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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Pronounced on: 14.01.2019

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CS(OS) 1247/2008

SHRI OM PRAKASH CHOPRA & ORS.

...Plaintiffs

Through

Mr.J.S.Bakshi and Mr.A.S.Bakshi,
Advs.

Versus

STATE BANK OF INDIA

....Defendant

Through

Mr.Sanjeev Kakra and Mr.Bheem
Sain Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This suit has been filed for recovery of possession of immovable property, damages, by way of compensation and for *mesne profits/compensation pendente lite* and future.
2. The case of the plaintiffs is that they are the co-owners of the property No.7, Community Centre, Friends Colony, measuring 222.96 sq.mts. The defendant is a body corporate engaged in the business of banking. It is pleaded that w.e.f. 1.4.2002 defendant bank occupied portion of the plaintiffs above described property consisting of an area of 5742 sq. ft. scattered on various floors of the above property being basement area, ground floor, mezzanine at a monthly rent of Rs.3,50,000/- per month. The terms and conditions of the lease agreed upon by the parties were stated in a duly registered Lease Deed dated 2.9.2002. As per terms of the Lease Deed

defendant came in occupation of the above described property for a period of five years to be computed w.e.f. 1.4.2002 to 31.3.2007. On 2.2.2007 the plaintiff by notice invited attention of the defendant to the terms of the Lease Deed expiring on 31.3.2007 by efflux of time, by calling upon the bank to deliver and hand over vacant possession of the premises failing which it was stated that the bank will have to pay Rs.50,000/- per day as damages. It is stated that despite expiry of the lease on 31.3.2007 the bank continued to be in occupation of the property on the representation that the bank is in the process of identifying new premises. In the first week of June, 2007 some proposals were discussed whereby it was suggested that the lease period be extended to 31.3.2012 and the revised monthly rent for the ground floor and the basement floor would be Rs.6,50,000/- w.e.f. 1.4.2007. The mezzanine floor was to be dropped. Appropriate letter dated 18.6.2007 was submitted to the defendant. Hence, the bank continued in possession of the premises. By demand notice dated 10.6.2008 the plaintiff stated to the bank its liability to pay occupation charges for use of the premises at current prevalent market rate w.e.f. 31.3.2007 and requiring the bank to vacate the premises by 30.6.2008. As the defendant failed to vacate the present suit has been filed seeking eviction of the bank from the premises and recovery of damages and possession w.e.f. 1.4.2007 to 30.6.2008 @ Rs.3,00,000/- per month (in addition to the rent already paid) and *mesne profit* commencing 1.7.2008 onwards.

3. Defendants have filed their written statement. The defendants in the written statement have stated that the plaintiff has concealed material facts inasmuch as the bank had been in possession of the property prior to execution of the Lease Deed dated 2.9.2002. In fact the bank is in occupation

of the suit property since 1.4.1997. A lease deed dated 22.9.1998 was executed giving the option to the bank to renew the lease for a further period of five years. The lease was renewed on 2.9.2002 recognising the right of renewal. It was further pleaded that despite efforts of the defendant bank the bank could not locate an alternative accommodation. However, the bank has been making regular payment of rental amount which the plaintiffs have duly accepted and as such the lease got renewed in favour of the bank automatically on a monthly basis.

4. During pendency of the present proceedings the bank handed over to the plaintiffs vacant premises on 20.7.2010. Hence, the only issue that survives is unpaid *mesne profits*/damages.

5. On 23.7.2010 this court framed the following issues:-

- (i) “Whether the plaintiff is entitled to damages/mesne profits? If so, the period and the rate at which it is payable? OPP
- (ii) Whether the plaintiff is entitled to any interest? If so, the rate and the period for which it is payable? OPP
- (iii) Reliefs.”

