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

% **Date of decision: 23rd December, 2021**

\+ CM(M) 664/2021

ALKA SACHDEVA ..... Petitioner

Through Mr. Pawan Kumar Rawal and Mr. Tarun Agarwal, Advocates along with petitioner in person.

versus

NEERAJ GUPTA & ORS. ..... Respondents

Through Mr. Satish Sharma, Mr. Nitin Kapoor, Mr. Pankaj Kumar, Mr. Praful Singh Thakur and Mr. Vivek Panwar, Advocates for respondent No.1.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (ORAL)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 23rd September, 2021 passed by the Rent Control Tribunal (RCT), Shahdara, Karkardooma Courts, Delhi in RCT Appeal No. 01/2021 to the extent that the use and occupation charges have been fixed @ Rs.270/- per month.

2. The brief facts necessary for deciding the present petition are as follows:

2.1 The eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (DRC Act) was filed on behalf of the petitioner landlord on 15th April, 2015 in respect of Shop C forming part of property bearing No.A-4/4, Ground Floor, Main Road, Krishna Nagar, Delhi-110051 (suit property) in which respondents No.2 to 4 were respondents/tenants, however, respondent No.1 was not a party.

2.2 On 26th September, 2019, the eviction petition filed on behalf of the petitioner was allowed by the Rent Controller and eviction order was passed against the respondents No.2 to 4.

2.3 On 19th July, 2020, the petitioner filed an execution petition before the Rent Controller.

2.4 The said petition was opposed in August, 2020 by the respondent No.1 by filing an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC).

2.5 On 16th September, 2020, the respondent No.1 filed his objections to the execution petition.

2.6 Vide order dated 1st February, 2021, the Executing Court was pleased to dismiss the objections filed on behalf of the respondent No.1.

2.7 Against the said dismissal, on 11th February, 2021, an appeal was filed on behalf of respondent No.1 before the RCT.

2.8 On 9th March, 2021 the RCT stated that the petitioner shall not take coercive steps in the execution petition.

2.9 On 12th March, 2021, the petitioner filed an application under Section 151 of the CPC seeking use and occupation charges from the respondents, which was opposed by respondent No.1 by filing a reply.

2.10 Vide the impugned order dated 23rd September, 2021, the aforesaid application was disposed of by the RCT and use and occupation charges were granted at the contractual rate of Rs.270/- per month from the date of filing of the eviction petition.

3. The counsel for the petitioner submits that along with application under Section 151 of the CPC, the petitioner had filed two lease deeds in

respect of the properties located in the neighbouring area.

4. The counsel for the petitioner has also placed on record in this Court, three lease deeds dated 3rd September, 2011, 26th April, 2019 and 3rd August, 2018 in respect of shops no. A5/4, A5/8, A8/29, and A8/30 located in the same area and adjacent/opposite to the suit property. The tabular chart of the said lease deeds to ascertain the prevailing market rate of rent as submitted by the counsel for the petitioner is as follows:

S. NO	***ADDRESS***	***PAGE***	***SQUARE FEET***	***SQUARE METER***	***RENT***	***PER SQUARE FEET***	***SUIT PREMISES RENT***
1.	*A5/4 KRISHNA NAGAR. Front/main road facing just opposite to the suit premises and 10 walking steps away from the tenanted property Photograph annexed on page **21***	*ON PAGE 280-285 ANNEXURE -R*	*8'X8'=64' SQ.FT*	*5.94 SQ.MT*	*RS. 25,000/-*	*RS.390.63 SQ FT.*	*RS. 25,390/- P.M.*
2.	*A5/8 KRISHNA NAGAR. Front/main road facing and approx. 50 mtrs.*	*ON PAGE 286-292 ANNEXURE -S*	*922 SQ.FT*	*85.7 SQ.MT*	*RS. 45,000/-*	*RS.48.81 SQ.FT*	*RS.3172.65/- P.M.*

	Away from the tenanted premises						
3.	*A8/29 AND A8/30 KRISHNA NAGAR. Road facing and approx. 165 mtrs. Away from the tenanted premises (IN Lane)*	*ON PAGE 293-297 ANNEXURE -T*	*350 SQ.FT*	*32.60 SQ.MT*	*RS.15,000/- / RS.20,000/-*	*RS.57.15/ SQ.FT*	*RS.3714.75/- P.M.*

