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

***Reserved on: 5th September, 2019***

***Date of decision: 23rd October, 2019***

\+ **CM(M) 1062/2019 &CM APPLS. 31780/2019, 31781/2019, 31782/2019**

RAGHUBIR SINGH ARORA & ANR ..... Petitioners

Through: Mr. S.S. Jain & Ms. Veena Rupana, Advocates (M-9911669894)

Versus

RAJESH KHANNA ..... Respondent

Through: Mr. Santosh Kumar & Mr. Rajiv R. Mishra, Advocate (M-9971149344)

**AND**

\+ **CM(M) 454/2019 & CAV 280/2019, CM APPL. 28993/2019**

RAJESH KHANNA & ANR ..... Petitioners

Through: Mr. Santosh Kumar & Mr. Rajiv R. Mishra, Advocate

Versus

SURJIT KAUR ARORA & ANR ..... Respondents

Through: Mr. S.S. Jain & Ms. Veena Rupana, Advocates

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**<u>Prathiba M. Singh, J.</u>**

**<u>CM(M) 1062/2019</u>**

1. The Petitioners/Plaintiffs -Raghubir Singh Arora and Mrs. Surjeet Kaur Arora(*hereinafter, "Plaintiffs"*) filed a suit for possession, recovery of arrears of rent, mesne profits and permanent injunction against Mr. Rajesh Khanna and

Mrs. Sonia Khanna, his wife (*hereinafter, "Defendants"*). The suit was filed in respect of K-74, Chhachhi Building, Krishna Nagar, Delhi-110051 consisting of basement, one shop on ground floor, one hall on first floor and one hall on second floor. According to the Plaintiffs, it is a well located,high rent yielding and valuable commercial property.

2. Vide registered lease agreement dated 4th December, 2007, the ground floor of the property was let out to Welspun Retail Limited at the rate of Rs.1,88,750/- for a period of three years with effect from 18th November, 2007. After Welspun Retail Limited vacated the premises, the same was let out for a rent of Rs.1,50,000/- per month for running a `*Wah Ji Wah'* restauranttill 19th June, 2012. Both the Plaintiffs, who are senior citizens having medical ailments, depend on the rental income from the building.

3. The Defendants, admittedly, are neighbors of the Plaintiffs. The Defendants approached the Plaintiffs in August, 2014 and requested them to allow them to use a portion of the ground floor temporarily for carrying out sale of woolen garments.As per the plaint, they agreed to pay a rent of Rs.1 lakh per month and also undertook to vacate the property by 31st March, 2015. After repeated requestsby the Defendantsand keeping in mind the fact that the Defendants were their neighbours, the Plaintiffs agreed to let out a portion of the property admeasuring 10' x 53.1/4' ft. on the ground floor. The remaining portion of the ground floor remained vacant.The Defendants paid advance rent of Rs.3 lakhs for the months of September, 2014 to November, 2014, and thereafter paid Rs.1 lakh in December, 2014 and Rs. 1 lakh in January, 2015.

However, they did not pay any further amounts and did not vacate the property by 31st March, 2015.

4. In April, 2015 when the Plaintiffs asked the Defendants to vacate the premises, the Defendants handed over the keys to the property on 5th April, 2015 along with a sum of Rs.2 lakhs. Upon the keys being handed over, the Plaintiffs presumed that the tenanted premises had been returned to them, and it was only in the third week of June, 2015 that the Plaintiffs realized that the Defendants had in a fraudulent manner trespassed into the property and taken possession of the entire ground floor by changing the locks and getting duplicate keys for the same. The Plaintiffs strongly objected to the manner in which the Defendants had taken illegal possession, and the Defendants sought a period of 15 days to vacate the premises, and also agreed to execute a fresh rent agreement, for which stamp paper was also procured by Plaintiff No. 1. The Defendants assured the Plaintiffs that they would pay a sum of Rs.2,50,000/- per month up to date. The tenancy was then terminated in November, 2015.Though the Plaintiffs had got the electricity connection to the property disconnected,the Defendants stole electricity from the neighbouring premises bearing No. K-76. Police complaints were also lodged.At that stage, the Defendants filed a civil suit being suit no. 6525/2016 titled *Sonia Khanna v Raghubir Singh* alleging that the property was under tenancy for a rent of Rs.2,000/- per month. Thus, the Plaintiffs filed the present suit seeking possession and other reliefs.

