



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 19, 2022

+ RFA 100/2021, CM APPL. 6374/2021

SHRI. TRILOCHAN SINGH & ORS. Appellants
Through: Mr.Rajesh Yadav, Sr. Adv. with
Mr.Vaibhav Sethi, Mr. Shubhankar
Sehgal, Ms. Priya Pathania &
Mr.Dhananjay Mehlawat, Advs.

versus

SHRI. AMARJIT SINGH & ORS. Respondents
Through: Mr. Sidharth Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this appeal is to a Judgment / Decree dated January 25, 2020, passed by the Addl. District Judge-07, (South-East), Saket Courts, New Delhi in *Amarjit Singh and Anr. vs. Vinod Bhatnagar and Ors., Civil Suit No. 208785/2016*, whereby the Trial Court has decreed the suit in favour of the respondent Nos.1 and 2/plaintiffs against all the defendants i.e., (appellants and respondent No.3) for a sum of ₹18,00,000/- with simple interest @ 6% per annum from the date of filing of the suit till realization along with the cost of the suit.

2. The facts as noted from the record are that respondent No.3 / Vinod Bhatnagar (defendant No.1 in the suit) had occupied a shop on



the ground floor of the back portion of the property bearing No. HS-2, Kailash Colony Market, New Delhi, and one miani / mezzanine in property bearing No. HS-2/1, Kailash Colony Market, New Delhi at a monthly rent of ₹350/- excluding all other charges.

3. Respondent No. 3 / Vinod Bhatnagar (defendant No.1 in the suit) sublet the possession of the aforesaid tenanted portion to the appellant No.1 / Trilochan Singh (defendant No.2 in the suit) and Sh. Harbans Lal.

4. Two petitions under Section 14(1)(a) and under Section 14 (1)(b) of the Delhi Rent Control Act ('DRC', for short) were filed against respondent No. 3, appellant No.1, and Sh. Harbans Lal.

5. An eviction order was passed on April 19, 2003, in favour of the respondent Nos. 1 and 2 / plaintiffs and Sh. Surjit Singh and against respondent No.3 / (defendant No.1 in the suit), appellant No.1 / (defendant No.2 in the suit), and Sh. Harbans Lal. Thereafter, appeals were filed by respondent No.3 / Vinod Bhatnagar (defendant No.1), appellant No.1 / Trilochan Singh (defendant No.2), and Sh. Harbans Lal, which were dismissed on November 22, 2006. Thereafter, they preferred CM(M) Nos. 65/2007 and 70/2007 before this Court.

6. Sh. Harbans Lal died during the pendency of the proceedings and the appellant Nos. 2 to 4 who were defendant Nos. 3 to 5 being the only legal heirs of Sh. Harbans Lal were substituted in those proceedings. Both the CM(M) Nos. 67/2007 and 70/2007 were dismissed vide order dated January 03, 2012. Sh. Surjit Singh relinquished his share in the property by virtue of relinquishment deed / release deed for consideration dated February 15, 2006, in favour of



respondent Nos. 1 and 2 and he was left with no right / title or interest in the suit property.

7. Respondent No. 3 / Vinod Bhatnagar (defendant No.1 in the suit) and the appellants (defendant Nos.2 to 5 in the suit) failed to vacate the suit property / premises after passing of the eviction order dated April 19, 2003, and continued in possession.

8. It is the case of the respondent Nos. 1 and 2 / plaintiffs that they being unauthorized occupants are liable to pay the damages for use / occupation / *mesne* profits @ ₹50,000/- per month for three years prior to the filing of the suit.

9. Written statement was filed by the appellants herein. Defendant No. 1 (respondent No. 3 herein) did not file any written statement. The case of the appellants (defendants in the suit) is that respondent Nos. 1 and 2 / plaintiffs are guilty of suppression of material facts. It is stated that the appellants had approached the Supreme Court against the order / Judgment dated January 03, 2012, passed by this Court and the Supreme Court vide order dated May 08, 2012, passed the following order:

“Delay in filing substitution application is condoned and the application for substitution, to bring on record the legal representatives of deceased petitioner No.2 Harbans Lal Aneja, is allowed. Permission to file SLP by these legal representative is granted.

