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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27th February, 2018

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RFA 583/2015

HARINDER PAL SINGH

..... Appellant

Through: Mr. D.D. Singh, Advocate & Mr.
Navdeep Singh, Advocates (M-
9891246248).

versus

KRISHAK BHARTI COOPERATIVE LTD

..... Respondent

Through: Ms. Surekkha Raman, Advocate (M-
9818392502).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present appeal arises out of a suit for possession and mesne profits filed by the Appellant/Plaintiff (*hereinafter 'Plaintiff'*) against the Respondent/ Defendant (*hereinafter, 'Defendant'*). Lease deed dated 12th January, 1982 was entered into between the predecessors of the Plaintiff with the Defendant. The admitted rent as per the lease deed was Rs.5,911/- per month. The Defendant was paying rent to the predecessors of the Plaintiff. The Plaintiff had purchased the property from the predecessors in 1996 but the mutation in his favour took place only in 2006. Since the Defendant did not pay the rent to the Plaintiff even after intimation, but continued to pay the same to the predecessors of the Plaintiff, the Plaintiff wanted to terminate the tenancy. He demanded that the rent be paid in his name vide notice dated 27th November, 2007. However, despite the receipt of the said letter, it is the allegation of the Plaintiff that the rent was not paid. The Plaintiff, vide notice dated 20th September, 2008, terminated the tenancy

and demanded the arrears of rent be paid within 15 days.

2. The Defendant did not hand over vacant and peaceful possession of the property. A suit was then filed seeking possession, recovery of rent and mesne profits. The said suit being No.05/2008 was withdrawn due to technical objections. The Plaintiff thereafter served a statutory notice dated 1st April, 2009 under Sections 106 and 111 of the Transfer of Property Act, 1882 read with Section 115 of the Multi State Cooperative Societies Act, 2002. The amounts due were quantified. Despite service of the said notice, the Defendant did not vacate the property. Hence the subject suit came to be filed on 22nd August, 2009 where the following reliefs were prayed for:

“(a) Pass a judgement and decree for possession in favour of the plaintiff and against the defendant society in respect of Flat No.303, Red Rose House, 49-50, Nehru Place, New Delhi more particularly described and marked in red colour in the site plan annexed herewith.

(b) Pass a further decree for future mesne profits/damages in favour of the plaintiff and against the defendant society awarding damages/mesne profit Rs. 80,000/- from July 2009 or any other higher rate this Hon'ble Court may determine in favour of the plaintiff and against the defendant society till the possession is handed over by the defendant society alongwith pendent lite and future interest calculated@18% p.a. or higher as is prevailing in the market.

(c) Pass a further judgement and decree in favour of the plaintiff and against the defendant society awarding a sum of Rs.15,84,395/-(Fifteen Lakh Eighty Four Thousand Three Hundred Ninety Five Only) towards arrears of rent as mentioned in the plaint alongwith pendent lite and future interest calculated @18% p.a.

*(d) award costs of the suit in favour of the plaintiff's and against the defendant, and
(e) pass such other or further orders as may be deemed fit and proper by this Hon'ble Court on the facts and in the circumstances of the case."*

3. The stand of the Defendant was that the Plaintiff was not the owner of the property and that the Plaintiff had not issued any notice intimating the ownership or the sale of the property in favour of the Plaintiff. Objections under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter*, 'CPC') were also raised. The following issues were framed in the suit:

- "1. Whether the plaintiff is the owner of the suit premises ?*
- 2. Whether the plaintiff is entitled to possession of the suit premises or not?*
- 3. Whether the plaintiff is entitled to recovery of rent, mesne profit. If so, at what rate and for which period ?*
- 4. Whether the plaintiff is entitled to interest on the amount as due and at what rate ?*
- 5. Whether the suit as filed by the plaintiff is not maintainable for want of notice U/Sec.111 of Multi Cooperative Societies Act? If so, its effect?*
- 6. Relief."*

4. During the pendency of the suit, the Defendant deposited the keys of the property in the Trial Court on 26th October, 2013. However, possession was handed over to the Plaintiff only on 2nd May, 2015 when the impugned judgment was passed. The Trial Court came to the conclusion, after perusing the evidence, that the Plaintiff had no reason to remain silent for 11 years after purchase of the property. The Trial Court also observed that there is a serious doubt which was raised as to the title of the Plaintiff to the suit property. However, the final conclusion of the Trial Court was on the basis

of preponderance of probability. The Plaintiff was held to be the owner of the property. In so far as possession is concerned, no issue was to be adjudicated before the Trial Court as the key stood deposited with the Trial Court on 26th October, 2013.

