

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

+ **RFA No. 1000/2016**

% **30th July, 2018**

CENTRAL BANK OF INDIA Appellant

Through: Mr. Jaswinder Singh and Mr. S.
Sankarana, Advocates.

versus

INNOVATIVE BUILDERS Respondent

Through: Mr. Anil Sapra, Sr. Advocate
with Mr. Jaideep Singh and Mr.
Sarhak Katiyal, Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/bank/tenant against the impugned judgment of the Trial Court dated 16.7.2016 by which the trial court has decreed the suit so far as the relief of *mesne* profits is concerned for the period from 1.7.2011 to 21.6.2013 along with interest at 6% per annum simple. The amount decreed is Rs.6,11,975/- per month, and which is decreed on the basis of Lease

Deed Ex.PW1/15, a Lease Deed executed by the appellant/defendant/tenant while taking another premises on rent in the same area.

2. I do not have to set down the facts in detail, inasmuch as, there is no dispute that there is a relationship of landlord and tenant between the parties and this Court has only to determine as to what would be the *mesne* profits payable for the period from 1.7.2011 to 21.6.2013.

3. During the course of admission/denial of the documents the respondent/plaintiff filed and proved on record the Lease Deed Ex.PW1/15 as per which the appellant/defendant had taken premises no. 11-94, plot no. 11, Municipal no. 94 M, Block no. 90, Baird Road, Gole Market, New Delhi, area admeasuring 1952 sq. feet. on the ground floor at monthly rent of Rs.5,25,088/- i.e Rs.269 per sq. ft. with effect from 1.10.2012. It is at this rate of Rs.269 per sq. ft. that the trial court has granted *mesne* profits for the subject suit from 1.7.2011 to 21.6.2013.

4. Though learned counsel for the appellant/defendant argues that the Lease Deed Ex.PW1/15 cannot be a parameter for

fixing rent of the subject premises because the subject premises are old premises and the premises under the Lease Deed Ex.PW1/15 are new premises, however this argument of the appellant/defendant cannot be accepted because admittedly this is only an oral submission being made before the Court and there is no such evidence led on behalf of the appellant/defendant in the trial court that the suit premises are situated in an older premises than the premises which are subject matter of the Lease Deed Ex.PW1/15. I may note that the undisputed position is that the difference in distance between the subject suit premises and the premises which are subject matter of Lease Deed Ex.PW1/15 is just about 200 metres and both the premises are in Central Delhi.

5. I however agree with one argument urged on behalf of the appellant/defendant that the Lease Deed Ex.PW1/15 fixes rent with effect from 1.10.2012 is almost of a period after about one year and three months from 1.7.2011, and from which date of 1.7.2011 the *mesne* profits have to be calculated, and therefore the rent of earlier year commencing from 1.7.2011 must be taken at a rate lesser than that fixed at Rs.269 per sq. feet.

6. The issue is that how much should the rent be reduced from 269 per sq. feet because this rate is the rate as on 1.10.2012 and we have to calculate the rate with effect from 1.7.2011.

7. In my opinion, since while granting increase in rent the Courts grant normally 10% increase per year for *mesne* profits, in view of the judgment in the case of ***M.C. Aggarwal vs. M/s Sahara India & Ors. 2011 (183) DLT 105***, therefore in my opinion the *mesne* profits should be granted in the present case at roughly 10% lesser i.e approximately Rs.27 lesser, and which would mean that we can take the rent at Rs.240 per sq. feet per month for the period from 1.7.2011 to 1.7.2012. From 1.7.2012 till 21.6.2013 this figure would have to be increased by 10% i.e. for the period from 1.7.2012 to 21.6.2013 rate of *mesne* profits will remain at the same rate as granted by the trial court at Rs.6,11,975/- per month i.e. Rs.269 per sq. feet.

8. In view of the aforesaid discussion, this appeal is partially allowed by directing that with effect from 1.7.2011 till 30.6.2012 the rate of *mesne* profits will be at Rs.240 per sq. feet per month and for the period from 1.7.2012 till 21.6.2013 the rate of *mesne* profits will be as granted by the trial court at Rs.269 per month per sq. feet.

9. I however clarify that the rate of interest will continue to remain at the same rate as granted by the trial court in terms of the impugned judgment.

10. Accordingly, this appeal is partially allowed as stated above, but dismissed with respect to the period from 1.7.2012 till 21.6.2013. Since the appellant/defendant has deposited the entire decretal amount in this Court, Registry will now calculate the amount of *mesne* profits payable in terms of today's judgment taking the principal amount deposited for *mesne* profits payable alongwith interest at the rate of 6% per annum simple taken as on date of passing of the impugned Judgment dated 16.7.2016.

11(i). The appellant/defendant having deposited in this Court an excess amount, Registry will now proportionately make payment of the principal amount of *mesne* profits payable due as on 16.7.2016 to the respondent/plaintiff and will refund the balance amount to the appellant/defendant. Payment to each of the parties will be of principal amount due as on 16.7.2016 along with accrued interest thereon till the date of deposit in this Court since the decretal amount which is deposited

in this Court by the appellant/defendant has been put in a fixed deposit and is earning interest.

11(ii). To clarify the issue, it is observed that the total amount deposited in this Court will be divided into two parts. The first part will be of a principal amount due from 1.7.2011 till 30.6.2012 at Rs.240 per sq. feet per month and Rs.269/- per sq. feet per month from 1.7.2012 till 21.6.2013, along with accrued interest thereon at 6% per annum simple in terms of the impugned judgment, till the date of deposit of the amount by the appellant/defendant in this Court. This amount will be paid to the respondent/plaintiff and the balance amount lying deposited in this Court along with accrued interest at 6 % per annum in terms of the impugned judgment and interest thereafter on this amount on account of fixed deposit being created in this Court, be paid to the appellant/defendant.

12. If for the subject period from 1.7.2011 till 21.6.2013 if the appellant/defendant has deposited any amount in any Court or the Court or Rent Controller, the appellant is at liberty to withdraw such amount deposited in any Court or Rent Controller.

13. The appeal is accordingly partially allowed and disposed of, leaving the parties to bear their own costs.

JULY 30, 2018 *AK*

VALMIKI J. MEHTA, J