

6. In appeal, arguments have been heard on behalf of both the parties. The decretal amount already stands deposited as per order dated 8th March, 2017.

7. Learned counsel for Defendant has reiterated his submission that the Plaintiff having failed to produce the best evidence, there is no basis whatsoever for awarding the rent @ Rs.15/- per sq. ft. and enhanced rent of Rs.18/- per sq. ft.. Learned counsel for Defendant specifically relies upon paragraph 34 of the impugned judgment wherein the Trial Court has merely

held that it is in the interest of justice to award Rs.15/- and Rs.18/-.

8. *Per contra*, learned counsel for the Plaintiff submits that the evidence on record includes the lease by ICICI Bank to prove the rental rates to the tune of Rs.38/- and hence the Trial Court was duly justified in awarding the *mesne* profits @ Rs.15/- and Rs.18/-.

9. The Court has perused the Trial Court judgment and evidence on record. There is no doubt that the Plaintiff is holding back its best evidence i.e. lease deed relating to the suit property which was given on lease in 2005. However, that by itself would not deprive the Plaintiff for *mesne* profits on a reasonable sum, based on the market rates which are available on record. Admittedly, in the lease deed dated 3rd February, 2006 produced by the Defendant the premises which was in a nearby area was let out to Indian Bank for a period of 5 years w.e.f. 1st April, 2005 @ Rs.34 per sq. ft. Another lease deed 30th September, 2015, let out for first five years w.e.f. 1st April, 2015 Rs.43.26/- per sq. ft., were for the subsequent periods. The Trial Court was faced with a situation where there were three lease deeds on record of different banks, which are as follows:

(i) Lease deed between Indian Bank and Prakash Exports Pvt. Ltd. rate of rent of Rs.34 per sq. feet in lease deed dated 3rd February, 2006 **[Ex. DW3/2]**.

(ii) Lease deed between Syndicate Bank and Simplex Construction where rate of rent was of Rs.65.72 per sq. ft. with effect from 1st January, 2014 **[Ex. DW2/1]**.

(iii) Lease dated 30th September, 2015, with rent rate of Rs.43.26/- per sq. feet **[Ex. DW3/3]**.

Faced with the above three agreements, the Trial Court has taken a reasonable view in the matter while awarding *mesne* profits. The Plaintiff ought to have brought on record the rent of the very same premises after it was vacated by the Defendant. Since the Trial Court has fixed the rate of rent of Rs.15/- per sq. feet, the said rent is directed to be paid for the entire period from 1st August, 2001 to 5th August, 2005, instead of a higher rate of rent of Rs. 18/- for the last year. Accordingly, the impugned judgment/decree is modified to the extent that for the entire period of 1st August, 2001 to 5th August 2005, the use and occupation charges would be payable @ Rs.15/- per sq. feet. The amount payable would carry interest @ 6% per annum from 1st August, 2005 till the date of deposit of decretal amount, i.e. 1st April, 2017.

10. The Appellant has already deposited the decretal amount in the Court and the same is lying in a fixed deposit in this Court. It is, accordingly, directed that the decretal amount as directed above, along with interest amount calculated @ 6% per annum be released to the Plaintiff within two weeks. Remaining amount lying deposited in this Court be refunded to the Defendant. The impugned judgment and decree is modified accordingly. Decree sheet be drawn up.

11. Appeal is disposed of in the above terms. Miscellaneous applications also stand disposed of.

PRATHIBA M. SINGH
Judge

FEBRUARY 21, 2018/*dk*