

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

+ **RFA No.546/2018**

% **18th July, 2018**

PUNJAB NATIONAL BANK Appellant

Through: Ms. Sangeeta Sondhi,
Advocate.

versus

S.K.FINANCE CORPORATION 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.27948/2018 (Exemption)

Exemption allowed subject to just exceptions

CM stands disposed of.

RFA 546/2018 & CM No. 27947/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the Trial Court dated 17.3.2018 by which

the trial court has decreed the suit for possession and *mesne* profits filed by the respondent/plaintiff/landlord with respect to the property being Flat No.12-C, situated at 1 Atma Ram building, Tolstoy Marg, New Delhi admeasuring 500 sq. feet. It may be noted that appellant/defendant is only pressing the relief with respect to the claim for reducing the *mesne* profits granted by the trial court inasmuch as appellant/defendant/tenant has already handed over possession of the suit property to the respondent/plaintiff.

2. The relevant period for grant of the *mesne* profits is from 6.5.2007 till handing over of possession, and which possession is said to have been handed over on 30.5.2018. It may be noted that the admitted rate of rent between the parties at the time of termination of tenancy being the rent payable and maintenance charges was a total sum of Rs.3904/-. On the admitted rent trial court has granted increase around 20% every three year as stated below.

“@Rs.75/- per sq. feet: 06.05.2007 till 05.05.2010

@ Rs.90/- per sq. feet: 06.05.2010 till 05.05.2013,

@ Rs. 110/- per sq. feet from 06.05.2013 till 05.05.2016

@ Rs.135/- per sq. feet from 06.05.2016 till the date of handing of possession.”

3. For granting the *mesne* profits trial court has referred to various judgments of this Court that Court should take judicial notice of increase of rent. One such judgment is of a Division Bench of this Court in the case of ***S. Kumar Vs. G.R.Kathpalia 1999 (1) RCR 431; 1999 RLR 114***. I have also referred to this judgment in ***S. Kumar's*** case (*supra*) and held 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 would be justified in granting an annual increase of 15% compounded every year. If the ratio of ***M.C. Aggarwal (supra)*** would have been applied the respondent/landlord would have been granted 15% cumulative increase every year i.e a total of more than 45% after 3 years whereas in the present case at best around 20% increase has been granted every three years. Therefore, in fact the trial court has been more than liberal in favour of the appellant/defendant and against the respondent/plaintiff. The relevant paragraph of the judgment in ***M.C. Aggarwal (supra)*** is para 8 and this para reads as under:-

“8. What is now therefore to be determined is that what should be the mesne profits which should be awarded to the landlord in the absence of any evidence having been led by the landlord with respect to the rents prevalent in the area. Though it has not been argued on behalf of the landlord, I would like to give benefit to landlord of various precedents of this Court and the Supreme Court which take judicial notice of increase of rent in the urban areas by applying the provisions of Sections 114 and 57 of the Evidence Act, 1872. In my opinion, considering that the premises are situated in one of the most centrally located commercial localities of Delhi, situated in Connaught Place, an increase of 15% every year should be awarded (and nothing has otherwise been shown to me for the increase to be lesser) during the period for which the tenants have over stayed in the tenanted premises. Putting it differently, for the first year of illegal occupation, the tenant will pay 15% increased rent over the contractual rent. For the second year of illegal occupation, 15% increase will be over the original contractual rent plus the additional 15%. It will be accordingly for all subsequent years of the illegal occupation till the premises were vacated on 3.4.2005. I rely upon and refer to a Division Bench judgment of this Court in the case of *S. Kumar Vs. G.R. Kathpalia 1999 RLR 114*, and in which case the Division Bench has given benefit to the landlord and has taken judicial notice of increase in rent, and has accordingly allowed mesne profits at a rate higher than the contractual rate of rent.”

4. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

VALMIKI J. MEHTA, J

JULY 18, 2018/ib