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

% **Date of decision: 26th November, 2019.**

\+ **<u>CS(OS) 95/2009</u>**

JOHN TINSON CO. PVT LTD. ..... **Plaintiff**

Through: Ms. Shyel Trehan and Mr. Rohan Poddar, Advs.

Versus

BANK OF INDIA & ANR. ..... **Defendants**

Through: Mr. Adarsh Dial, Sr. Adv. with Ms. Sumati Anand, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This suit for recovery of Rs.10,92,02,688/- towards past *mesne* profits along with interest, is ripe for final hearing.

2. It is not in dispute that the defendant Bank was a tenant under the plaintiff in an area of 9100 sq. ft. spread over basement, ground and first floors and terrace of Property No.54, Janpath, New Delhi w.e.f. 21st April, 1962 till determination of tenancy and was ejected therefrom pursuant to court proceedings, on 15th September, 2009. It is also not in dispute that no claim for *mesne* profits was made by the plaintiff against the defendant Bank in the ejectment proceedings.

3. The plaintiff instituted this suit on 18th December, 2008 for recovery of past *mesne* profits w.e.f. the month of December, 2005 till the institution of the suit.

4. The suit having been instituted on 18th December, 2008, the plaintiff would be entitled to *mesne* profits from 19th December, 2005 till 18th December, 2008 i.e. for a period of three years prior to the institution of the suit.

5. The plaintiff in the suit, has claimed *mesne* profits (i) for the month of December, 2005 at Rs.137 per sq. ft.; (ii) from 1st January, 2006 to 31st December, 2006 at the rate of Rs.200 per sq. ft.; and, (iii) from 1st January, 2007 to 31st December, 2007 @ Rs.400 per sq. ft. and from 1st January, 2008 till the institution of the suit at Rs.420 per sq. ft.

6. Needless to state, the defendant Bank contested the suit.

7. In view of the narrow compass of the controversy to be adjudicated, need to detail the pleadings of the parties is not felt and suffice it is to state that on 12th July, 2010, the following issues were framed in the suit and the parties relegated to evidence:-

> *"1. Whether the plaintiff is entitled to obtain mesne profits/damages from the defendant with effect from December, 2005 and if so, at what rate of interest? OPP*
>
> *2. Whether the plaintiff has not disclosed true and complete facts of this case? OPD*
>
> *3. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD*
>
> *4. Relief."*

8. The counsel for the plaintiff states that the plaintiff, in its evidence examined Mr. Shashank Bhagat, the Chairman of the plaintiff, Ms. Poonam the concerned officer from the Office of the Sub Registrar with which the

lease deeds in proof of rate of *mesne* profits were registered and Mr. Gurgeet Singh Sawhney the property broker.

9. The senior counsel for the defendant Bank on enquiry states that the defendant Bank examined four witnesses, of which two were officials of the defendant Bank and two others are tenant and landlords of two similarly situated premises, lease deeds whereof were proved in proof of the rate of *mesne* profits.

10. The counsel for the plaintiff and the senior counsel for the defendant Bank have been heard.

11. The counsel for the plaintiff has referred to –

A. Ex. PW1/1, being a Lease Deed dated 29th April, 2004 with respect to ground and mezzanine floors of 58 Janpath, let out at the rate of Rs.130/- per sq. ft. per month.

B. Ex. PW1/2, being Lease Deed dated 20th November, 2007 with respect to ground and mezzanine floors of 52 Janpath @ Rs.392 per sq. ft. per month.

C. Ex. PW1/4, being a Lease Deed dated 25th June, 2009 of the ground floor and upper ground floor of the premises at 66 Janpath, taken on rent by the defendant Bank after vacating the premises of the plaintiff, @ Rs.425/- per sq. ft. per month.

