

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

+ **RFA No. 792/2018**

% **19th September, 2018**

M/S HINDUSTAN MOTORS LTD.

..... Appellant

Through: Ms. Pruti Marwaha Gupta,
Advocate (Mobile No.
9810464514).

versus

M/S SEVEN SEAS LEASING LTD.

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 38155/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 792/2018 and C.M. Appl. No. 38154/2018 (for stay)

2. 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 15.05.2018 whereby the trial court has awarded *mesne* profits for the period 16.05.1998 to 31.08.1998 at the rate of Rs. 75/- per square feet, per month for the ground floor and Rs. 65/- per square feet, per month for the mezzanine floor as opposed to the agreed rate of rent of Rs. 31.51/- per square feet, per month for the ground floor and Rs. 26.28/- per square feet, per month for the mezzanine floor. The trial court has also awarded interest on the decretal amount at 9% per annum.

3. I need not set out the facts in detail, except stating that admittedly the appellant/defendant was a tenant in the property comprising of 6433 square feet on the ground floor and 1820 square feet on the mezzanine floor at Gulab Bhawan, 6, Bahadur Shah Zafar Marg, New Delhi. The tenancy of the appellant/defendant had commenced on 12.03.1986 and the same was terminated vide Legal Notice dated 10.04.1998. Appellant/Defendant has in the meanwhile, during the pendency of the suit, for possession and *mesne* profit handed over possession of the tenanted premises to the

respondent/plaintiff/landlord on 31.08.1999. The trial court was therefore required to compute the *mesne* profits for the period 16.05.1998 to 31.08.1999. This aspect has been dealt with by the trial court in paras 34-36 of the impugned judgment and these paras read as under:-

“34. The reasons given while deciding issue no.1 be read as part and parcel of this issue as the same are not being reproduced herein for the sake of brevity and to avoid repetition.

35. The plaintiff led evidence of PW1, he being the Director and constituted attorney of the plaintiff-company. He has deposed with respect to the mesne profits in the area of suit property and has also led evidence of PW2-Sh. Tilak Raj Chopra, Accounts Manager of M/s Tirupati Services Ltd. to prove the market rate of rent. PW2 has proved the account statement of M/s Tirupati Services Ltd. from 01.04.1999 to 31.03.2000 and ledger of M/s Kailash Motors as Ex.PW2/2 and Ex.PW2/3 respectively. PW2 has also proved TDS Certificates of M/s Tirupati Services Ltd. for the year 2000 to 2003. From the testimonies of PW1 and PW2, it stands proved that the rate of rent per square feet per month in the area of the suit property was around the same as claimed in the plaint.

36. Thus, the plaintiff is entitled to mesne profits for the period of 16.05.1998 to 31.08.1998 @ Rs.75/- per square feet per month for the ground floor and @ Rs.65/- per square feet per month for the mezzanine floor of the suit property. The defendant paid the rent @ Rs.31.51 per square feet per month for the ground floor and @ Rs.26.28 per square feet per month for the mezzanine floor during the abovesaid period. Thus, the remaining amount @ Rs. 43.49 per square feet per month for the ground floor admeasuring 6435 square feet and @ Rs. 38.72 per square feet per month for the mezzanine floor admeasuring 1820 square feet for 15.5 months (i.e. from 16.05.1998 to 31.08.1999) is to be paid by the defendant to the plaintiff which comes to Rs. 54,30,092.52 (Rs. 43,37,801.325 + Rs. 10,92,291.20). Thus, the suit of the plaintiff is liable to be decreed for a sum of Rs.

54,30,092.52 along with *pendente lite* and future interest @ 9% p.a. for unauthorized and illegal occupation.”

(underlining added)

4. A reading of the aforesaid paragraphs show that the trial court has relied upon the evidence led by PW2 with respect to the premises in the same area and on the basis of the rent paid by the tenant M/s Tirupati Services Ltd., the *mesne* profits have been calculated. I may note that some amount of honest guess work is always involved in calculation of *mesne* profits and therefore once rent is taken of similar premises situated in the same area, I do not find any illegality in the impugned judgment awarding *mesne* profits at Rs. 75/- per square feet, per month for the ground floor and Rs. 65/- per square feet, per month for the mezzanine floor.

5. The definition of *mesne* profits, contained in Section 2(12) of the CPC, provides that *mesne* profits include the interest payable on *mesne* profits. Therefore, the trial court has committed no illegality in awarding reasonable rate of interest of 9% per annum on the decretal amount towards *mesne* profits.

6. I fail to understand the attitude of tenants who despite termination of the tenancy, insist on continuing possession of the

tenanted premises, and thereafter, come shouting to courts seeking reduction of *mense* profits, whereas, if the occupation of premises were not convenient and the *mesne* profits were not to be paid, then why would the tenants not immediately vacate, as per time period provided in law, on receiving the notice of termination of tenancy. There is no inherent right in citizens of this country, who are tenants, to violate the law by overstaying in the premises where the tenancy stands terminated.

7. Dismissed.

SEPTEMBER 19, 2018

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VALMIKI J. MEHTA, J