6. Parties have led their respective evidence. Plaintiff No.1 has led his own evidence as PW-1 and of Mr.Vimal Kumar PW-2 Head Clerk of the Office of Sub Registrar V, Mehrauli, Delhi. The defendants have led the evidence of four witnesses, namely, DW-1 Mr. K.K.Kapoor, Sr.Manager, Canara Bank, Community Centre, New Friends Colony. DW-1 has exhibited the copy of the lease deed dated 3.4.2008 as Ex.DW1/1 and DW1/2. The defendant has also led the evidence of DW-2 Mr.Radhey Shyam Sharma. Sub-Registrar, Sub District-V, Mehrauli, New Delhi who has brought the lease deed dated 5.1.2010 with the Lessee Oriental Bank of Commerce. The

lease deed was exhibited as Ex.DW2/1. The evidence of DW-3 Mr. Prashant Kumar, Special Assistant, Oriental Bank of Commerce was also recorded who brought the originals of DW2/1 and DW2/2. The evidence of Shri Jitendra Kumar Sharma, Branch Manager from the defendant bank was recorded as DW-3 (DW-3 has been numbered twice). He has produced the Minutes of Meeting dated 16.2.2009 as Ex.DW3/P-2.

7. I have heard learned counsel for the parties. Learned counsel for the plaintiff has stated as follows:-

- (i) He has pointed out that the issue is confined in the present suit to payment of the mesne profit/damages. He submits that the defendant has been in illegal and unauthorized occupation w.e.f. 1.4.2007 till vacant possession was given on 20.7.2010. He, however submits that in the plaint a demand has been made for recovery of damages @ Rs.3 lac per month for the period 1.4.2007 to 30.6.2008 as the defendant is liable to pay to the plaintiff @Rs.6,50,000/- per month as agreed upon in the meeting in the first week of June 2007. Defendant has paid only Rs.3,50,000/- per month leaving the balance of Rs. 3,00,000/- per month. He submits that mesne profit w.e.f. 1.7.2008 till 20.7.2010 are payable @ above Rs.11 lac per month. This is in view the fact that the plaintiff had entered into three lease deeds for part of the said premises on 5.2.2011 and 21.3.2011 being Ex.PW2/1 and Ex.PW2/2 for a total rent of Rs.11 lac per month.
- (ii) He further relies upon minutes DW3/P-2 where in a meeting held on 16.2.2009 the AGM and the defendant agreed that the rent would be Rs.11 lacs per month plus service tax w.e.f. 31.3.2007. Based on this,

it is pleaded that mesne profit above @ Rs.11 lacs per month for the said period would be appropriate.

8. Learned counsel appearing for the defendant has, however, pleaded as follows:-

- (i) He submits that there was acquiescence on the part of the plaintiff who allowed the defendant to continue to occupy the premises @ original rent till 30.6.2008. Rents were duly paid and accepted by the plaintiff @ original rate of Rs.3.5 lacs per month. Hence, he submits that no additional payment is required to be paid as claimed for the period after 30.6.2008.
- (ii) He further submits that the bank was interested in shifting of the branch but shifting of a branch is not easy and the defendant could not easily locate alternate premises. He reiterates that the Minutes of the Meeting relied upon by the plaintiff of 2009 are misplaced and cannot bind the bank. He relies upon the rentals being paid in the adjoining properties taken on lease by the Oriental Bank of Commerce who were paying Rs.5,736/- per month being rent of Rs.90.69 per sq.ft. per month (Ex.DW-2/1 and DW2/2). He also relies upon the rental being paid by Canara bank for adjoining premises 10 Community Centre, New Friends Colony, Delhi who were paying a rent of Rs.1,80,000/- per month @ Rs.80 per sq.ft. (Ex.DW1/1). He pleads that agreed rent stands paid and nothing further is payable to the plaintiffs.

9. We may look at the legal position regarding determination of mesne profits. Section 2(12) CPC defines mesne profit as follows:-

“2(12) “mesne 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 by the person in wrongful possession;”

10. The Supreme Court in the case of *Lucy Kochuvareed vs. P. Mariappa Gounder & Ors.*, AIR 1979 SC 1214 held as follows:-

“25. Mesne profits being in the nature of damages, no invariable rule governing their award and assessment in every case, can be laid down and "the Court may mould it according to the justice of the case". Even so, one broad basic principle governing the liability for mesne profits is discernible from Section 2(12) of the CPC which defines 'mesne profits' to mean "those profits which the person in wrongful possession of 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 by the person in wrongful possession". From a plain reading of this definition, it is clear that wrongful possession of the defendant is the very essence of a claim for mesne profits and the very foundation of the defendant's liability therefore. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits.”