12. It is informed that it has come on record that owing to fall in rentals thereafter, the rate of rent was subsequently reduced to about Rs.300 per sq. ft. per month and that it has been deposed by the defendant Bank's witness DW-4 Karan Khanna that the said rate of rent was on super area basis as

compared to covered area or carpet area basis and that the rent on covered area basis or carpet area basis would be more than even the rent on the super area basis.

13. The counsel for the plaintiff has further stated that one of the pleas taken by the defendant Bank in its defence is that the aforesaid lease deeds have not been duly proved by the plaintiff since the plaintiff did not examine the parties thereto and only got the certified copies of the said lease deed proved from the official of the Office of the Sub Registrar with which the said lease deeds were registered. Reliance is placed on ***Dr. Zulfiquar Ali Khan Vs. J.K. Helene Courtis Ltd.*** 2009 SCC OnLine Del 2897 which in turn relying upon the judgments under the land acquisition laws held proof in such manner to be sufficient for the purposes of determination of *mesne* profits.

14. Per contra, the senior counsel for the defendant Bank has contended that the defendant Bank in its evidence has proved -

A. DW3/1, being Lease Deed dated 5th October, 2004 of a large premises at 74 Janpath taken on rent by Canara Bank from 1st January, 2004 at a rent of Rs.85 per sq. ft. per month for the ground floor, Rs.55 per sq. ft. per month for the mezzanine floor and Rs.30 per sq. ft. per month for the basement and with 15% increase after three years. On enquiry, whether Canara Bank was in occupation of the said premises from before, it is stated that the lease deed mentions so but does not state since when Canara Bank was in occupation of the said premises.

B. Ex. DW4/1, being a Lease Deed dated 23rd September, 2006 of the first floor of 74 Janpath, on super area basis, at Rs.100 per sq. ft. per month with increase in 15% after three years.

15. The senior counsel for the defendant Bank has contended that the leases of large premises, as was in occupation of the defendant Bank under the plaintiff, fetch a different rate than leases of small portions. It is also contended that the premises of the plaintiff in occupation of the defendant Bank were without any facilities and the defendant Bank itself had provided air conditioning in some parts of the premises in occupation of the defendant Bank under the plaintiff.

16. The mode of assessment of *mesne* profits has been discussed in detail in ***Ajit Gogna Vs. Jitender Gogna*** 2019 SCC OnLine Del 7517, ***Udayan Sinha Vs. Fertilizers & Chemicals Travancore Ltd.*** 2016 SCC OnLine Del 3247 (SLP(C) No.27296/2016 preferred whereagainst was disposed of on 26th September, 2016), ***M.R. Sahni Vs. Doris Randhawa*** 2008 SCC OnLine Del 268 (SLP(C) No.13820/2008 preferred whereagainst was dismissed on 26th October, 2010), ***Consep India Pvt. Ltd. Vs. CEPCO Industries Pvt. Ltd.*** 2010 SCC OnLine Del 1349, ***Inder Sain Bedi Vs. Chopra Electricals*** 2012 SCC OnLine Del 5180, ***Sakata Inx (India) Ltd. Vs. Pooja Aggarwal*** 2012 SCC OnLine Del 916 (SLP(C) No.17896/2012 preferred whereagainst was dismissed on 12th October, 2010), ***Chander Kirti Rani Tandon Vs. VXL Lodging N. Boarding Services Pvt. Ltd.*** 2013 SCC OnLine Del 406 and ***Hindustan Petroleum Corpn. Ltd. Vs. Khwaja Asadullah Baig*** 1996 SCC OnLine AP 152 (DB) and the need to reiterate does not arise.

17. I have considered the rival contentions.

18. As far as Issues no.2&3 are concerned, the non-disclosure even if any by the plaintiff cannot deprive the plaintiff of its substantial claim of recovery of *mesne* profits from the defendant Bank, who being in unauthorised occupation of the premises of the plaintiff and which now stands proved in the litigation going up to the Supreme Court for ejectment of the defendant Bank from the premises. Even otherwise, the plea of non-disclosure is vague and neither from the pleadings nor from the hearing is it clear as to what was not disclosed and what true facts were not pleaded. The same is the position with respect to Issue no.3 qua valuation. The relief claimed in the suit is a money claim and court fees has been paid thereon. Thus Issues no.2&3 are decided in favour of the plaintiff and against the defendant Bank.

