

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

+ RFA No. 940/2018

% 20th November, 2018

M/S BAJAJ ELECTRICALS LTD & ANR.

..... Appellants

**Through: Mr. T.K.Ganju, Sr. Adv. with
Mr. Amitabh Marwah &
Mr. S.P.Das, Advs.
(Mobile No.9818097998).**

versus

**M/S DHURUV DEVANSH INVESTMENT &
FINANCE PVT. LTD.**

..... Respondent

Through: (Appearance not given).

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 24.04.2018 by which the trial court has decreed the suit for damages/*mesne* profits filed by the respondent/plaintiff/landlord against the appellant/defendant/tenant with respect to the leased premises being the ground floor of property no. 4/11, Asaf Ali Road, New Delhi. The period in question for which

the damages/*mesne* profits have to be decided are from 01.10.2007 till 14.09.2011. I may note that originally the suit filed by the respondent/plaintiff, was for possession and *mesne* profits, and during pendency of the suit on account of a decree passed in favour of the respondent/plaintiff for possession, the appellant/defendant vacated the suit premises on 14.09.2011.

2. The facts of the case are that the respondent/plaintiff let out the suit property being the ground floor of property no. 4/11, Asaf Ali Road, New Delhi to the appellant/defendant vide Lease Deed dated 09.10.1964, and which lease continued by extensions up to the year 1974 whereby no further lease deed was executed. After terminating the tenancy by a Legal Notice dated 08.08.2007, the subject Suit for recovery of possession and *mesne* profits was filed on 06.12.2007.

3. As regards the legal requirements to be proved in order to get a money decree for damages/*mesne* profits with respect to a leased premises, what is ordinarily required to be led in evidence are lease deeds of similar premises, and the rate of rents of such similar premises are taken as an indication with respect to rate of rent/*mesne* profits which would be payable for the suit premises. The relevant

issue framed by the trial court in this regard is issue no.2, and which has been dealt with in paras 17 to 28 of the impugned judgment and these paras read as under:-

“17. The onus of proving this issue was fixed upon the plaintiff. It is submitted by the Id. Counsel for the plaintiff that the notice of termination of tenancy dated 08-08-2007 was served upon the defendant no.1 wherein the defendant no.1 was requested to hand over the possession of the suit premises on or before 30-09-2007 and reply dated 12-09-2007 was also given on behalf of the defendant no.1 and since, after 30-09-2007, the defendant no.1 was in unauthorized use and occupation of the premises in question and that is why the plaintiff is entitled for damages/mesne profits from 01-10-2007. It has not been disputed that notice of termination was not received by the defendant no.1 and therefore, it was required to hand over peaceful possession of the premises in question. ***Therefore, I agree with the submissions of Id. Counsel for the plaintiff that the plaintiff is entitled for damages/mesne –profits from 01-10-2007 till the possession of the suit premises was handed over i.e. 14-09-2011.***

18. It is submitted by the Id. Counsel for the plaintiff that the PW1-O.P.Gupta relied upon certified copies of lease-deeds Ex.PW-1/7 to Ex.PW-1/11 to prove that he is entitled to recover damages @ Rs.5 lakhs per month and those lease-deeds may kindly be considered for deciding rate of damages/mesne-profits. It is further submitted that PW-1 has also relied upon lease-deed Ex.PW-1/5 in his affidavit when he tendered the same in rebuttal which may also be considered for deciding the damages/mesne-profits. It is further submitted that PW2-Sh. Rajesh Verma has produced three original lease-deeds dated 16-07-2007, 22-07-2008 and 17-11-2008 already exhibited as Ex.PW-1/8, Ex.PW-1/11 and Ex.PW-1/10 respectively and has proved the certified copies of the same. It is further submitted that PW3-Rahul Bansal has produced original lease-deed dated 09-02-2009, certified copy of which is Ex.PW-1/7 and PW-4 has produced certified copy of lease-deed dated 21-11-2008 Ex.PW-1/9. It is further submitted that PW5-Sh.S.K.Sharma, LDC from the office of Sub-Registrar-III, Asaf Ali Road, Delhi has been examined in the court who has proved registration of lease-deeds Ex.PW-1/7 to Ex.PW-1/11 and these lease-deeds may kindly be considered for deciding damages/mesne-profits. It is submitted by the Id. Counsel for the plaintiff that the plaintiff has claimed damages/mesne-profits @ Rs.5 lakhs per month or at such higher rate as may be determined

by the court.