5. The counsel appearing on behalf of the respondent No.1 states that since the respondent No.1 was never recognized as a tenant by the petitioner and was not even made a party in the eviction petition, the judgment in ***Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.*** (2005) 1 SCC 705, would not be applicable to the facts and circumstances of the case as that was a case in which landlord and tenant relationship was admitted. Even if use and occupation charges were held to be payable in the present case, the condition of the suit property has to be taken into account to ascertain the same. Reliance is placed on the judgment of this Court dated 14th September, 2021 in CM(M) 196/2021 titled ***V.C. Jain Vs. Radha Kishan Poddar (Deceased) Through his Legal Heir Jagdeep Poddar & Ors***. He has handed over the photographs of the suit property in Court to show that the suit property is in a dilapidated condition and requires repairs. He has further contended that use and occupation charges could only be payable from the date that the objections filed by respondent No.1 were dismissed i.e. 1st February, 2021.

6. The counsel for the respondent has also handed over in Court, a comparative analysis chart of lease deeds for determining the rent of the impugned tenanted shop.

7. I have considered the submissions made by the counsels for the parties.

8. Even though this is not a case of an admitted landlord-tenant relationship, the ratio of the judgment in ***Atma Ram Properties (P) Ltd.*** (supra) would still be applicable to the facts and circumstances of the case as admittedly, the respondent No.1 continues to be in occupation of the suit property, despite his objections having been dismissed on 1st February, 2021. The Supreme Court in ***Atma Ram Properties (P) Ltd.*** (supra) has held as under:

> *"18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court.* ***<u>While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.</u>***
>
> *19. To sum up, our conclusions are:*
>
> ***<u>(1) While passing an order of stay under Rule 5 of Order 41 of</u>***

the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. ***With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.***

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.

20. In the case at hand, it has to be borne in mind that the tenant has been paying Rs 371.90p. rent of the premises since 1944. ***The value of real estate and rent rates have skyrocketed since that day. The premises are situated in the prime commercial locality in the heart of Delhi, the capital city.*** *It was pointed out to the High Court that adjoining premises belonging to the same landlord admeasuring 2000 sq ft have been recently let out on rent at the rate of Rs 3,50,000 per month. The Rent Control Tribunal was right in putting the tenant on term of payment of Rs 15,000 per month as charges for use and occupation during the pendency of appeal. The Tribunal took extra care to see that the amount was retained in deposit with it until the appeal was decided so that the amount in deposit could be disbursed by the appellate court consistently with the opinion formed by it at the end of the appeal. No fault can be found with the approach adopted by the Tribunal. The High Court has interfered with the impugned order of the Tribunal on an erroneous assumption that any direction for payment by the tenant* *to the landlord of any amount at any rate above the contractual rate of rent could not have been made. We cannot countenance the view taken by the High Court. We may place on record that it has not been the case of the respondent tenant before us, nor was it in the High Court, that the amount of Rs 15,000 assessed by the Rent Control Tribunal was unreasonable or grossly on the higher side."*

9. The position of law that emerges from the ***Atma Ram Properties (P) Ltd.*** (supra) is that the tenant has to compensate the landlords for the loss to be suffered by the landlords on account of stay granted by the Court on the execution of the impugned judgment passed in favour of the landlords. Furthermore, the Court can direct the tenant to compensate the landlords by payment of a reasonable amount, which does not necessarily have to be the same as the contractual rate of rent. The ratio of the judgment in ***Atma Ram Properties (P) Ltd.*** (supra) has been affirmed by the Supreme Court in ***State of Maharashtra & Anr. Vs. Super Max International Private Limited*** (2009) 9 SCC 772. Reference in this regard may also be made to the decision of this Bench in ***V.C. Jain*** (supra).