11. A Division Bench of this Court in *Phiraya Lal vs. Jia Rani*, 1973 AIR (Del) 186 in paragraph 14 held as follows:-

“14. The claim in the suit by Jia Rani against the appellants was firstly for possession and secondly for damage's for use and occupation of the site in suit wrongfully by the defendants appellants. When damages are claimed in respect of wrongful occupation of immovable property on the basis of the loss caused by the wrongful possession of the trespasser to the person entitled to the possession of the immovable property,

these damages are called "mesne profits". The measure of mesne profits according to the definition in section 2(12) of the Code of Civil Procedure is "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received there from, together with interest on such profits". It is to be noted that though mesne profits are awarded because the rightful claimant is excluded from possession of immovable property by a trespasser, it is not what the original claimant loses by such exclusion but what the person in wrongful possession gets or ought to have got out of the property which is the measure of calculation of the mesne profits. (*Rattan Lal v. Girdhari Lal*, Air 1972 Delhi 11). This basis of damages for use and occupation of immovable property which are equivalent to mesne profits is different from that of damages for tort or breach of contract unconnected with possession of immovable property. Section 2(12) and order XX rule 12 of the Code of Civil Procedure apply only to the claims in respect of mesne profits but not to claims for damages not connected with wrongful occupation of immovable property."

12. Similarly, the Andhra Pradesh High Court in *Dr.J.Bhakthavasala Rao and Ors.vs. Industrial Engineers and Ors. AIR 2005 AP 438* in paragraph 8 held as follows:-

"8. The controversy in this appeal is limited to the one of fixing the damages for use and occupation of the suit building. By its very nature, it involves adjudication of a pure question of fact and there exists hardly any uniform and standard pattern of assessment in this regard. The Court has to undertake a comparative assessment of the nature, location, age, condition etc., of the suit schedule premises, on the one hand, and the similar characteristics of the premises in the surrounding area, on the other. It is very difficult to find the premises of similar nature, size and quality at the same location. Even if there exists any broad similarity on these aspects, the rent in respect of such premises would depend, mostly, upon the need of the lessee and the circumstances under which the leases are granted. Prevalence of amity or enmity, as the case may be, between the landlords and the

tenants or the duration of lease, are also certain factors, which would have a bearing on this.”

13. One of the methods for determination of mesne profits/damages accepted by this court is to take into account the enhancement of the stated rent @ 15% every year. This method for assessment has been accepted by various judgments of this court i.e. ***Sneh Vaish & Anr. vs. State Bank of Patiala & Ors., 189(2012) DLT 153; Chander Kirti Rani Tandon vs. M/s.VXL Lodging N.Boarding Services Pvt. Ltd., 197(2013) DLT 266 and; M.C.Agrawal HUF. vs. Sahara India and Ors., 183(2011) DLT 105.*** The above judgments have held that in residential and commercial areas in prime and centrally located locations an increase of 15% every year would be in order.

14. The above judgments were also relied upon by this court in the case of ***Anil Kumar Khanna vs. The Indian Tourism Development Corporation Ltd., 222 (2015) DLT 119.*** The above judgment has been upheld by the Division bench in ***Indian Tourism Development Corporation vs. Anil Kumar Khanna and Ors., 2016 SCC online Del 2431.***

15. I may look at the evidence filed by the plaintiffs to demonstrate the existing rent in the areas around the property in question. The plaintiff has heavily relied upon the lease executed on 21.03.2011 after it received possession of the property from the defendant being Ex.PW2/1 and PW 2/2. The said document was tendered by Mr.Vimal Kumar PW-2. The lease deed dated 21.03.2011 was executed by the plaintiff and Citi Group Global Market India Private Limited and provides for the monthly rent of Rs.10,80,000/-. Similarly, the second lease being Ex.PW2/2 dated 21.3.2011

executed between Shri O.P.Chopra and others and Prizm Payment Services Private Limited was also duly registered and provides for a monthly rent of Rs.20,000/- per month being a total of Rs.11 lacs. Based on this it was pleaded that the defendant is liable to pay above @ Rs.11,00,000/- per month.