5. The case of the Defendants is that they are protected under the provisions of the Delhi Rent Control Act, 1958 and that the Plaintiffs are entitled to only 10% increase under the said act. The Plaintiffs then filed an application under Order XVA CPC, which reads as under:

> ***<u>Order XVA CPC</u>***
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> *"(A) "In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.*
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> *In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.*
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> *(2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.*
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> *(3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination."*

6. While deciding the said application, the Trial Court considered the registered sale deeds placed on record by the Plaintiffs - not only of the Plaintiffs' own property, but also that of the father of the Defendant No.1 in the adjoining property, and has come to the conclusion that the defense of the Defendants is completely false and moonshine. The Trial Court also places reliance on various registered lease deeds of neighbouring properties and the conduct of the Defendants having paid rent for various months previously at the rate of Rs.1 lakh and finally concludes as under:

> *"In the light of above said judgment andkeeping in view the material on record i.e, aforesaidregistered rent agreements, defendant is directed todeposit the arrears of rent @ Rs, 50,000/- per month fromthe date of filing of the suit till date within one month fromthe date of this order and to deposit the rent @ Rs, 50,000/-every month before the Court w,e.f 01.03.2019, till the finaldisposal of the suit. Application stands disposed offaccordingly."*

7. The submission of Mr. Jain, ld. counsel appearing for the Plaintiffs is that the amount of Rs.50,000/- which has been fixed, is on the lower side as he has placed on record documents to show that in similar premises located in the neighbourhood including the Defendant No. 1's father's premises which is adjoining, the rent is in the range of more than Rs.1,50,000/-. The following are the documents relied upon by the Plaintiff in support of the claim for a higher monthly payment:

*"(i) Regd. Lease Deed dated 22.02.2009 (havingarea approximately 1000 sq. feet) executed between theplaintiffs and Manappuran Finance Ltd for K-74 First Floor,Krishan Nagar, Chhachi Building which is @ Rs. 40,000/- permonth for period of three years.*

*(ii) Regd. Lease Deed dated 04.12.2007executed between the plaintiff no. 1 and Welspun RetailLtd Co. regarding shop no. K-74 Ground Floor, KrishanNagar, Chhachi Building (the suit property) which is @ Rs.1,88,750/- per month for period of three years.*

*(iii) Regd. Lease Deed dated 12.11.2010executed between the father of the defendant no. 1 andJubilant Foodworks Ltd K-74 A (admeasuring 220 sq. yards)& K-76 (admeasuring 55.11/20 sq. yards)Chhachi Building.Krishan Nagar, Delhi which is@Rs. 1,20,000/- per month forperiod of three years i.eupto November 2013 and forNovember 2013 to November 2016 @ Rs, 1,38,000/- andfrom: November 2016 to November 2019 @ Rs. 1,58,700/."*

8. It is further submitted that the rental agreement of Defendant No. 1's father in the adjoining property, is in fact not denied by the Defendants, and under such circumstances, the suit property being bigger in size and also including a basement apart from the Ground Floor, a higher amount ought to be fixed for payment during the pendency of the present suit.

9. Reliance is placed by Mr. Jain on the judgment in ***Raghuvar Rai v. Prem Lata and Anr.211 (2014) DLT 516,***to submit that in such cases, the market rate would be liable to be taken into consideration while fixing the monthly

payment to be made. Various observations made in the above judgment are relied upon to argue that there is no limitation in Order XVA CPC on the Court from fixing a rate higher than what is admitted by the Defendant.

10. On behalf of the Defendants, Mr. Santosh Kumar, ld. counsel submits that the present is a case where the Defendants are protected under the provisions of the Delhi Rent Control Act, as the monthly rent is a sum of only Rs.2,000/-. The said defence of the Defendant is to be adjudicated by the Trial Court and thus the protection ought to be continued and the only amount that can be directed to be paid is Rs.2,000/-. Reliance is placed on the ld. Single Judge's judgment in***Atma Ram Properties Pvt. Ltd. v. Escorts Ltd. CS (OS) No. 1422/2006 (Decided on 16th March, 2012)*** wherein the Court has observed that whenever the tenant is a protected tenant, a suit for possession would not be maintainable.

