

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

+ **RFA No.548/2018**

% **18th July, 2018**

M/S MODI INFOSOL PVT. LTD. Appellant

Through: Mr. Harish Kumar Garg and
Ms. Puran Kumari and Ms.
Payal Agrawal, Advocates.

versus

SUKHDEV KAUR Respondent

Through

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.27999/2018 (Exemption)

Exemption allowed subject to just exceptions

CM stands disposed of.

CM Nos. 27997/2018(delay in filing) & 27998/2018 (delay in re-filing)

For the reasons stated in the applications, delays in filing and re-filing are condoned, subject to just exceptions.

CMs stand disposed of.

RFA No. 548/2018 & CM No. 27996/2018 (stay) & CM No. 27995/2018 (for addl. documents)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/tenant impugning the Judgment of the Trial Court dated 14.12.2017 by which the trial court has decreed the suit for possession and *mesne* profits, as regards the *mesne* profits payable for the period from 14.8.2011 till 2.1.2014. I may note that possession of the suit premises has already been handed over by the appellant/defendant to the respondent/plaintiff pursuant to a decree earlier passed against the appellant/defendant under Order XII Rule 6 CPC.

2. The suit premises is a property bearing no.103, First Floor, Premises No.88, Skipper Corner, Nehru Place, New Delhi-49. The last admitted rent which was paid was Rs.24,780/-. Trial court has relied upon the Lease Deed of the appellant/defendant itself with respect to the premises bearing no. 106 in the very same multi-storeyed building where the suit premises are situated, and this Lease Deed Ex.PW2/A shows that for a premises of 422 sq. ft. appellant/defendant was paying in January,2008 rent at Rs.40,000/-

per month. As per the Lease Deed Ex.PW2/A rent was increased by 18% every three years. As per the Lease Deed of the appellant/defendant itself for the subject leased premises rent was to increase by 15% every three years. Accordingly, trial court has held that enhancement at about 6% in the rate of rent every year can be taken. The relevant discussion in this regard is contained in paras 15,21 and 22 of the impugned judgment and these paras read as under:-

“15. Learned counsel for the plaintiff argued that plaintiff was entitled to claim mesne profits from 15.10.2010 i.e after 15 days from 30.09.2010 when legal notice was sent. He further argued that Ex.PW2/A, which is lease deed executed between defendant and owner of 106, Skipper Corner, 88 Nehru Place, reflects that the tenanted premises could have fetched higher rent. He referred to the site plan filed by the plaintiff and stated that tenanted premises had more area than the premises leased vide Ex.PW2/A. He submitted that the tenanted premises was measuring about 621 sq. feet while premises leased vide Ex.PW2/A was measuring 422 sq. feet and hence rent of the tenanted premises would be higher than that was agreed in Ex.PW2/A.

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21. Having said so, the question that now arises is at what rate mesne profits should be granted. Several Superior Courts have held in number of cases that court can take judicial notice of increase of rental values in Delhi specially in respect to commercial properties and some guess work in deciding mesne profits is allowed. Keeping this legal principle in mind, I proceed to decide the rate of mesne profits to which plaintiff is entitled in light of the evidence brought before the court.

22. The prime document on which plaintiff has relied upon to assess the rate of mesne profits is Ex.PW2/A. This document was executed by the defendant with respect to tenancy of a property nearby the tenanted premises. It is the case of the plaintiff that the said property is smaller

than the tenanted premises, however, the site plan that was referred by learned counsel for the plaintiff to show this was not proved by the plaintiff during the recording of her testimony. However, considering the case of the plaintiff that the tenanted premises is the property similarly situated to the property which is subject matter of Ex.Pw2/A, it can be assumed without hesitation that in January 2008, rent of the tenanted premises was Rs.40,000/- per month. As per Ex.PW2/A rent was to increase by 18% every three year and as per the lease deed relied upon by the plaintiff pertaining to the year 2002 with respect to tenanted premises, rent was to increase by 15% every 3 years. Taking this to be the standard, it can be safely assumed that there is enhancement of about 6% in the rates of rent every year qua the properties similarly situated to the tenanted premises. Lease deed Ex.PW2/A pertains to February 2008. Considering that the rent increased by 18% after every three years, the rent would have been enhanced in February, 2011 and taking the same standard forward i.e increase of about 3% every six months, it can be safely assumed that the rent of the tenanted premises would have enhanced by 20% in August 2011. By this calculation, the rent of the tenancy in August 2011 would have been around Rs.48,000/- per month.” (underlining added)

3. It has been held by this Court in the case of ***M.C. Aggarwal vs. M/s Shahra India & Ors. 2011 (183) DLT 105*** that unless evidence is led to the contrary, courts can grant compounded 15% annual increase and which was held to be so in view of the fact that courts can take judicial notice of increase of rent and so held by a Division Bench of this Court in the case of ***S. Kumar Vs. G.R.Kathpalia 1999 (1) RCR 431; 1999 RLR 114.***

4. In the present case, in fact the trial court has not granted 15% compounded yearly increase but has only already granted increase at 6% every year. Learned counsel for the

appellant/defendant argues that appellant/defendant was paying high rent for the premises no. 106, and since appellant/defendant was already having adjacent premises and therefore no reliance be placed upon Ex-PW2/A. However I fail to understand that how on such ground the *mesne* profits cannot be granted at the rate which was awarded by the trial court because an agreed Lease Agreement, especially to which tenant is already a party, would be one of the best proof of rate of rent prevailing in the area. At best because of having an adjacent premises there may be some minor modifications in rent but it cannot be that there would be a drastic high rent paid by a tenant simply because the tenant already has an adjacent premises. This argument of the appellant is rejected.

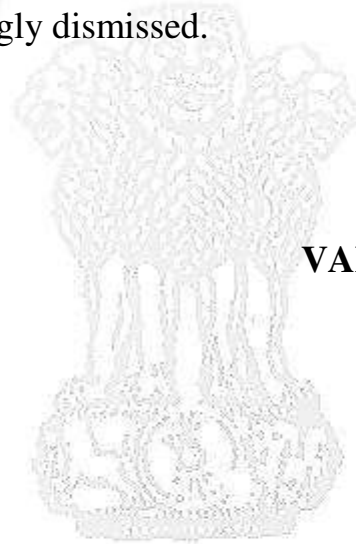
5. Learned counsel for the appellant/defendant then sought to rely upon additional documents with respect to a Lease Deed of the same property, and for which purpose an application under Order XLI Rule 27 CPC being CM No.27995/2018 is filed in this Court, however the object of Order XLI Rule 27 CPC is not to permit a person to fill up lacunae in his case once complete trial has been held and complete opportunity was given to a party, such as the appellant/defendant, to

lead evidence. The company such as the appellant/defendant cannot contend that having failed to lead certain evidence in the trial court, the case should not now again start *denovo* from the stage of leading of evidence. CM No. 27995/2018 is therefore dismissed.

6. In view of the aforesaid discussion, there is no merit in the appeal and the same is therefore dismissed. CM No. 27996/2018 for stay is also accordingly dismissed.

JULY 18, 2018/ib

VALMIKI J. MEHTA, J



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