16. Reference may also be had to the Minutes of Meeting that took place between the parties on 16.9.2009(Ex.DW3/P-2). In the said meeting Mr.Bhasin the AGM (Adim) of the defendant offered rent of Rs.11 lacs per month plus service tax to the plaintiffs. The plaintiff demanded that increase should be made from the date of expiry of the lease dated 31.3.2007. All the persons present in the meeting including the officers of the defendant had agreed to the same. Relevant portion of the Minutes of the said Meeting reads as follows:-

“Shri Bhasin offered rent of Rs.11.00 Lakh (Rupees Eleven Lakh Only) per month + service tax. Shri Chopra agreed on this but he further demanded that the increase should be from the date of expiry of present term of the lease (i.e. 31.3.2007). All present members agreed on this.” (Ex. DW3/P-2)

17. The plaintiff has also in his evidence tendered two lease deeds pertaining to adjacent properties, namely, 15, Community Centre, New Friends Colony and; 13, Community Centre, New Friends Colony. The details of the rentals of the said two properties as per the said lease deeds being Ex.PW1/6 and PW1/7 are as follows:-

<u>Sr</u> <u>o.</u>	<u>Particulars of</u> <u>Property</u>	<u>Period of</u> <u>lease</u>	<u>Date of</u> <u>leased &</u> <u>Rent</u>	<u>Rate of Rent</u>	<u>Ex.No.</u>
1.	15,Community	11.04.2009	29.04.2009	Rs.333.33/sq.ft.	Ex.

	Centre, New Friends Colony, New Delhi (1350 sq.fts. Mezzanine Floor)	to 10.04.2015 (6 years)	Rs.4,50,000/- (with 5% yearly escalation from 11.04.2010)	(11.04.2009 to 10.04.2010) & Rs.350 (11.04.2010 to 10.04.2011)	PW1/6
2.	13,Community Centre, New Friends Colony, New Delhi (850 sq.fts. Ground Floor)	23.10.2007 to 22.10.2016 (9 years)	15.10.2007 Rs.4,67,500/- (23.10.2007 to 22.10.2010)	Rs.550/sq.ft.	Ex. PW1/7

18. Having seen the evidence led by the plaintiffs, I may now look at the evidence led by the defendant to demonstrate the applicable market rates for rent for the period in question, namely, 01.07.2008 to 20.07.2010.

19. I may only note that a faint plea was sought to be raised before this court that the plaintiffs have recognised the continuation of the tenancy by the defendant @ Rs.3.50 lakhs per month. However, no such issue has been framed regarding any Holding Over by the defendant. However, in any case in the facts of the case it would be difficult to hold that there was any assent to the defendant continuing with possession without enhancement of rents as is sought to be alleged.

20. The following chart depicts the documents/leases of neighbouring premises tendered in evidence by the defendant to prove their case namely that nothing further is required to be paid to the plaintiffs.

<u>Sr. No.</u>	<u>Particulars of Property</u>	<u>Period of lease</u>	<u>Date of leased & Rent</u>	<u>Rate of Rent</u>	<u>Ex.No.</u>
1.	10, Community Centre, New Friends Colony, New Delhi (900 sq.fts. Ground Floor & 900 sq.fts Basement i.e. 1800 sq.fts.)	01.11.2004 to 31.10.2009	03.04.2008 Rs.1,44,000/- & (Rs.1,80,000/- payable from 01.11.2009)	Rs.80/sq.ft. (01.11.2004 to 31.10.2009) & Rs.100/sq.ft. (from 01.11.2009)	Ex. DW1/1
2.	11, Community Centre, New Friends Colony, New Delhi (600 sq.fts. Ground Floor & 600 sq.fts. Basement i.e. 1200 sq.fts.)	01.11.2004 to 31.10.2009	03.04.2008 Rs.96,000/- & (Rs.1,20,000/- payable from 01.11.2009)	Rs.80/sq.ft. (01.11.2004 to 31.10.2009) & Rs.100/sq.ft. (from 01.11.2009)	Ex. DW1/2
3.	5, Community Centre, New Friends Colony, New Delhi (1978.36 sq.fts. consisting as follows: 1) G-18 (63.25 sq.fts.)	03.05.2007 to 02.05.2012	05.01.2010 Rs.5736.25/-	Rs.90.69/sq.ft.	Ex. DW2/1 & Ex. DW2/2 AND Ex. DW3/1 to Ex. DW3/11
	2) G-7 (58.16 sq.fts.)		05.01.2010 Rs.5003.10/-	Rs.85/sq.ft.	