11. It is further submitted on behalf of the Defendants that the termination of the oral tenancy, admittedly, as per the plaint itself, took place in 2015 and thus there is an admission that the Defendant was a tenant till November, 2015. In view of the said admission, the Defendant has to be treated only as a tenant and not as an illegal occupant or trespasser. It is further submitted that the house tax has been deposited by the Defendant to the tune of approximately Rs.3.5 lakhs and it is the settled position in law that any house tax paid would not be considered as part of the rental amount. Reliance is placed on***Embassy Restaurant v. Atma Ram Builders Pvt. Ltd. 2018 (247) DLT 39***. It is further submitted that under Order 15A CPC, the manner in which the provision is worded requires that the Court ought to give a fair opportunity for the

Defendant's case to be adjudicated after evidence is led in the matter. The fixing of the monthly amount cannot be done in a summary manner, as has been done by the Trial Court.

12. The Court has heard the parties and perused the record. A perusal of the impugned order, as also the various registered lease deeds for the neighbouring properties in the same area, shows that the market rent of the suit property is substantial.Moreover, apart from the rentals of the properties in the neighbourhood, this very property i.e. the ground floor, had been leased out in the past i.e. almost two years ago for a period of three years at Rs.1,88,750/- per month. The Defendants do not deny the registered lease deed entered into between the father of Defendant No. 1 and Jubilant Foodworks Ltd. in respect of K-74A and K-76, Chhachhi building, Krishna Nagar, Delhi for running of a Domino's Pizza outlet at the rate of Rs.1,58,700/-. In any event these facts are those that need to be given credence. The Defendants are admittedly adjacent neighbours and at this stage, it appears that the facts set out by the Plaintiffs are *prima facie* true.

13. The pivot of the Defendants' defense is that they are protected tenants under the Delhi Rent Control Act. The mere raising of the plea that they are protected tenants, without any further documents and irrefutable evidence, cannot be taken to be as the gospel truth. The Court would have to adjudicate the defense of protected tenancy taking into consideration all the facts and circumstances.

14. The following facts emerge from the record:

i. That the Defendants are neighbours of the Plaintiffs.

ii. That Defendant No. 1's father owns the adjoining property and has given out the premises on rent for running of a Domino's Pizza.

iii. That the suit property was given out on rent in the past to Welspun Retail Limited and for running a Wah Ji Wah restaurant. Photographs of the premises where the restaurant was running have been filed.

iv. That the Defendants are running a garment shop in the suit premises.

15. In view of the above facts which *prima facie* cannot be disputed, the case put forth by the Plaintiffs has a strong basis, and the Defendants were unable to show before the Trial Court as to on what basis it is being claimed that Rs. 2000/- was the rental amount. Moreover, the said defense of being a protected tenant seems to be a completely dishonest attempt by the Defendants, who have clearly taken advantage *prima facie* of the Plaintiffs, who are aged.

16. The previous lease deeds of this property firmly establish that the property had a huge rental potential. Further, the monthly rent that it can fetch currently is evident from the lease deed of the adjoining property, which is K-74A, Chhachi building, Krishna Nagar, Delhi. The Defendants themselves paid Rs. 1,00,000/- in the past for the premises to the Plaintiffs.Thus, there cannot be a better case where the tenants ought to be put to extremely strict terms for continuing to retain possession of the property.

17. In ***M/sAtma Ram Properties (P) Ltd vs M/s Federal Motors Pvt. Ltd(2005) 1 SCC 705,*** the Supreme Court has clearly held that the market rent in the adjoining premises and neighbourhood would be an extremely relevant consideration. The Supreme Court, in fact, observes that in landlord-tenant

litigation, the protraction of the litigation without direction to pay market rent puts the tenant in an extremely advantageous position. The Supreme Court observes as under:

> *"4. Ordinarily, this Court does not interfere with discretionary orders, more so when they are of interim nature, passed by the High Court or subordinate courts/tribunals. However, this appeal raises an issue of frequent recurrence and, therefore, we have heard the learned counsel for the parties at length. Landlord-tenant litigation constitutes a large chunk of litigation pending in the courts and tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. If the plea raised by the learned Senior Counsel for the respondent was to be accepted, the tenant, in spite of having lost at the end, does not lose anything and rather stands to gain as he has enjoyed the use and occupation of the premises, earned as well a lot from the premises if they are non-residential in nature and all that he is held liable to pay is damages for use and occupation at the same rate at which he would have paid even otherwise by way of rent and a little amount of costs which is generally insignificant.*
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> *...*
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> *9. Robust common sense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record-all these provide useful inputs as relevant facts for exercise of discretion which*

