

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

+ **RFA No. 13/2019**

% **9th January, 2019**

HINDUSTAN PETROLEUM CORPORATION LTD Appellant

Through: Mr. Rajat Navet, Mr. Mukul
Gupta and Mr. Shashi Kant,
Advocates (Mobile No.
9811177237).

versus

AJAY BHATIA Respondent

Through: Mr. M.M. Kalra and Ms. Sonali
Kumar, Advocates (Mobile No.
9810135477).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CAVEAT No. 8/2019

1. Since counsel for the caveator has entered appearance, the
caveat stands discharged.

C.M. Appl. No. 544-46/2019 (for exemptions)

2. Exemptions allowed, subject to just exceptions.

C.Ms. stand disposed of.

RFA 13/2019 and C.M. Appl. No. 543/2019 (for stay)

3. 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 20.08.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff for *mesne* profits. The appellant/defendant was a tenant in the suit premises and the respondent/plaintiff was the owner/landlord. The suit premises is a plot of land admeasuring 9700 sq. feet situated at 4/4 Azad Pur, G.T. Road, Delhi.

4. Ld. counsel for the appellant/defendant does not press the rate of *mesne* profits awarded by the trial court but only argues that the *mesne* profits are liable to be paid only once a tenancy is terminated, and only after the termination of tenancy, a tenant becomes an illegal occupant who is then liable to pay *mesne* profits under Section 2(12) CPC, and therefore the trial court has erred in decreeing the *mesne* profits from June, 2003 when the monthly tenancy was terminated only w.e.f. 28.02.2006. Therefore, the issue to be addressed by this

Court is as to what is the date of termination of tenancy, as only from such date, the *mesne* profits would be liable to be paid for.

5. The admitted facts of the case are that there was a registered Lease Deed originally entered into between the predecessor of the respondent/plaintiff and the predecessor of the appellant/defendant, M/s Caltex (India) Limited. As per the plaint, this Lease Deed dated 15.10.1970 was for a period of ten years. Admittedly, no other lease was entered into between the parties. Respondent/plaintiff is the successor of the original owner of the suit property, and the original owner was also the respondent's/plaintiff's grandfather. After the death of the grandfather of the respondent/plaintiff, the grandmother became the owner/landlady and subsequently the rent was paid to her. The grandmother of the respondent/plaintiff died on 22.11.1993 leaving behind her Will dated 05.06.1989 in favour of the respondent/plaintiff, and which was probated by the respondent/plaintiff, whereby the respondent/plaintiff became the owner/landlord of the suit property.

6. A reading of the suit plaint shows that except stating that the original lease was for a period of ten years, and that the respondent/plaintiff has only received damages upto June, 2003, it is

not stated as to how the tenancy would stand terminated as on June, 2003 especially when the tenancy by efflux of time had come to an end 23 years earlier. In fact and admittedly, a Legal Notice dated 31.01.2006 was issued by the respondent/plaintiff to the appellant/defendant, and by this Notice, the respondent/plaintiff had terminated the monthly tenancy of the appellant/defendant w.e.f. 28.02.2006. The paras 9-14 along with the last para of this notice are relevant, and these paras read as under:-

“9. That the period of lease has expired and my client has been making repeated request to you to hand over the vacant possession of the said piece of land.

10. That instead of vacating the said plot of land, you have been sending the rent cheques to my client by means of courier to my client. My client has never accepted the cheques sent by you. My client had received the rent/damages upto June 2003.

11. That after the expiry of the lease, you are liable to pay the damages by way of mesne profits to my client for unauthorized occupation of the piece of land, since your tenancy had come to an end.

12. That be it as it may be my client does not wish to keep you as his tenant and has instructed me to terminate your tenancy in respect of the said plot of land.

13. That your tenancy is governed by English Calendar. It starts from the first day of the month and lasts on the last day of the month.

14. That you are liable to pay damages by way of mesne profits after the expiry of the lease i.e. from June, 2003 @ Rs.50,000/- per month to my client till you vacate the land.

My client has instructed me to terminate your tenancy and I, therefore serve you with this notice of terminating your tenancy in respect of property bearing no. 4/4, Azadpur, G.T. Road, Delhi and to inform you that your monthly tenancy, any, will come to an end on the expiry of 28th February, 2006. I also call upon you to hand over the peaceful vacant possession of the land measuring 9700 sq. feet at 4/4, Azadpur, G.T. Road, Delhi to my client on the expiry of your tenancy and remove all structures, building, tanks, fixtures, fittings, equipment, machinery, pumps,

underground tanks and all other properties belonging to you within one month from the date of expiry of the lease including office and trade fixtures, fittings, counter's partitions, benches, shelves, lockers, gas and electrical fittings of any nature and bring back the said land into its original condition and hand over the peaceful possession of the same to my client, failing which my client shall file a suit for possession of the said property against you in the competent court of law and shall also hold you responsible for all the costs and consequences.

You are also called upon to make the payment of mesne profits @Rs.50,000/-per month from July, 2003 up to 28.2.2006 to my client, failing which my client shall also sue for recovery of the said amount and hold you responsible for the same.

Copy kept,
Thanking you,

Yours faithfully,
(Sd/-)
(M.M. Kalra)
Advocate”

(Underlining added)

7. A reading of the aforesaid paras of the legal notice makes it clear that the tenancy is admittedly month to month and the monthly tenancy was never terminated before sending of the Legal Notice dated 31.01.2006. It is specifically stated in the last para of the Legal Notice dated 31.01.2006 that the monthly tenancy of the appellant/defendant will come to an end on 28.02.2006 and therefore, the appellant/defendant would only become an illegal occupant from 01.03.2006, and not from an earlier period when the appellant/defendant remained as a monthly tenant. The monthly tenancy can only be terminated by a notice under Section 106 of the Transfer of Property Act, 1882.

8. Once the appellant/defendant became an illegal occupant only from 01.03.2006, the trial court therefore in the opinion of this Court has clearly erred in granting *mesne* profits from July, 2003 till the vacation of the suit property. Appellant/defendant is only therefore liable to pay *mesne* profits as decreed by the trial court only from 01.03.2006 and not from July, 2003.

9. In view of the aforesaid discussion, this appeal is partially allowed by holding that the impugned judgment and decree will stand modified whereby the *mesne* profits will be payable not from July, 2003 but from 01.03.2006. Rest of the judgment will stand as it is.

10. I may also note that the Ld. counsel for the respondent/plaintiff states that the respondent/plaintiff intends to file an appeal to seek increase in the quantum of damages, and if such an appeal is filed, the same will be decided in accordance with law.

10. The appeal is disposed of accordingly.

JANUARY 09, 2019

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VALMIKI J. MEHTA, J