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

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Delivered on : 18th December, 2019

+ **RFA 263/2018, CM APPL No.10035/2018**

CORPORATION BANK & ANR

..... Appellants

Through: Mr.Alok Kumar, Ms.Somya
Yadava, Ms.Snigdha Singh,
Mr.Ketul Hansraj, Mr.Ashutosh
Jain, Ms.Sanjana Samor,
Advocates.

versus

RAM KUMAR SHARMA

..... Respondent

Through: Mr.Sunil Kumar, Advocate with
Respondent in person.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is against the judgment and decree dated 10.01.2018 passed by the learned Additional District Judge-05/South-West District, Dwarka Courts, New Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.212/2017 whereby the suit filed by respondent for eviction, recovery of possession, mandatory injunction, and mesne profits was decreed to an extent of Rs.20,40,597/- with costs in respect of ground floor of property bearing No.4, Rati Ram Park, Shivaji Marg, Delhi Road, Najafgarh, Delhi area admeasuring 1800 square feet (hereinafter referred to as the 'demised premises').

2. The dispute involved in the present case is only qua the amount of mesne profits / charges for the period between 29.01.2017 till 30.11.2017 i.e. for ten months.

3. It is the case of the appellant the lease of the premises was to end on 27.01.2017 and despite the appellants' initiating the renewal process and negotiations in July 2016, the respondent continued to delay the matter and agreed to extend the lease only on highly unreasonable rental. It was also alleged while the negotiations of renewal of lease and rentals were going on the respondent sent a legal notice dated 16.11.2016 to the appellant herein and demanded either to renew the lease @ Rs.130/- per square feet per month or to vacate the property. The appellant then referred to a letter dated 07.01.2017 wherein the respondent agreed to extend the lease and also to decrease the quantification from Rs.130/- to Rs.105/- per square feet per month. However, the stand of the respondent is this letter was never sent by him and probably was sent by his son without his permission and is not binding upon him.

4. The learned counsel for the appellant then argued the learned Trial Court has wrongly granted the monthly mesne profits @ Rs.130/- per square feet for the undisputed period holding interalia : -

“11. The onus to prove this issue is upon the plaintiff. It has been argued that the plaintiff is entitled for the recovery of damages/mesne profits qua the tenanted suit property to the defendant bank at the rate of Rs.2,88,000/-per month (Rs.160/- per square feet)towards damages for unauthorized use and occupation of the suit property w.e.f 29.01.2017 till 30.11.2017 when the suit property was vacated by the defendant bank in pursuance to the undertaking given by the official of the bank to the Hon'ble High Court of Delhi. The plaintiff examined himself as PW-1 and proved on record letter dated 22.07.2016 which is

Ex.PW1/4 asking defendant bank for renewal of the lease at the rate of Rs.130 per square feet. Vide the said legal notice, defendant bank is called "to take appropriate steps for execution of fresh lease deed at a monthly rent of Rs.2,34,000/-at the rate of Rs. 130/-per sq. ft. failing which to vacate the leased premises by 28.01.2017. Plaintiff has also examined one Avinash Rai, Dy. Manager from HDFC Bank who produced the attested copy of lease deed dated 25.11.2014 executed between one Mangey Ram Bhardwaj and HDFC Bank Ltd showing that the said property is located in the vicinity of the suit property and is fetching Rs.120 per sq. feet on 25.11.2014 which comes to Rs.138persq.feet presently. Attested copy of the said Lease deed is Ex. PW2/1. Plaintiff has also examined Mr. A.S. Rao, Asst. Law Officer, Delhi Metro Rail Corporation to show that the rate of the rent of the leased property in favour of DMRC is at the rate of Rs. 133 per sq. feet on 19.11.2005 which comes to Rs.159 per sq.feet presently. This witness has brought the copy of Memorandum of Understanding executed between the plaintiff and DMRC which is Ex. PW3/1. Further, the Plaintiff in order to prove his case also examined one witness namely Mr.Anoop Kumar,Sr. Officer from ICICI Bank who has brought the attested copy of Lease Deed dated 30.11.2016 executed between Ms.Geetanjali Bhardwaj and ICICI Bank which is Ex PW4/1. As per the said lease agreement, the rate of rent is 125 sq. yards on 30.11.2016 which comes to Rs. 133.5 per square ft. presently.