*passing an order and formulating the terms to put the parties on."*

18. It is thus clear that the Court has to gauge the documents and the evidence on record, as also the pleadings and the conduct of the parties.The version of the Plaintiffs appears clearly believable, while considering the previous lease agreements and the lease agreement of Defendant No. 1's father in the adjoining shop. The Plaintiffs have placed on record photographs of the restaurantwhich was running previously from the suit property itself, for a rent of Rs.1,50,000/- per month. Copies of all the registered lease deeds are on record including that entered into with Welspun Retail Limited. The registered lease deed dated 12th November, 2010 entered into between Mr. Rattan Chand Khanna and Jubilant Foodworks Ltd. for shop no. K-74A and K-76, Chhachi building, Krishna Nagar, Delhi for running of a Domino's Pizza store has also been placed on record. The monthly rent for the period 3rd November, 2016 to 2nd November, 2019 for the said premises, with K-74A (admeasuring 220 sq. yards)& K-76 (admeasuring 55.11/20 sq. yards), is Rs. 1,58,700/-. The suit premises consists of 1230 sq. yards carpet area. Thus, completely comparable rental accounts are available. The Plaintiffsare aggrieved by the fact that despite such irrefutable evidence having been placed on record, only Rs.50,000/- per month has been fixed by the Trial Court. The grievance of the petitioners/landlords is well founded. The sum fixed by the Trial Court is only Rs.50,000/- which is almost one-third of whatDefendant No. 1's own father is earning for a smallerpremise adjoining the suit property. Thus, following the principles laid down in ***Raghuvar Rai(supra)***wherein a Division Bench of this

Court has clearly laid down the various principles for fixing of rent under Order XVA CPC, the market rent is determined on the basis of the following documents:

i. Lease deed dated 4th December, 2012 between the Plaintiff No. 1 and Welspun Retail Ltd for suit premises at Rs. 1,88,750/- permonth for a period of 3 years

ii. Lease Deed executed between the Plaintiffs and Mannapuran Finance Ltd. for K-74, first floor, Chaachi Building, Krishna Nagar for Rs. 40,000/- per month for three years.

iii. Lease deed dated 12th November, 2010 for the adjoining premises belonging to the father of Defendant no.1 with Jubilant Foodworks Ltd. at Rs. 1,20,000/- per month for period of three years i.e. upto November 2013 and for November 2013 to November 2016 @ Rs, 1,38,000/- and from: November 2016 to November 2019 @ Rs. 1,58,700/.

19. On the basis of the above documents, this Court is of the opinion that the market rent liable to be paid by the tenants for the suit premises ought to be a sum of Rs.1,50,000/- per month as rent with effect from 1st August, 2016 till the final disposal of the suit,as the suit was filed on 27th July, 2016. Ordered accordingly.

20. The total amount due for the period of 38 months i.e., from 1st August 2016 till 30th September 2019, would be Rs.57,00,000/-. Insofar as the

payment of arrears is concerned the same shall be paid by the tenants to the landlords in the following manner:

i. Rs.11 lakhs on or before 10th November, 2019.
ii. Rs.11 lakhs on or before 31st December, 2019
iii. Rs.11 lakhs on or before 31st January, 2020
iv. Rs.11 lakhs on or before 29th February, 2020
v. Rs.13 lakhs on or before 31st March, 2020.

The amounts, from the month of October, 2019 onwards, shall be paid on or before the 10th of the succeeding month.

21. All the arrears shall be cleared on or before 31st March, 2020.CM(M) No.1062/2019 is allowed in the above terms.All pending applications are also disposed of.

**<u>CM(M) 454/2019</u>**

22. This is a petition filed by the Tenant challenging the impugned order by which Rs. 50,000/- has been directed to be paid to the landlords. The conduct of the tenants, starting from the manner in which they took possession of the suit property, created a façade of handing back possession, changing of locks and occupying the same reflects complete *malafides*. There is no merit in this petition. The same is dismissed with costs of Rs.20,000/- to Delhi High Court Bar Association Library Fund.Caveat is discharged. All pending applications are also disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**OCTOBER 23, 2019/*dj***