

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

+ **RFA No. 538/2018**

% **16<sup>th</sup> July, 2018**

THE KARNATAKA HANDLOOM DEVELOPMENT  
CORPORATION LTD. .... Appellant

Through: Mr. Hem C. Vashisht, Advocate  
with Mr. Rahul Malik,  
Advocate.

versus

M/S S.L. ASSOCIATES PVT. LTD. .... Respondent

Through:

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

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. No.27511/2018 (exemption)**

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

**C.M. No.27512/2018 (for condonation of delay)**

2. For the reasons stated in the application delay of 140 days  
in re-filing the appeal is condoned.

C.M. stands disposed of.

**RFA No. 538/2018 and C.M. Nos.27510/2018 (stay) & 27528/2018**  
**(under Order XX Rule 6 CPC)**

3. By this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC), the defendant in the suit, impugns the judgment of the Trial Court dated 25.9.2017 by which trial court has decreed the suit for *mesne* profits filed by the respondent/plaintiff/landlord against the appellant/defendant/tenant. It may be noted that the suit was for possession and *mesne* profits, and that the possession of the suit premises is already received by the respondent/plaintiff/landlord on 12.7.1996, in execution of the decree for possession obtained by the respondent/plaintiff/landlord.

4. The facts of the case are that the predecessor-in-interest of the respondent/plaintiff/landlord let out the suit property bearing no. 2707, Bank Street, Karol Bagh, New Delhi to the appellant/defendant/tenant vide registered Lease Deed dated 7.11.1986. The suit premises comprised of 600 sq feet. The registered lease was admittedly w.e.f 1.1.1986 and which expired on 31.10.1989. Since the appellant failed to vacate the suit premises therefore a notice dated 7.10.1989 was sent asking the appellant/defendant/tenant to vacate by 31.10.1989, and since the

appellant/defendant/tenant failed to do so, the subject suit was filed after serving a legal notice dated 11.1.1990. It is not disputed on behalf of the appellant/defendant/tenant that appellant/defendant/tenant was inducted as a tenant pursuant to the lease agreement dated 7.11.1986 at rent at Rs.15,000/- per month. It was argued that there was an oral understanding that the lease would be renewed after the expiry of three years, and therefore, the suit was prayed to be dismissed.

5. As already stated above, this Court only has to decide the aspect of *mesne* profits as possession has already been received by the respondent/plaintiff/landlord on 12.7.1996. The period in question for which *mesne* profits had to be determined by the trial court was from 1.11.1989 till 12.7.1996.

6. Trial court has held that since in terms of the lease deed dated 7.11.1986(Ex.P15), the rent was to be increased by 10% every three years, and taking that factum as a guide, and since rents have otherwise increased, trial court hence granted 20% increase in the rent after every three years i.e first enhancement was granted of 20% w.e.f 1.11.1989 and the second increase on 1.11.1992. The relevant

discussion in this regard by the trial court is contained in para 14 of the impugned judgment and this para 14 reads as under:-

“14. The plaintiff has claimed mesne profits/damages for the wrongful use and occupation of suit premises by the defendant.

Although in para 12 of the plaint, the plaintiff has stated that the prevalent rate of rent is Rs.42/- per square feet per month i.e. Rs.25,200/- per month, however, though the plaintiff has examined PW2 to show that it was Rs.42/- sq. feet per month, but the same remains only a verbal contention and is not supported by any document.

In his testimony, PW1 has stated that the plaintiff had issued letter dated 07.10.1989 which is Ex.P1 and another letter dated 31.10.1989 terminating the lease deed and thereafter, it also sent a legal notice dated 11.01.1990 which is Ex.PW1/2, which all communication was regarding non extension of the period of lease after expiry of initial period of three years and the plaintiff has not demanded damages in case of occupation of suit premises by the defendant after expiry of initial period of three years.

The perusal of lease deed dated 07.11.1986 which is Ex.P15 shows that the suit premises was let out to the defendant at the rate of Rs.25/- per sq. feet and area of suit premises is 600 sq. feet and hence, its monthly rent was Rs.1500/-.

Clause (3) of the said lease deed provides that this lease can be renewed at the option of both the parties for a period of three years only. Clause (4) provides that in case both the parties agree to renew the lease after initial period of three years, the rent shall be increased by 10%.

From the terms and conditions of lease deed Ex.P15, it is clear that after expiry of initial period of three years, if the

period of lease was to be extended, it would have been with consent of both the parties and could not have been a unilateral act of one of the parties.