19. On the other hand, Id. Counsel for the defendants submits that Sh.R.S.Chadha has filed his affidavit in evidence and examined as DW-2. It is further submitted that DW1-Sh. S.K.Sharma has proved lease-deeds Ex.DW-1/1 to Ex.DW-1/6 and these lease-deeds may kindly be considered for the purposes of deciding damages/mesne-profits.

20. I considered the submissions of Id. Counsel for the plaintiff and Id. Counsel for the defendants as submitted above.

21. In WS, defendants have admitted the area of the suit premises as 4000 sq. feet. Therefore, the plaintiff is entitled for the damages as per the area of the suit premises i.e. 4000 sq. feet.

22. The increase in the market rent depends upon a number of factors such as the tenanted area, the requirement of the tenant and the landlord the facilities available in the surroundings, the parking space etc.

23. I agree with the submissions of Id. Counsel for the defendants that the lease-deed Ex.PW-1/15 can not be considered for deciding damages/mesne-profits as the same is w.e.f. 25-04-2016 onwards while the damages/mesne-profits are being claimed by the plaintiff 30-08-2007 till 14-09-2011.

24. I also agree with the submissions of Id. Counsel for the defendants that the order of the Hon'ble High Court of Delhi dated 24-07-2013 in RFA No.44/2013 is of no help to the plaintiff since the rate of rent of Rs.39,060/- per month was agreed rate of rent and in the present case. agreed rate of rent was Rs.1600/- per month and the court has to decide damages/mesne-profits keeping in view the facts and situation of the present case. I further agree with the submissions of Id. Counsel for the defendants that the order dated 19-01-2018 passed in RFA No.54/2018 is with respect to the rent claimed for a period of 01-12-2011 to 31-12-2011 while the period in the present suit for damages/mesne-profits is from 30-08-2007 till 14-09-2011 and therefore, the said order-judgment is not relevant to the facts of the present case.

25. I considered the sale-deed Ex.PW-1/7 for the purpose of deciding the damages/mesne-profits. The lease-deed Ex.PW-1/7 is of the property bearing NO.4/10 Asaf Ali Road, New Delhi area measuring 2700 sq.feet commencing from 09-02-2009 for nine years

and the rate of rent is Rs.155/- per sq. feet for ground floor. The suit property in reference situated at 4/11, Asaf Ali Road, New Delhi is adjacent to the property of lease-deed Ex.PW-1/7. The property is also related to ground floor in the present suit as the property in the lease-deed Ex.PW-1/7. Therefore, I am of the view that for the purpose of determining damages/mesne-profits, the lease-deed Ex.PW-1/7 is relevant.

26. The properties in respect of which lease-deeds Ex.PW-1/8 to Ex.PW-1/11 produced, are not situated adjacent to the property in reference. Therefore, I do not consider the lease-deeds Ex.PW-1/8 to Ex.PW-1/11 for the purpose of deciding the damages/mesne-profits.

27. Lease-deeds Ex.DW-1/1 to Ex.DW-1/6 cannot be considered for the purposes of determining damages/mesne-profits because the properties as mentioned in lease-deeds Ex.DW-1/1 to Ex.DW-1/6 are not situated adjacent to the property in reference and are situated in Vardhman City-II Plaza, Commercial Centre, Asaf Ali Road, New Delhi. Therefore, I do not consider the lease-deeds Ex.DW-1/1 to Ex.DW-1/6 for the purpose of deciding the damages/mesne-profits.

28. In this case, the suit property and property of Ex.PW-1/7 are within the same vicinity and adjacent to each other. If the lease-deed Ex.PW-1/7 is considered for the purposes of determining the damages/mesne-profits, I am of the view that the damages/mesne-profits @ Rs.5 lakhs per month has been genuinely and reasonable claimed by the plaintiff and it can be held entitled for the same. ***Therefore, the plaintiff is granted damages/mesne-profits @ Rs.5 lakhs per month for the suit property from 01-10-2007 till 14-09-2011 i.e. the date on which the possession of the suit property was handed over by the defendants to the plaintiff. This issue is decided accordingly.***

(Underlining Added)

4. It is, therefore, seen that the trial court has placed reliance upon the Lease Deed dated 09.02.2009 Ex.PW1/7, entered into between the lessor - Growth Securities Private Ltd. and the lessee - Axis Bank Limited, and this lease is for the ground floor and basement of premises bearing no.4/10, Asaf Ali Road, New Delhi which is the

adjacent premises to the suit premises situated at 4/11, Asaf Ali Road, New Delhi. The trial court has arrived at a figure of rent @ Rs.155/- per sq. ft. per month as per Ex. P.W. 1/7, as the total area let out under the lease deed Ex.PW1/7 was an area of 5950 sq. ft. with 2700 sq. ft. being the area in the ground floor and 3250 sq. ft. being the area in the basement.