19. That brings to the meat of the problem i.e. Issue no.1 and whereunder also only the rate at which the plaintiff is entitled to *mesne* profits is to be determined, the entitlement of the plaintiff to *mesne* profits having stood adjudicated in the decree for ejectment passed in favour of the plaintiff and against the defendant Bank which has attained finality. In fact in ***R.S. Maddanappa Vs. Chandramma*** AIR 1965 SC 1812, ***Gopalakrishna Pillai Vs. Meenakshi Ayal*** AIR 1967 SC 155, ***Santosh Arora Vs. M.L. Arora*** 2014 SCC OnLine Del 3005 (DB) and ***Chemons India Pvt. Ltd. Vs. Vijay Singh Sandhu*** (2013) 204 DLT 260 it has been held that even without a claim for *mesne* profits being made, the Court is empowered when passing a decree for ejectment from immovable property, to award *mesne* profits and/or to order an inquiry into *mesne* profits. So implicit is the entitlement for *mesne* profits of the owner, from the unauthorised occupation of the premises.

20. As far as the rate of *mesne* profits is concerned, the principles relating to assessment thereof have been discussed and laid down in detail in the judgments aforesaid and need to reiterate the same is not felt. Suffice it is to broadly state that applying the aforesaid judgments, what is evident from the three lease deeds being Ex.PW1/1, PW1/2 and PW1/4 proved by the plaintiff and the two lease deeds being DW3/1 and DW4/1 proved by the defendant Bank is that between the years 2005 and 2008 with which we are concerned in the present suit, the rate of rent in the locality in which the premises are situated were on the upswing.

21. Though there is a huge dichotomy between the rates of rent in the leases proved by the plaintiff and the leases proved by the defendant Bank but the reason therefor becomes immediately evident from the admission by the senior counsel for the defendant Bank, of the lease DW3/1 proved by the defendant Bank being in renewal of an earlier lease deed. Merely because a landlord of a premises in occupation of tenant agrees, for his or her own reasons, including of avoiding litigation, to the offer of a tenant already in occupation of the property to increase the rent, does not truly reflect the prevalent rent in the locality and which is the measure of *mesne* profits. Rather, Section 2(12) of the Code of Civil Procedure, 1908 (CPC) defines *mesne* profits as the profits which the person in wrongful occupation of the property actually received or might with the ordinary diligence have received therefrom, together with interest on such profits. Here the defendant Bank was in unauthorised occupation of the property of the plaintiff and the measure of the profits which the defendant Bank received from continuing in unauthorised occupation of the premises of the plaintiff is evident from the fact that the defendant Bank, on vacating the said

premises, had to take another premises in the same locality, vide lease deed Ex.PW1/4 supra at a rent of Rs.425/- per sq. ft. per month. Therefrom alone it is evident that the defendant Bank, by continuing to litigate with the plaintiff and resisting ejectment from the premises, benefited by not paying such rates of rent for the premises of the plaintiff.

22. Here the defendant Bank as aforesaid was in possession of the property of the plaintiff since the year 1962 and continued to enjoy the same under the protection of the Delhi Rent Control Act, 1958 till the applicability thereof was legislatively removed w.e.f. 1st December, 1988 and whereafter only the plaintiff became entitled to recover possession from the defendant Bank and whereafter also the defendant Bank inspite of being a Public Sector Bank resisted the same and dragged the plaintiff to litigation till the Supreme Court.

23. Going by the said logic, the defendant Bank should be liable to pay *mesne* profits to the plaintiff at Rs.425/- per sq. ft. per month. However since the *mesne* profits are for a period w.e.f. 19th December, 2005 the exercise of computing is to be undertaken.