10. In the opinion of this Court, the present case is squarely covered by the case of ***Atma Ram Properties (P) Ltd.*** (supra), where the respondent No.1 has to compensate the petitioner for the loss to be suffered by the petitioner on account of the order dated 9th March, 2021 of the RCT stating that the petitioner shall not take coercive steps in the execution petition. It is to be noted that the order for eviction was passed in favour of the petitioner on 26th September, 2019 and the objections filed by the respondent No.1 were also dismissed on 1st February, 2021, and the respondent No.1 has no right to continue in possession. The respondent No.1 continues to be in possession of the suit property only on account of the interim protection granted to him vide the order dated 9th March, 2021.

11. Having found the petitioner to be entitled to use and occupation charges, the RCT has erroneously awarded use and occupation charges @ Rs.270/- per month. The judgment in ***Atma Ram Properties (P) Ltd.*** (supra) clearly states that the use and occupation charges do not necessarily have to be the same as the contractual rate of rent. The respondent No.1 is liable to pay compensation for use and occupation of the suit property at the same rate at which the petitioner would have been able to let out the suit property and earn rent if the respondent No.1 would have vacated the suit property.

12. What remains to be determined is the date from which the use and occupation charges are payable by the respondent No.1 and the rate at which the same are payable.

13. Admittedly, the eviction petition was filed in April, 2015 by the petitioner against the respondents No.2 to 4 and was allowed on 26th September, 2019. The petitioner was free to execute the eviction order passed by the Rent Controller from 26th September, 2019 till the grant of the direction to the effect that coercive action would not be taken by the petitioner on 9th March, 2021. However, the execution petition was filed by the petitioner only in July, 2020.

14. Therefore, in view of the aforesaid and the judgment of this Court in ***V.C. Jain*** (supra), the petitioner can claim use and occupation charges, apart from the contractual rate of rent, from the respondent No.1 only from August, 2020.

15. In the opinion of this Court, for fixing the compensation payable by the respondent No.1 to the petitioner, the best indicator would be the lease deeds of similar premises situated in the same locality. In order to ascertain the use and occupation charges to be paid by the respondent No.1, this Court finds it appropriate to rely upon the lease deeds at serial no.2 and 3 of the

aforesaid table as placed on record by the counsel for the petitioner. Amongst the three lease deeds placed on record by the counsel for the petitioner, the said two lease deeds are in a similar range, having similar rates per sq. ft. and having been entered into approximately one year apart. The lease deed at serial no.1 is deemed not relevant as the rent payable pursuant thereto is significantly higher, and this Court also deems it appropriate to take into account the dilapidated condition of the suit property, evidenced by the photographs filed thereof. It may also be made note of that the lease deeds relied upon the counsel for the respondent No.1 do not serve the said purpose as the same relate to a godown and a basement, and therefore, cannot be taken into account while fixing the use and occupation charges.

16. In the facts and circumstances of the case and based on the two lease deeds filed on behalf of the petitioner before this Court, this Court is of the view that the respondent No.1 would be liable to pay use and occupation charges @ Rs.3,500/- per month w.e.f. August, 2020.

17. Accordingly, this Court affirms the direction of the RCT to the extent that it directs the respondent No.1 to pay to the petitioner, the contractual rent @ Rs.270/- per month but for the period prior to the filing of the execution petition i.e. from the date of filing of the eviction petition i.e. from April, 2015 till the date the execution petition was filed by the petitioner i.e. July, 2020. The arrears of the contractual rent @ Rs.270/- per month w.e.f. April, 2015 till the date the execution petition was filed by the petitioner i.e. July, 2020, shall be paid by the respondent No.1 to the petitioner on or before 15th January, 2022.

18. The use and occupation charges @ Rs.3,500/- shall be deposited with the RCT on or before 10th day of every month, beginning from January,

2022.

19. The arrears of use and occupation charges @ Rs.3,500/- per month w.e.f. August, 2020 till December, 2021 shall be deposited with the RCT by the respondent No.1 on or before 15th January, 2022.

20. The use and occupation charges @ Rs.3,500/- shall be invested in a fixed deposit and the release of such amount with interest accrued thereon shall be directed by the RCT at the time of the disposal of the appeal by the RCT.

21. The counsel for the respondent No.1 submits that substantial arguments on behalf the respondents have already been heard by the learned RCT in the appeal.

22. Therefore, in view of the above, RCT is requested to expeditiously decide the said appeal.

AMIT BANSAL, J.

DECEMBER 23, 2021
dk