

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

+ *Reserved on: 10th July, 2019*
Pronounced on: 23rd July, 2019

+ **CS(COMM) 138/2016 & CC(COMM) 26/2018**

CEPCO INDUSTRIES PVT LTD Plaintiff

Through: Mr. Jai Sahai Endlaw, Advocate with
Ms. Deepika Mishra, Advocate.

versus

M/S TORQUE BIKES PVT LTD & ANR Defendants

Through: None.

CORAM: JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J

1. The present suit filed by the Plaintiff inter alia seeks possession of property bearing municipal no. 43, Rani Jhansi Road, New Delhi- 110055, admeasuring 4,300 Sq. Ft. ('tenanted premises') and for recovery of arrears of rents and mesne profits from January 2015 till date of delivery of possession along with interest.

2. The brief facts are that the Plaintiff and Defendants entered into a Lease Agreement dated 8th January 2013 whereby the tenanted premises were let out to the Defendants for a period of 3 years from 1st January 2013 to 31st December 2015 at a monthly rent of Rs. 3,00,000/-, along with applicable service tax. The Defendants had been irregular in making payment of rent to

the Plaintiff and had only paid the amounts as mentioned in Para 3 of the Plaint. Pursuant thereto, the Plaintiff issued a notice dated 20th October 2015 demanding arrears of rent and further terminated the tenancy of the Defendants with effect from 31st October 2015. The Defendants issued reply to the aforesaid notice on 7th November 2015 denying the averments contained in the notice dated 20th October 2015. As on 30th October 2015 (i.e. the effective date of termination of the Lease Agreement), a sum of Rs. 61,13,280/-, was due from the Defendants and they continued to use and occupy the tenanted premises. Plaintiff thus claimed that the Defendants are liable to pay arrears of rent along with interest thereon, besides mesne profits for continued use and occupation of the tenanted premise.

3. On service of summons in the suit, the Defendants entered appearance in the suit and filed their written statement dated 5th July 2016. In the written statement, Defendants admitted the execution of the lease agreement dated 8th January 2016. However, they disputed the rate of rent alleging that the area of the premises let out to the Defendants was less than what was agreed to between the parties. The Defendants further pleaded that they were unable to commence their work from the tenanted premises due to lack of No Objection Certificate (NOC) from the Plaintiff for obtaining an electricity connection in their name.

4. The Plaintiff contradicted the objection by contending that in light of the Defendants' admission with respect to execution of the lease agreement, the contentions of the Defendants as stated in their written statement hold no merit. The Lease Agreement records the area of the tenanted premises to be

4,300 Sq. ft., and the rate of rent as Rs. 3,00,000/- per month exclusive of service tax liability. Therefore, the Defendants' cavil with regard to area and rate of rent of the tenanted premises is frivolous and baseless. Further, Clause 10 of the Lease Agreement itself contains a NOC for the Defendants to apply for an electricity connection in their name.

5. During the pendency of the Suit, on 24th March 2017, the Defendants vacated the tenanted premise.

6. It is also relevant to note that the Plaintiff had also preferred IA No. 13462 of 2016 under Order XVA of the Code of Civil Procedure, 1908 seeking deposit of rent in the court during the pendency of the suit. This court vide order dated 10th September 2018, decided this application, in favour of the Plaintiff and directed the Defendants to deposit arrears of rent with the registry of this court, which was to be released in favour of the Plaintiff. Till this stage, the Defendants were represented before this Hon'ble Court through their counsel. Thereafter, vide order dated 7th December 2018 due to repeated non-appearance of the Defendants, they were set *ex-parte*. No formal issues were framed. Then *vide* order dated 14th January 2019 Plaintiff was directed to file its list of witnesses and the matter was listed before learned Joint Registrar for recording of *ex-parte* evidence. Pursuant thereto, Plaintiff filed an affidavit by way of evidence of Mr. Rohit Aggarwal. He was examined and discharged on 3rd July 2019. There was no one present on behalf of Defendants to cross examine the said witness, Plaintiff closed *ex-parte* evidence and suit was listed for final disposal.