5. At this stage it is also required to be noted that the trial court has not placed reliance upon various lease deeds which were proved and exhibited by the respondent/plaintiff being Ex.PW1/8 to Ex.PW1/11, though these lease deeds were of Asif Ali Road itself, as the trial court has observed in para 26 of the impugned judgment that properties which are subject matter of lease deeds Ex.PW1/8 to Ex.PW1/11 are not adjacent to the suit property.

6. It is also noted that the trial court has rejected the case of the appellant/defendant which had placed reliance upon lease deeds Ex.DW1/1 to Ex.DW1/6, for the self-same reason that these lease deeds are not with respect to the adjacent premises but are of an area some distance away at Vardhman City-II, Plaza, Commercial Centre, Asaf Ali Road, New Delhi from the subject suit premises.

7. At the outset, I agree with the submission urged on behalf of the appellant/defendant that calculation given by the trial court of Rs.155 per sq. ft. as per the lease deed Ex.PW1/7 is not correct because the lease deed Ex.PW1/7 contains a lump sum rent of Rs.5,45,000/- per month for the total area of 5950 sq. ft. and when the figure of Rs.5,45,000/- is divided by 5950 sq. ft. then we get a figure of Rs.91.59 per sq. ft. Of course, this figure would not be rent for both the ground floor and basement because this court can take judicial notice that rate of rent for ground floor would obviously be more than rate of rent of the basement. When we divide the figure of Rs.5,45,000/- with the figure of 2700 sq. ft. out of the total area of 5950 sq. ft, and this 2700 sq. ft. is the area of ground floor of the premises, which is the subject matter of the lease deed EX.PW1/7, the rate of rent comes to Rs. 201/- per sq ft. per month and when we divide the figure of Rs.5,45,000/- with the figure of 3250 sq. ft. area of the basement comprised in Ex.PW1/7, it is seen that the rate of rent would become Rs.167.69 per sq. ft. per month, and as per above facts the trial court has taken a rough approximate figure by taking the figure of rent at Rs.155/- per sq. ft. per month in terms of this lease

deed Ex.PW1/7 i.e. instead of taking the figure at Rs.201/- per sq. ft. per month which would be the rate of rent for the ground floor and Rs.167 per sq. ft. per month which would be the rate of rent for the basement, the trial court has taken a figure of rate of rent of Rs.155/- per sq. ft. per month. This figure of Rs. 155 per sq. ft per month is even lesser than the rate of rent of the basement area which when calculated comes to Rs. 167.69/- per sq. ft. per month. The suit premises comprised of 4000 sq. ft. and when 4000 sq. ft. is multiplied by Rs.155/- per sq. ft. than the rate of rent per month comes to Rs.6,20,000/- per month. The trial court has however finally awarded to the respondent/plaintiff *mesne* profits only at Rs.5,00,000/- per month and not at Rs.6,20,000/- per month i.e. the rate per sq. ft. per month has been taken only @ Rs. 125 per sq. ft. per month.

8. I may note that there is always some amount of honest guess work involved in the calculation of *mesne* profits, but it is pertinent to note that courts should not act perversely and there must be a nexus and link between evidence led in the form of lease deeds proved on behalf of landlord to prove the rent which is to be calculated. In my opinion therefore on the basis of Ex.PW1/7, the trial

court has committed no error in arriving at a rate of rent for suit premises as Rs.5,00,000/- per month i.e. only Rs. 125 per sq. ft. per month inasmuch as, the premises which are subject matter of the lease deed Ex.PW1/7 is 4/10, Asaf Ali Road, New Delhi i.e. the very next or the adjacent premises.