The plaintiff before expiry of initial period of three years had shown its intention not to renew the lease of suit premises after initial period of three years as evident from the letters Ex.P1, Ex.P6 and legal notice Ex.PW1/2. Hence, it is clear that the plaintiff was not interested to extend the period of lease of suit premises and it is also clear that stay of the defendant in the suit premises after agreed period of three years was not consented by the plaintiff.

Although, the lease deed provides for enhancement in rent by 10% in case the period of lease is extended, but it was only with the consent of both the parties and as already discussed, consent of the plaintiff is missing for extension of the lease period after expiry of agreed period and hence, in the given facts and circumstances and on the basis of the material as placed on the record, in considered opinion of the court, the plaintiff is entitled for damages/mesne profits after expiry of initial agreed period i.e. w.e.f. 01.11.1989.

It would be pertinent to mention even at the cost of repetition that the plaintiff has not led any direct or appropriate evidence with respect to rate for mesne profits/damages, however, in opinion of the court, if the stay of the defendant in suit premises was with consent of the plaintiff, then undoubtedly, the rent would have been enhanced by 10% on the previously paid rent. It may be mentioned that there can be a reason that the plaintiff was not interested to extend the period of lease and without taking consent of the plaintiff, the defendant continued remaining in the suit premises and hence, in the given facts and circumstances, the plaintiff is certainly entitled to enhanced damages more than 10% in the previously paid rent. Accordingly, in view of the facts and circumstances of the case, the plaintiff is entitled for damages/mesne profits with enhancement of 20%

on the previously paid rent which comes to Rs.30/- per sq. feet per month (20% enhancement of Rs.25/- per sq. feet). Hence, rate of damages/mesne profits comes to Rs.18,000/- per month for a period of three years w.e.f. 01.11.1989 to 31.10.1992.

Further, similarly the plaintiff is also entitled to enhancement of 20% on Rs.30/- per sq. feet per month for the period beyond three extended years of initial three years, i.e. w.e.f. 01.11.1992 till the date of handing over the possession of the suit premises to the plaintiff by the defendant, which comes to Rs.36/- per sq. feet (20% of Rs.30/- per sq. feet).

Thus, the plaintiff is held entitled for damages of Rs.30/- per sq. feet per month for 600 sq. feet w.e.f. 01.11.1989 to 31.10.1992 and at the rate of Rs.36/- per sq. feet per month for 600 sq. feet i.e. Rs.21,600/- per month w.e.f. 01.11.1992 to 30.04.1996 as in the month of May, 1996, PW1 in his cross-examination has admitted that the plaintiff had sold the suit premises.

The defendant shall also be entitled for adjustment of amount paid by it to the plaintiff during pendency of the case.

Accordingly, in view of totality of facts and circumstances of the case and on the basis of material as placed on record, Issue No. 1 is decided in favour of the plaintiff and against the defendant.”

(underlining added)

7. In fact, in my opinion, the appellant/defendant/tenant is lucky in having been granted increase of 20% after every three years because it has been held by this Court in the judgment in the case of

***M.C. Aggarwal vs. M/s Shahra India & Ors. 2011 (183) DLT 105***

that unless evidence to the contrary is led, courts are justified in drawing a presumption as to increase of rent, and for which ordinarily a court can grant increase between 10% to 15% every year on a cumulative basis. In the present case as against the appellant/defendant/tenant the increase was only of 20% after three years as stated above.

8(i) Learned counsel for the appellant/defendant/tenant argued that although the witness of the appellant/defendant/tenant failed to appear for complete cross-examination, however the documents which were already exhibited in the affidavit by way of evidence of the witness of the appellant/defendant/tenant, should be looked into (witness was Sh. A.K. Gupta).

(ii) The law is well settled, and I need not elaborate on the same, that evidence of a witness cannot be looked into unless the witness is brought by the person who wants to lead his evidence for his complete cross-examination. Once cross-examination is not completed, then therefore it has to be held that there is no evidence led on behalf of the appellant/defendant/tenant, and counsel for the

appellant/defendant/tenant is not correct in arguing that the documents exhibited in support of the witness can be looked into although the witness admittedly did not appear and his cross-examination was not completed.

9. In view of the above, I do not find any merit in the appeal. Dismissed.

**JULY 16, 2018/Ne**

**VALMIKI J. MEHTA, J**