12. *Per contra, the defendant examined one Mr. Manoj Kumar as DW-1, Sr. Manager of the defendant bank who tendered his affidavit in evidence and one Surender Jain, DW-2 who stated himself to be the new lessor of the defendant bank and deposed that he had given his property to the bank at the rate of Rs. 78 per sq. feet which also includes GST.*

13. *It is the admitted case of the parties that the lease deed between the plaintiff and defendant bank stood expired on 28.01.2017 and the defendant remained in occupation of the suit property till 30.11.2017 and the defendant has paid the arrears of the rent and other charges till 30.11.2017 at the rate agreed between the parties as per the lease deed between the plaintiff and defendant. Now, it has to be seen only as to whether the plaintiff is entitled to the enhanced rent for the aforesaid period. The plaintiff has proved on record the various lease deeds executed between the lessors and lessees in the vicinity of the suit property of the plaintiff and admittedly, the rate of the rent of those properties ranges presently from Rs.133sq.feet to Rs.159 per sq.feet.*

14. *On the contrary, the defendant has brought the evidence of DW-2to prove that he had let out his property to the bank at the rate of Rs.78per sq.feet. However in his cross-examination, DW-1 has admitted that the suit premises leased by the plaintiff to the defendant bank is nearer to the proposed new premises and DW-2 in his cross-examination has admitted that his property is*

around ten buildings away from the premises of the plaintiff and the first property from the main city Najafgarh is the plaintiff's property. During the course of the cross-examination, the counsel for the defendant bank confronted a letter dated 07.01.2017 issued by the son of plaintiff to the defendant bank for the renewal of the leased premises at the rate of Rs. 105 per sq. feet to which the plaintiff stated that he had not authorised his son for the same.

15. For deciding mesne profit, what is required to be kept in perspective are the rental value in the area where the suit premises is located and in the present case, the plaintiff has by proving on record the various lease deeds executed between the lessor and lessee for the properties in the vicinity of the suit property, has succeeded to prove that he is entitled to the enhanced rent and thus, I am of the considered opinion that the plaintiff is entitled to mesne profit in respect of the suit property at the rate of Rs. 130 per square feet which he asked from the defendant through his legal notice dated 16.11.2016 Ex. PW1/5. The defendant has failed to persuade the court that the claim of Rs.130 per sq.feet contained in the legal notice was contrary to the rentals then prevailing in the market rate. Accordingly, the suit is decreed for mesne profit at the rate of 130 per sq.feet for the period w.e.f. February 2017 to November 2017. The plaintiff has been paid rent at the old rate upto October,2017 and the rent for the month of November, 2017 is still pending. The following amount therefore would fall due:

CALCULATION SHEET

Total area of Leased Premises	1800 sq. ft.
Period of rent occupation of leased premises after expiry of lease	10 months
Total Rent payable (for 10 months) (Rs.130 x 1800 x 10)	Rs.23,40,000/-
Rent received by plaintiff for 10 months	Rs.2,99,403/-
Principal Rent Amount payable by Defendant Bank (23,40,000 – 2,99,403)	Rs.20,40,597/- (Rupees Twenty lakh Forty thousand and Five hundred Ninety Seven only)

5. Even in this appeal, the learned counsel for the appellant did not file lease deed of any similarly situated premises and rather relied purely upon the depositions of DW-1 and DW-2 to prove his point. However he could not deny the property of the respondent is at the corner of the Najafgarh Road main market and whereas the property now taken on lease by the appellant is ten buildings away. The HDFC Bank functions from the seventh building from the appellants' property and is paying the

rental of Rs.138/- per sq.ft. per month. Similarly the properties near to the building of the respondent are fetching Rs.154/- per sq.ft. and Rs.133.5 per sq.ft; per lease deed Ex.PW 2/1; MOU Ex.PW 3/1 and lease deed Ex.PW 4/1. On the contrary the appellant has not even placed on record any lease deed, muchless its own lease deed; hence there being sufficient material on record in favour of the respondent and the learned trial court has rightly allowed the respondent an amount @ Rs.130/- per sq.ft. per month for 10 months.

6. In *Rajesh Bansal & Anr. V. A. S. Rastogi*, RFA No.228/2013 decided on 10.01.2014, the Coordinate Bench of this Court held if a tenant induces a landlord to give his premises on rent *assuring* him he would vacate it on a given date and then ignores warning viz legal notice to vacate, he must suffer the consequences.

7. In view of above, no interference is called for in the impugned judgment and decree passed by learned Trial Court. The appeal is accordingly dismissed being bereft of merits. The pending application(s), if any, are also dismissed. LCR be remitted forthwith. No order as to costs.

YOGESH KHANNA, J.

DECEMBER 18, 2019

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