	3) G-22 (64.16 sq.fts.)		23.02.2010 Rs.5453.60/-	Rs.85/sq.ft.	
	4) G-11 & 25 (122.85 sq.fts.)		05.01.2010 Rs.10442.25/-	Rs.85/sq.ft.	
	5) G-4 (151.25 sq.fts)		16.02.2010 Rs.12856.25/-	Rs.85/sq.ft.	
	6) G-1, 17 and 24 (201.66 sq.fts.)		16.12.2010 Rs.17141.10/-	Rs.85/sq.ft.	
	7) G-15 & 16 (116 sq.fts.)		16.12.2010 Rs.98860/-	Rs.85/sq.ft.	
	8) G-9 & 10 (64.16 sq.fts.)		16.12.2010 Rs.10,922.50/-	Rs.85/sq.ft.	
	9) G-8 (58 sq.fts.)		16.12.2010 Rs.4930/-	Rs.85/sq.ft.	
	10) G-21 & 23 (346.5 sq.fts.)		29.03.2010 Rs.29,452.50/-	Rs.85/sq.ft.	
	11) G-12 (221.84 sq.fts.)		05.01.2010 Rs.18856.40/-	Rs.85/sq.ft.	
	12) G-5 & 6 (117.33 sq.fts.)		05.01.2010 Rs.9973.05/-	Rs.85/sq.ft.	
	13) G-19 & 20 (126.50 sq.fts.)		16.02.2010 Rs.10,752.50/-	Rs.85/sq.ft.	

21. This court has to undertake a comparative assessment of the leases produced by the parties. As held by the Andhra Pradesh High Court in ***Dr.J.Bhakthavasala Rao and Ors. vs. Industrial Engineers and Ors.***(supra), this court has to undertake a comparative assessment of the nature, location, age, condition etc., of the suit schedule premises, on the one hand, and the similar characteristics of the premises in the surrounding area, on the other. It is very difficult to find the premises of similar nature, size and quality at the same location. Even if there exists any broad similarity on these aspects, the rent in respect of such premises would depend, mostly, upon the need of the lessee and the circumstances under which the leases are granted. Prevalence of amity or enmity, as the case may be, between the landlords and the tenants or the duration of lease, are also certain factors, which would have a bearing on this.

22. There is clearly conflicting evidence produced by both the sides. Whereas the plaintiff has shown documents which demonstrate that the rate of rent in the area in question is Rs.333.33 per sq.ft./Rs.550 per sq.ft per month, the defendants have filed documents showing applicable rent as Rs.80 per sq.ft. (Ex.DW1/1) and (Ex.DW1/2) and Rs.90.69 per sq.ft./Rs.85 per sq.ft. per month (Ex.DW2/1 and DW2/2). Both sides in cross-examination of PW1 and DW3 have sought to highlight the features in the properties whose leases they have respectively relied upon. PW1 has denied that properties whose leases he has relied upon, namely, 15 Community Centre and 13 Community Centre face main approach road. On the other hand, he has tried to argue that premises whose lease defendant have been relied upon, namely, premises No.10 Community Centre, New Friends

Colony, New Delhi leased to Canara Bank and premises No.5 Community Centre, New Friends Colony, New Delhi leased to Oriental Bank of Commerce are not well located. He has in his cross-examination stated that the premises in occupation of the Oriental Bank of Commerce has a minimal height. A similar line of cross-examination has been done to DW3 regarding the height of the premises occupied by the Canara Bank and Oriental Bank of Commerce.