5. For determination of mesne profits, the Plaintiff had placed on record one lease deed with respect to property no.26, Deepak Building, 13, Nehru Place, Delhi measuring 609 sq. ft. which was let out January, 2008, @ Rs.61,000/- per month for two years with an escalation clause of 20% increase. However, the Trial Court simply rejected the said agreement on the ground that the condition of the said property was not disclosed and held that this agreement cannot be made the basis for determining mesne profits, merely because it was located in the same area,. The Defendant had not led any evidence on the issue of mesne profits. Under the said circumstances, the Trial Court merely gave a 15% increase on the last paid rent of Rs.5,911/- in the following manner:

<i>Sr. No.</i>	<i>Last Paid Rent</i>	<i>Period</i>	<i>Rate of Mesne Profit</i>
1.	Rs.5,911/-	01.05.2009 to 30.04.2010	Rs. 6,800/-x 12
2.	Rs.6,800/-	01.05.2010 to 30.04.2011	Rs. 7,820/-x12
3.	Rs.7,820/-	01.05.2011 to 30.04.2012	Rs. 9,000/-x 12
4.	Rs.9,000/-	01.05.2012 to 30.04.2013	Rs. 10,350/-x 12
5.	Rs.10,350/-	01.05.2013 to 30.10.2013	Rs. 11,900/-x6

6. In the present appeal, the only issue that is canvassed before the Court is in respect of mesne profits. Mr. D.D. Singh submits that the mesne profits awarded are extremely low. The admitted position, based on the record, is that only one agreement has been relied upon by the Plaintiff in the suit. The Trial Court has referred to this agreement i.e., a Lease Deed dated 26th

December, 2007 between Hospital Equipment Manufacturing Company and Supreme Industries Ltd. The said agreement was proved by the official of the Sub-Registrar's office. His testimony is extracted herein below:

“PW: Statement of Sh. Rajesh Kumar, Reader to Sub Registrar, Office of Sub Registrar-V, Mehrauli, ND.

ON SA

I have brought the record pertaining to the lease executed between hospital equipment manufacturing company and Supreme Industries Ltd on 26/12/2007 in respect of premises no. 26, Deepak Building, 13, Nehru Place, ND. The same was registered in our office vide Sl. No. 175, Book No.1, Volume No.7967, pages 130 to 138 dated 04/01/2008. As per the said lease, the rent of the premises was Rs.61,000/- and the area of the premises was 609 sq. feet. The copy of the same is Exb.PW.2/A

XXXXXXXXXX by Shri Om Prakash, counsel for the defendant.

I am a summoned witness. I am posted in this office for the last four five months. It is correct that the lease deed Exb.PW.2/A was not executed in my presence. I have no personal information about the prevalent market rent in the area. I cannot admit the contents of Exb.PW.2/A.”

7. On the other hand, the Defendant, has sought to produce, in this appeal, along with an application under Order XLI Rule 27 of the CPC, an alleged investigation report which claims to have been conducted in respect of rate of rentals in the vicinity. Without going into the issue as to whether the additional evidence can even be entertained at the appellate stage, a perusal of the said report also reveals that for the period of 2012-17, the rent per sq. ft. was in the range of Rs.43.44/sq. ft. to Rs.60/sq. ft. Thus, even

going by the documents filed by the Defendant, the mesne profit awarded by the Trial Court is on the lower side.

8. Admittedly, the Defendant has been in occupation of the property for an extremely long time, since 1982. There has been some fault of the Plaintiff as well in not notifying the Defendant of its ownership and also allowing the Defendant to raise doubts as to the ownership as discussed in the Trial Court Judgment.

9. The only agreement proved in accordance with law is the agreement which the Plaintiff has filed on record. However, the said agreement is for the period 2007 onwards which is mentioning the rent in the range of Rs. 100/- per sq feet.

10. The range of rent proffered by the Respondent is in the range of Rs. 43.44 to Rs. 60/-, though the said agreements were never placed on record before the Trial Court. Thus, by any standard the mesne profits awarded are on the lower side.

11. Keeping in view the agreement proved on record by the Plaintiff, and the conduct of the parties, the decree for mesne profits is modified to Rs.65/pm/sq.ft payable for the period 1st May, 2009 to 30th October, 2013. The Plaintiff is also entitled for interest @ 8% from the date of filing of the suit i.e., 22nd August, 2009, till the date of payment. The impugned judgment and decree is modified accordingly. Decree sheet be drawn up.

12. Appeal is disposed of along with all pending applications.

PRATHIBA M. SINGH
Judge

FEBRUARY 27, 2018

Rahul