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

\+ **RFA No. 67/2018**

% **Reserved on: 22nd January, 2018**
Pronounced on: 25th January, 2018

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. D.D. Singh and Ms. Seerat Deep Singh, Advocates.

versus

M/s M. GULAB SINGH & SONS P. LTD. ..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. 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 9.5.2017 by which the trial court has decreed the suit for possession and *mesne* profits filed by the respondent/plaintiff/landlord with respect to *mesne* profits. The suit premises is an area of 11276 sq. ft. in the first floor (rear wing) of the building known as Gulab Bhawan, 6, Bahadurshah Zafar Marg, New Delhi. It may be noted that the appellant/defendant/tenant has

already vacated the suit premises on 30.6.2010 and the only issue decided by the impugned judgment is the *mesne* profits which are payable by the appellant/defendant to the respondent/plaintiff for the period from 1.1.1999 to 30.6.2010.

2. With respect to the issue at hand of the *mesne* profits payable by the appellant/defendant to the respondent/plaintiff, and which is the subject matter of issue no.7, trial court has awarded *mesne* profits at the following rate:-

> "44. The result is that the plaintiff shall be entitled to damages/*mesne* profits-at the rate of **Rs.26 per square foot** per month for the year 1999 (from January 1999 to December 1999); at the rate of **Rs.30 per square foot** per month from January, 2000 to December, 2002; at the rate of **Rs.35 per square foot** per month from January 2003 to December 2005; at the rate of **Rs.40 per square foot** per month from January 2006 to December 2008; and at the rate of **Rs.46 per square foot** per month from January 2009 to June 2010 for the entire suit premises measuring 11276 square feet in area." (emphasis added)

3. The aforesaid rate of *mesne* profits for different periods have been arrived at by the trial court by placing reliance upon the lease deeds proved and exhibited by the respondent/plaintiff as Ex.PW1/8 and Ex.PW1/9. Ex.PW1/8 is a lease deed dated 4.11.2005 with respect to the second floor, front block, of the very same building and the rate of rent was Rs.35 per sq. ft. per month. The rent which was payable in terms of the lease deed Ex.PW1/8 dated 4.11.2005 was

to be increased by 15% every three years. Ex.PW1/9 is the lease deed dated 11.1.2006 for the fourth floor, front block, again of the very same building, at rent of Rs.38 per sq. ft. per month. Since the period in question is from 1.1.1999 to 30.6.2010, trial court has reduced the figure of rent of Rs. 35 per sq. ft. as contained in Ex.PW1/8 dated 4.11.2005 and also fixed the rate of rent from 1.1.1999 by taking agreed rate of rent of Rs.15 per sq. ft. per month payable under the original lease entered into between the parties on 1.1.1993 and increasing the agreed rate of rent of Rs.15 per sq. ft to Rs. 26 per sq. ft. as on 1.1.1999. It may be noted that since the period in question for determining *mesne* profits is the period from 1.1.1999 to 30.6.2010, the lease deeds proved and exhibited by the respondent/plaintiff as Ex.PW1/8 and Ex.PW1/9 are relevant because these lease deeds are not only with respect to the very same premises but are with respect to around 50% of the period for calculating the *mesne* profits viz from the years 2005 to 2010.

4. As held by this Court on numerous occasions, some amount of honest calculation and guess work is always in built in the process of determining the *mesne* profits and courts are entitled on the

basis of evidence on record of the suit, and more particularly documentary evidences, to arrive at honest and fair rate of rent which is payable as *mesne* profits. Obviously, there cannot be too many identical situations in almost overwhelming number of cases, and therefore, calculation of *mesne* profits on the basis of rate of rent payable by taking the rate of rent of the premises in question or rate of rent of the premises in the same area or nearby areas always involves an honest assessment by a civil court inasmuch as a civil court decides an issue in the suit on the basis of preponderance of probabilities.

5. In view of the aforesaid discussion, I do not find any illegality whatsoever in the impugned judgment of the trial court determining the *mesne* profits payable for different periods from 1.1.1999 to 30.6.2010 from Rs. 26/- per sq. ft. to Rs. 46/- per sq. ft. whereby effectively the rate of rent is fixed for the first period commencing from January 1999 and thereafter increased at 15% every three years. In fact, in my opinion, appellant/defendant is lucky because it has been held by this Court in the case of ***M.C. Agrawal HUF Vs. Sahara India and Ors. 183 (2011) DLT 105*** that courts are also empowered to grant *mesne* profits in the absence of any evidence

to the contrary by increasing the *mesne* profits payable compounding the same and increasing it by 10% every year, whereas in the present case enhancement is only granted at 15% every three years.

6. Learned counsel for the appellant/defendant sought to argue that the appellant/defendant is in possession of the rear portion of the building, and therefore, the trial court has committed an error in relying upon the lease deeds Ex.PW1/8 and Ex.PW1/9 with respect to the front block of the very same building, however, trial court has rightly rejected this argument by observing that the leases are for office purposes and really therefore it would not make much difference whether the office is situated at the front portion of the premises or at the back of the premises. Obviously, the trial court is correct in so observing because the issue of the front portion would arise with respect to any showroom on the ground floor especially in the front, but an office which is used not as a showroom but for administrative work of the appellant/defendant/tenant company will result in the fact that it does not make too much difference of the office premises being situated at the front or the back of the building.

7. Learned counsel for the appellant/defendant then argued that the trial court has illegally granted compound rate of interest, however this argument is misconceived because reference to the discussion and the operative para of the impugned judgment shows that what has been granted is only simple interest at 8% per annum and not compound interest. This becomes clear from para 51 of the impugned judgment and which para reads as under:-

> "51. The plaintiff shall also be entitled to simple interest @ 8% per annum on the amount of damages/*mesne* profits payable for each month (after adjustment of the amount already paid) from the date of expiry of the month for which such damages/*mesne* profits were payable till the date of actual payment/realization."

8. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed.

JANUARY 25, 2018 **VALMIKI J. MEHTA, J**

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