9. In fact the learned counsel for the respondent/plaintiff is justified in arguing that the trial court has committed an illegality in overlooking the lease deed Ex.PW1/9 filed and proved by the respondent/plaintiff, and this Lease Deed dated 21.11.2008 is between M/s. Bhandari Machinery Co. Private Ltd./Lesser and M/s. Tata AIG Life Insurance Co. Ltd/lessee with respect to the property bearing no. 4/24 A, Asaf Ali Road, New Delhi, and as per this lease deed the per sq. ft. rate of rent per month is Rs.260 per sq. ft. per month, but I however need not go into this argument urged on behalf of the respondent/plaintiff because I am accepting the lease deed Ex.PW1/7 for the reasons given above, including by observing that some amount of honest guess work is always involved in assessing the rate of rent figure.

10(i) Learned senior counsel for the appellant/defendant has

argued that the trial court has committed an error in giving the benefit of the lease deed Ex.PW1/7 to the respondent/plaintiff because the witness of the appellant/defendant did depose in evidence by way of Affidavit dated 25.02.2015, (paras 4, 5 and 7 thereof), that in the suit premises neither there is any power back up/power-generator nor there is any central air-conditioning along with the fact that there was a leakage in the roof of tenanted premises in the year 2010 which was repaired by the appellant/defendant. It was therefore, argued on behalf of the appellant/defendant that the rate of rent/*mesne* profits of the suit premises considering these aspects of lack of power back up; lack of central air conditioning and the roof once having leaked in the year 2010; could not have been fixed at the rate of rent in terms of the lease deed Ex.PW1/7.

(ii) I cannot agree with this argument urged on behalf of the appellant/defendant because it is not as if that the trial court has taken the rate of rent exactly given in the lease deed Ex.PW1/7, to arrive at the figure of *mesne* profits/damages. If we take the exact figure calculated in terms of the lease deed Ex.PW1/7, it is seen that for the ground floor area, the rate of rent would come to about Rs.201/- per

sq. ft. per month and for the basement it would come to Rs.167/- per sq. ft. per month, but the rate of rent granted by the trial court however is only Rs.5,00,000/- per month which comes to around Rs.125 per sq. ft. per month i.e much lesser than the *mesne* rent of the ground floor if taken individually as derived from the total lump sum amount and even less than the *mesne* rents for the basement area, and as already discussed above. Therefore, by making an honest guesstimate, the trial court could not have been found to have faulted while giving the rate of rent at Rs.125/- per sq. ft. per month to the respondent/plaintiff/landlord taking into consideration of the fact that the rate of rent of Rs. 201 per sq ft. per month or Rs. 167 per sq. ft. per month has to be reduced for the suit premises lacking in the three aspects as argued on behalf of the appellant/defendant.

11(i) Learned Senior counsel for the appellant/defendant then argued that the trial court has committed an illegality in not referring to the lease deeds Ex.DW1/1 to Ex.DW1/6 inasmuch as the premises which were the subject matter of the lease deed, Ex.DW1/1 to DW1/6 are also for the same Asaf Ali Road, Delhi.

(ii) At the first instance, the argument urged on behalf of the

Ld. Senior Counsel seems attractive, but as stated above, the lease deed which is relied upon by the trial court being Ex. PW1/7 is for the very adjacent premises, and therefore, once a reasonable estimate or a guesstimate has to be made by the court, there is hence found a valid nexus between the evidence led on behalf of the landlord and the rate of rent fixed by the trial court, and this court would therefore not like to substitute its view instead of a possible and plausible view taken by the trial court which is not in any manner perverse.

12. Finally, I may note that another aspect which was urged and argued before this court by the appellant/defendant that the trial court could not have granted arrears of rent for a period of more than three years prior to filing of the suit as such arrears would be barred by limitation. In response to this argument the learned counsel for the respondent/plaintiff very fairly does not oppose this argument inasmuch as in law a period of limitation of three years is provided for the arrears of rent payable, and since the suit was filed on 06.12.2007, arrears of rent could only have been granted from 06.12.2004 and not from January 1996 or 08.07.1997 as has been done by the trial court. Thus Judgment dated 24.04.2018 will accordingly stand modified to

granting arrears of rent to the respondent/plaintiff only for a period of three years prior to filing of the suit.

13. In view of the aforesaid discussion, this appeal is dismissed except to the extent of modifying the impugned judgment and decree by reducing the arrears of rent payable for only a period of three years prior to filing of the suit. The parties are left to bear their own costs.

NOVEMBER 20, 2018
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VALMIKI J. MEHTA, J