24. On enquiry, it is informed that the defendant Bank was in occupation of 3100 sq. ft. area in the basement, 3100 sq. ft. area on the ground floor and 2900 sq. ft. area on the first floor.

25. Applying the aforesaid judgments and considering (i) that the subject premises are situated at main Janpath Road where commercial use is permitted of the ground as well as first floor and such use was in fact being made; and, (ii) that the defendant Bank was occupying the ground and first floor as a composite premises and its functions were spread over both the

floors, no distinction can be made between the rate of rent of the ground floor and the first floor. However the rate of rent of the basement though mostly used also for commercial purposes but permitted use whereof is for storage purposes, the rate thereof has to be less than that of the ground and first floors. A perusal of Ex.PW1/4 being the Lease Deed of the new premises taken on rent by the defendant Bank after vacating the premises of the plaintiff, also shows the defendant Bank to have agreed to pay the same rent for the ground as well as the upper ground floors of the new premises.

26. The aforesaid Lease Deed Ex.PW1/4 provides for increase in rent by 15% ever three years. Following the said trend, the rent for a period of three years prior thereto would be 15% less than the rent agreed to be paid for the subsequent three years and similarly for a period of every three years prior would have to be reduced by another 15%. Applying the said calculation, the *mesne* profits for three years prior i.e. December, 2005 to December, 2008 would be less by 15% of Rs.425/- i.e. @ Rs.369.56 paise per sq. ft. per month. However plaintiff has claimed at much lesser rate. Thus, the claim of the plaintiff for *mesne* profits, (a) for the month of December, 2005 @ Rs.137/- per sq. ft. per month; (b) from 1st January, 2006 to 31st December, 2006 @ Rs.200/- per sq. ft. per month; and, (c) from 1st January, 2007 to 31st December, 2008 @ Rs.396.56 paise per sq. ft. per month is allowed.

27. In the aforesaid state of affairs the need to discuss the other leases is not felt.

28. The counsel for the plaintiff has also sued for future *mesne* profits from the date of institution of the suit viz. December, 2008 till the date of vacation of the premises viz. 15th September, 2009.

29. I have enquired from the counsel for the plaintiff, how the plaintiff can claim future *mesne* profits in a simplicitor suit for recovery of arrears of *mesne* profits. Only in a suit for recovery of possession along with *mesne* profit, under Order XX Rule 12 of the CPC can the Court grant future *mesne* profits. Such claim is also contrary to the general principle of law otherwise, of the cause of action being prior to the date of institution of the suit. Reference in this regard may be made to ***Gopalkrishna Pillai*** supra, ***Santosh Arora*** supra and ***Cosmos Infra Engineering (I) Ltd. Vs. Tirupati Buildings & Offices (P) Ltd.*** 2016 SCC OnLine Del 6378.

30. The plaintiff, besides being entitled to *mesne* profits, is also entitled to interest thereon from the date of institution of the suit till realisation.

31. Though the Delhi Rent Control Act, 1958 has legislatively provided for interest at 15% per annum on arrears of rent which are akin to *mesne* profits but considering the prevalent rates of rent for the period of which the suit pertains, it is deemed appropriate to award to the plaintiff interest on the *mesne* profit due from the date of institution of the suit till the date of passing of the decree and/for another two months thereafter @ 9% per annum and thereafter @ 15% per annum.

32. The plaintiff shall also be entitled to costs of the suit with professional fee and miscellaneous expense assessed at Rs.2,00,000/-.

33. The senior counsel for the defendant Bank has contended that the plaintiff itself in or about 2012 let out the premises at much lesser rent. We are however not concerned with the prevalent rents in the year 2011-12 when the witness of the defendant Bank also deposed that the rent of the

premises taken by the defendant Bank reduced and rents for the period for which *mesne* profits are claimed have to be taken into consideration.

34. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 26, 2019
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(corrected & released on 21st December, 2019)