

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA No. 764/2017

% 21st August, 2018

RAJIV JAIN Appellant

Through: Mr. Siddhant Asthana and Mr.
Chhetarpal Singh, Advocates
(Mobile No. 9818501011).

versus

SHASHI BHATNAGAR Respondent

Through: Ms. Namita Sharma and Mr.
Sandeep Thukral, Advocates
(Mobile No. 9891072729).

**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 in the suit impugning the judgment of the Trial Court dated 25.7.2017 by which the trial court has decreed the suit for possession and *mesne* profits filed by the respondent/plaintiff.

2. I may note that this appeal was only pressed with respect to rate of *mesne* profits and appellant/defendant agreed to vacate the

suit premises on or before 30.9.2017. This order dated 4.9.2017 reads as under:-

1. After arguments, this appeal is disposed of as not pressed so far as the relief of challenge to a decree of possession is concerned and it is stated that the appellant will vacate the suit premises on or before 30.9.2017. Counsel for the appellant, on behalf of the appellant, undertakes to vacate the suit premises on or before 30.9.2017 as counsel states that he has received instructions from the appellant to say so. In any case, appellant will file an affidavit of undertaking in this Court within one week from today to vacate the suit premises on or before 30.9.2017.
 2. Learned counsel for the appellant argues that appellant is aggrieved with respect to the rate of *mesne* profits granted at Rs.30,000/- per month from the year 2007 inasmuch as it is argued that no positive evidence is led with respect to the rate of rent in the area. It is argued that appellant is always ready to pay some reasonable use and occupation charges, however, in the facts of the present case a sum of Rs.30,000/- is exorbitant considering the lack of evidence led by the respondent/plaintiff.
 3. No doubt, evidence has to be led with respect to rate of rent, however, Courts have taken judicial notice of increase of rent and in fact this Court in the judgment in the case of ***M.C. Agarwal HUF Vs. M/s Sahara India & Ors. 2011 (183) DLT 105*** has held that courts will be entitled to grant 10% yearly cumulative increase from the last rate of rent which is paid. Therefore, issue with respect to the rate of mesne profits will be examined at the time of disposal of this first appeal and since the decree is a money decree, money decree cannot be stayed except on furnishing a security to the satisfaction of this Court under Order 41 Rule 5 CPC, and therefore, operation of the impugned judgment is stayed subject to the appellant depositing the decretal amount in this Court within a period of four weeks from today.
 4. Notice be issued the respondent, on filing of process fee, both in the ordinary method as well as by registered AD post, returnable on 12th January, 2018.”
3. The only issue now to be determined by this Court is with respect to rate of *mesne* profits to be awarded to the respondent/plaintiff from 1.9.2007 till the appellant/defendant vacates the suit premises.

4. No doubt, the respondent/plaintiff has not led any documentary evidence with respect to the rate of rent, however it is noted that appellant/defendant is in possession of an entire second floor of the property bearing house no. R-742, New Rajinder Nagar, New Delhi. This premises consists of one big room, kitchen, bathroom and an open courtyard. Whereas the respondent/plaintiff has proved by at least oral deposition that the rate of rent of Rs.30,000/- per month in around the year 2007, but the appellant/defendant has not had the courage of conviction to depose on affidavit as to the rate of rent not being Rs.30,000/-. Once the appellant/defendant has no courage of conviction to depose with respect to what was the rate of rent of similar premises in the year 2007, there is no reason why the respondent/plaintiff should be disbelieved, more so because Rs.30,000/- per month cannot be said to be an completely unnatural figure of rent inasmuch as the premises are situated in a reasonably posh locality of Delhi i.e. New Rajinder Nagar, New Delhi and R Block is stated to be a posh block of New Rajinder Nagar Colony.

5. Courts also take judicial notice of rate of rents in metropolitan cities like Delhi in terms of Sections 57 and 114 of the Indian Evidence Act, 1872.

6. In view of the aforesaid discussion, it is found that the appeal has no merits so far as the grant of *mesne* profits by the trial court at Rs.30,000/- per month is concerned.

7. In view of the aforesaid discussion, there is no merit in the appeal and the same is dismissed.

AUGUST 21, 2018

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VALMIKI J. MEHTA, J