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

+ RFA 609/2006

NAND RANI

..... Appellant

Through : Mr.Hemant Chaudhary, Mr.Piyush
Arora, Mr.Gaurav, Advocates.

versus

DEEPAK JOSHI

..... Respondent

Through : Mr.K.P.Tohs, Mr.Khalin Chadha,
Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **10.12.2019**

This appeal challenges the impugned judgment and decree dated 19.07.2006 passed by learned Additional District Judge in Civil Suit No.215/2005 only qua quantum of damages/mesne profits awarded which per appellant were meagrely awarded despite there being an overwhelming evidence to this effect.

It is argued by the learned counsel for the appellant *admittedly* the respondent was running a medical clinic in the subject premises and per PW6- Mr.H.L.Arora, Branch Manager, State Bank of Patiala who had proved Ex.PW6/1 viz., a lease deed dated 05.10.2000 to say the rental of such like premises to be Rs.40,000/- till 31.03.2005 alongwith two letters viz. Ex.PW6/2 and Ex.PW6/3 written by the erstwhile owner to the State Bank of Patiala for further increase in the rental; an amount of Rs.1.00 lacs per month at least ought to have been granted after termination of lease.

The learned counsel for the appellant refers to an evidence of *PW1* and of *DW1* alleging interalia there being a clear assertion by the plaintiff/appellant in her examination in chief qua the market rental of such like premises, being Rs.2.50 lacs per month approx. and there been no cross-examination by the respondent in this regard. He also referred to deposition of *DW1* who failed to depose qua the market rental.

The learned counsel for the respondent on the other hand argued the lease deed Ex.*PW6/1* cannot be the basis to determine the mesne profits of the subject premises *firstly* it pertain to a premises admeasuring 4,000 sq. ft., inclusive of ground floor and basement and whereas the area of subject property is 1300 sq.ft. approx. and *secondly* the said premises being let out to State Bank of Patiala purely for *commercial* purposes and is on the *main road* of the locality and whereas the subject premises is inside a *gali*, hence both the properties cannot be said to be similarly situated.

During the course of the arguments the learned counsel for the respondent agrees to pay to the appellant an amount of mesne profits @ Rs.7,000/- per month w.e.f. 01.07.2004 till the date of the vacation of the premises with adjustment of rentals already paid during this period. This is accepted by the learned counsel for the appellant.

In the circumstances, the impugned judgment dated 19.07.2006 stands modified to an extent the respondent shall be liable to pay an amount of Rs.7,000/- per month as mesne profits of the subject property w.e.f. 01.07.2004 till 22.08.2006, of course, with necessary adjustment for amount already paid during this period need be given.

The appeal stands disposed of in terms of above. No order as to costs.

YOGESH KHANNA, J.

DECEMBER 10, 2019

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