7. Mr. Jai Sahai, learned counsel for the Plaintiff prays that the suit be

decreed for the recovery of the arrears of rent and also for mesne profits for 17 months i.e. 1st November 2015 to 21st March 2017. He also prays for interest on the arrears of rent and use and occupation charges.

8. I have given my thoughtful consideration to the contentions raised by the learned counsel for the Plaintiff. The entitlement of a landlord to claim mesne profits from the tenant who is in illegal possession of the premises after the tenancy was terminated is governed by Section 2 (12) of Code of Civil Procedure 1908 which defines mesne profits as under:-

“Section 2 (12): “means profits”- of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made but the person in wrongful possession;”

9. The aforesaid provision has been subject matter of interpretation in several judgments. Ordinarily, a landlord is entitled to mesne profits against the Defendants who continue to stay in the tenanted premises after the termination of tenancy. This is because the landlord is to be compensated in terms of the amount which the premises could have fetched if it had been let out during the period of illegal occupation by the tenant.

10. In the present case, concededly, the Defendants stayed beyond the period provided in the lease agreement dated 8th January 2013 which expired on 31st December 2015. Thus, the Defendants are liable to pay mesne profits/use and occupational charges from 1st November 2015 to 24th March 2017, the date when the tenanted premise was vacated and the possession

thereof was handed over to the Plaintiff.

11. In the present case, the Plaintiff has not led any evidence to prove the measure of damages that can be awarded against the Defendants towards mesne profits. Mr. Endlaw, contends that nonetheless Plaintiff is entitled to mesne profits on the basis of the last paid rent and also factoring an increase in the monthly rate of return at 15%. On the last paid rent as per the lease agreement for the period of 17 months from 1st November 2015 to 24th March 2017, he submits that the use and occupation charges be awarded @ Rs. 3,45,000/- per month for the aforesaid period, calculated with 15% increase over the last paid rent.

12. In the affidavit by way of evidence, the Plaintiff has also led evidence to say that there are arrears of rent of an amount of Rs. 61,13,280/- as on 31st October 2015 i.e. the date of termination of the lease agreement. This testimony is un rebutted. The Court finds merit in the submission advanced by the learned counsel. This court in RFA No. 6/2004, decided on 13th February, 2012, ***State Bank of India v. H.C. Takyar (HUF)***, has held that increase of 15% rent per annum for commercial premises should normally be awarded where there is no documentary evidence to prove rate of rent for a period of unauthorized occupation. Even in ***M.C. Aggarwal HUF v. Sahara India, 183 (2011) DLT 105***, mesne profits were awarded at a rate enhanced by 15% over the last paid rent in absence of any evidence. I am thus of the opinion that even though there is no evidence led by the Plaintiff regarding the prevalent letting value of the premises, the Court can award damages/use and occupation charges at the rate enhanced by 15% over the

last paid rent.

13. Accordingly, the decree is passed in favour of the Plaintiff for an amount of Rs. 61,13,280/- towards arrears of rent. Plaintiff shall also be entitled to *pendente lite* and future interest on the arrears of rent @ 9 % per annum simple from the date of filing of the present suit till the date of realization. In addition, Plaintiff shall also be entitled to mesne profits @ Rs. 3,45,000/- commencing from 1st November 2015 with further increase of 15 % per annum compounded. Plaintiff shall also be entitled to interest on arrears of mesne profits @ 9 % per annum simple from the end of each month of illegal occupation till the date of payment of arrears along with interest. The mesne profits will be payable till 24th March 2017, the date of taking over of the possession of the tenanted premises. Plaintiff shall also be entitled to the cost of the suit as per schedule.

14. The Defendants were proceeded ex parte vide order dated 7th December 2018 and have led no evidence to prove the counter claim. Accordingly the counter claim is dismissed.

15. Decree sheet be drawn up.

SANJEEV NARULA, J.

JULY 23, 2019

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