*   IN THE HIGH COURT OF DELHI AT NEW DELHI

\+   RFA No.54/2018

%   19th January, 2018

THE ORIENTAL INSURACE CO. LTD. ..... Appellant
Through : Mr. Vishnu Mehra, Adv.

versus

M/S DEVANSH REAL ESTATE PVT. LTD. ..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. 2068/2018(exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 54/2018 & C.M. 2067/2018(stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is filed by the appellant/tenant/Oriental Insurance Company Limited impugning the judgment of the trial court

dated 30.08.2017 whereby the trial court has decreed the suit filed by the respondent/plaintiff/landlord for *mesne* profits.

2. It may be noted that the suit filed by the respondent/plaintiff/landlord was for both possession and *mesne* profits. On account of a decree earlier being passed under Order XII Rule 6 CPC against the appellant/defendant, during the pendency of the suit, the appellant/defendant vacated the suit premises on 25.03.2014. However, the *mesne* profits have been granted by the trial court not later till 25.03.2014 but earlier only till 31.12.2013 inasmuch as there was an offer made by the appellant/defendant to vacate the suit premises by 31.12.2013, but the respondent/plaintiff did not take possession of the suit premises and ultimately took possession only in Court on 25.03.2014 pursuant to an application filed by the appellant/defendant for handing over possession.

3. The limited issue in this appeal is as to what should be the rate of *mesne* profits which should be payable by the appellant/defendant for the suit premises for the period from 01.02.2011 to 25.03.2014. The suit premises are bearing No. X/2538, commonly known as 4/12, Asaf Ali Road, New Delhi.

Appellant/defendant was a tenant in a portion of 1250 sq. ft. on the fourth floor of the aforesaid premises and which are the suit premises.

4. In my opinion trial court has very extensively dealt with the issue with respect to rate of *mesne* profits payable by referring to the lease deeds filed by both the parties for arriving at a conclusion for payment of *mesne* profits at Rs.100/- per sq. ft. per month in paras 29 to 34 of the impugned judgment. These paras read as under:-

> "29. The defendant has placed on record (i) lease deed dated 20.04.2004 executed between the Amrapali International and Ban of India in respect of the Ground Floor, Mezzanine Floor and Basement of the property situated at 4/8, Asaf Ali Road, New Delhi-110002 which is Ex.DW1/5 (rate of rent Rs.37.50 per sq. ft. per month) (ii) The lease deed dated 05.03.2003 executed between the Oriental Insurance Company Limited and UCO Bank in respect of the property no. A-25/27, Ground Floor, Oriental House, Asaf Ali Road, New Delhi which is Ex. DW1/6 (rate of rent of Rs. 22.50 per sq. ft. per month) (iii) The lease deed dated 25.10.2007 executed between M/s Laxmi Aggarwal and Union Bank of India in respect of property no. 4/14-A, Asaf Ali Road, Delhi which is Ex. DW1/4(rate of rent Rs. 44.16 per sq. ft. per month).
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> 30. However, the damages/mesne profits are to be determined for the period 01.02.2011 onwards. It is seen that the lease deeds which have been produced by the defendant were executed much prior to the date relevant for determination of damages/ mesne profits and accordingly the lease deeds produced by the defendant cannot be of much assistance for determining the same. Whereas the lease deeds produced by the plaintiffs are of later dates.
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> 31. The plaintiff has placed on record lease deed dated 09.02.2009 executed between Growth Security Private Limited and Axis Bank Limited in respect of property no. 4/10, Asaf Ali Road, New Delhi which is Ex. PW3/1. As per this lease deed the rate of rent was Rs. 91/- per sq. ft. per month approximately.
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> 32. The plaintiff has further placed on record lease deed executed between the LIC of India and Bank of Maharashtra on 16.07.2008 in respect of property i.e. ground floor, Saraswati Insurance Building, Asaf

Ali Road, New Delhi which is Ex. PW2/1. As per this lease deed the rate of rent was Rs.120 per sq. ft. per month approximately.

33. The plaintiff has further placed on record lease deed executed between Bhandari Machinery Co. Private Limited and TATA AIG Life Insurance Company on 21.11.2008 which is Ex. PW1/16. As per this lease deed the rate of rent was Rs.260/- per sq. ft. per month approximately.

34. Thus it is seen that even on the dates much prior to 01.02.2011 the prevailing market rate of rent in the area was more than Rs. 100 per month, though slight variations may arise on account of condition and location of the property etc. As per lease deed Ex. DW1/P-1 dated 01.08.2013 the defendant had itself agreed to pay rent @ Rs. 100 per sq. ft. plus maintenance charges of Rs. 5 per sq. ft. per month as rent for premises in property no. 4/14-A, Asaf Ali Road, New Delhi." (underlining added)

5. A reference to the aforesaid paras of the impugned judgment shows that whereas appellant/defendant relied upon three documents Ex.DW1/4 to Ex.DW1/6, being lease deeds dated 25.10.2007, 05.03.2003 and 20.04.2004 with respect to rent of premises in the same Asaf Ali Road at Rs.44.16/-, Rs.22.50/-, and Rs.37.50/- respectively, the respondent/plaintiff led evidence of lease deeds being Ex.PW2/1 dated 16.07.2008 for Rs.120/- per sq. ft., Ex.PW3/1 dated 09.02.2009 at Rs.91/- per sq. ft. and Ex.PW1/16 dated 21.11.2008 at Rs.260/- per sq. ft. Therefore, in terms of the documentary evidence led by both the parties it is seen that the rate of rent from the year 2003 till the year 2008 with respect to the same area viz Asaf Ali Road, varied between Rs. 22.50/- per sq. ft. to Rs. 260/- per sq. ft.

6. No doubt, rate of rent varies as per location of a property as also the condition of the property, however in the facts of the present case in my opinion this aspect has been duly considered by the trial court because the trial court has granted rent at Rs.100/- per sq. ft. for the period from 01.02.2011 till 31.12.2013. As held by this Court on repeated occasions, some amount of honest guess work will always be required for calculating the *mesne* profits, and that once there is some factual basis especially documentary evidence to make an honest guess work, then the finding of the trial court cannot be held to be perverse or in any manner illegal for this Court to interfere with the same in a first appeal.

7. In view of the above discussion, and because of the observations made by the trial court by referring to various lease deeds in paras 29 to 34 of the impugned judgment, I do not find any illegality in the trial court having granted rate of *mesne* profits at Rs.100/- per sq. ft. In fact, in my opinion the appellant/defendant is very lucky because the rate of interest granted is also not at a high rate as the rate of 8% p.a. has been awarded although the letting out is for commercial purposes.

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

JANUARY 19, 2018 **VALMIKI J. MEHTA, J**

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