23. I may note that for the period 1.4.2007 to 30.6.2008 the plaintiffs have claimed mesne profit/damages @ Rs.6,50,000/- per month. Plaintiff has relied upon the meeting that took place in June 2007 with the defendant bank whereby it was agreed that a revised monthly rent of Rs.6,50,000/- per month w.e.f. 1.4.2007 shall be paid to the plaintiff. However, there are no minutes of this meeting.

24. I may also refer to some orders passed by this court. On 7.5.2010 this court recorded the submission of learned counsel for the plaintiff that six weeks' extension may be granted to vacate the suit property. Defendant also agreed to pay compensation @ Rs.6 lacs per month instead of the existing Rs.3,50,000/- per month. On 21.6.2010 learned counsel for the defendant sought additional time to vacate the property i.e. another six weeks' time. Defendant agreed to pay compensation of Rs.8 lacs per month for the extended period.

25. Further from 2011 the plaintiff has started receiving rent @ Rs.11,00,000/- per month for part of the property.

26. Keeping in view the above orders and facts, in my opinion, the appropriate rent payable for the period in question, namely, 1.4.2007 to 30.6.2008 would be Rs.6 lac per month keeping in view the consent order of this court dated 7.5.2010. It is ordered accordingly that for the said period in question the plaintiff shall be entitled to mesne profit/damages @ R.6 lac per month i.e. for the period 1.4.2007 to 30.6.2008.

27. For the period after 30.06.2008 given the nature of the evidence led by the parties and the fact that within the same vicinity different leases for having different rate of rent have been produced by the parties within wide variations i.e. Rs.80/- sq.ft. to Rs.550/- sq.ft., in my opinion, it would be appropriate to follow the principles laid down by this court in the judgment of Division Bench of this court in the case of **ITDC vs. Anil Kumar Khanna**(supra). It would be appropriate that the rent be increased by 15% every year for the purpose of determination of mesne profits and damages.

28. The enhancement of the said rate by 15% every year is as per the dicta of various judgments of this court i.e. **Sneh Vaish & Anr. vs. State Bank of Patiala, 189(2012) DLT 153; Chander Kirti Rani Tandon vs. M.s.VXL Lodging N.Boarding Services Pvt. Ltd., 197(2013) DLT 266 and; M.C.Agrawal and Ors. vs. Sahara India and Ors., 183(2011) DLT 105.** These judgments have held that in residential and commercial areas in prime and centrally located locations like Connaught Place an increase of 15% every year would be in order to determine mesne profits/damages.

29. Following the above judgment, I order accordingly. The plaintiffs shall be entitled to recover *mesne profits* and damages as follows:

Sl. No.	<u>Period</u>	<u>Amount</u>
1.	01.04.2007 to 30.06.2008	Rs.6,00,000/- per month
2.	01.07.2008 to 30.06.2009	= Rs.6,00,000/-+ Rs.90,000/-(15% of 6.00 lakhs) = Rs.6,90,000/-
3.	01.07.2009 to 30.06.2010	Rs.6,90,000/-+ Rs.1,03,500(15% of Rs.6,90,000/-) = Rs.7,93,500/-
4.	01.07.2010 to 20.07.2010	Rs.7,93,500/-(one month) 20 days = Rs.5,29,000/- = Rs.5,29,000/- + Rs.4400/-(15% of 20 days) = Rs.5,33,400/-

30. A decree is accordingly passed in favour of the plaintiffs and against the defendant in terms of the above calculation of *mesne profits* and damages. Payments already made by the defendant are liable to be deducted. For the unpaid amount the plaintiff shall also be entitled to simple interest @ 10% w.e.f. 1st of the succeeding month for which the payment fell due (e.g. for May, 2009 interest will be paid with effect from 01.06.2009 on unpaid amount). The interest will be payable till the plaintiff receiving money. The plaintiffs shall also be entitled to costs. Suit stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

JANUARY 14, 2019/n