After having heard learned counsel for the petitioners and after having gone through the impugned order and the record, we find no ground to interfere with it and the special leave petitions are dismissed.

However, looking to the facts and features of the case we deem it fit and proper to grant one year’s time to



the petitioners to vacate the suit premises and hand over its peaceful possession to the respondents – decree holder, subject to their filling usual undertaking in this court within four weeks from today.”

10. According to the appellants (defendants in the suit), the Supreme Court has granted one year's time to vacate the suit property / premises in question till May 07, 2013, and cannot be said to be in illegal or unlawful possession of the said premises/suit property in question. A plea was also taken that the suit is *ex facie* barred by Section 47 of the Code of Civil Procedure, 1908 (for short, 'CPC'), and a separate suit like the present one is not maintainable.

11. A plea has also been taken by the appellants / defendant Nos. 2 to 5 that they are only liable to pay an amount of ₹250/- per month.

12. A replication to the written statement was filed by the respondent Nos. 1 and 2/plaintiffs and it has been stated that the respondent Nos. 1 and 2/plaintiffs had no knowledge of granting of time by the Supreme Court to the appellants and respondent No.3 to vacate the suit property / premises. It is also stated that the order dated May 08, 2012, of the Supreme Court has no effect upon the rights of respondent Nos. 1 and 2 / plaintiffs to claim the damages for use and occupation from the appellants and respondent No.3 (defendants in the suit) on account of their unlawful and illegal possession after passing of the order of eviction on April 19, 2003, at the prevalent market rate / rent.

13. After hearing the parties and perusing the record, the Trial Court framed the following issues:

- “1. Whether the suit is barred under Section 47 CPC? OPD
2. Whether the plaintiffs are entitled to recovery of suit



- amount, as prayed for? OPP*
3. *Whether the Plaintiffs are entitled to interest, if so at what rate and for which period? OPP*
4. *Relief.”*

14. Respondent Nos. 1 and 2 / plaintiffs had examined respondent No.1 / plaintiff No.1 as PW-1, Sh. Ved Prakash was examined as PW-2 and one Mrs. Kavita was examined as PW-3.

15. PW-2 and PW-3 were summoned in order to prove the prevailing market rate / rent in the locality, wherein the suit property / premises in question is located. PW-4 is Dheeraj Kumar, Junior Assistant from the Office of the Sub-Registrar who brought the registered lease deed of the suit properties/premises in the locality, where the suit property/premises in question is situated. Appellant No.1(herein), who was defendant No.2 in the suit examined himself as DW-1 in support of the case of the appellants (defendant Nos. 2 to 5), and thereafter DE was closed.

16. With regard to the Issue No.1, before the Trial Court that whether the suit is barred under Section 47 of the CPC, the onus to prove the issue was on the appellants and respondent No.3 (defendants). No evidence was led by the appellants and respondent No.3 (defendants) with respect to the said issue. It was held by the Trial Court that the issue is not maintainable in view of the fact that the eviction orders were passed in the eviction petition under Section 14(1)(a) and 14(1)(b) of the DRC Act and there was no suit pending for *mesne* profits. Section 47 of the CPC is applicable only when the question has been raised and decided by the Court passing a decree. Therefore, Section 47 of the CPC is no bar to the filing of the suit. The issue was decided against the appellants and respondent No.3 (defendants in



the suit).

17. With regard to the Issue No.2, before the Trial Court that whether the respondent Nos.1 and 2 / plaintiffs are entitled to recover the suit amount, the court has referred to the Judgment in the case of **Chander Mohan Chadha vs. Singer India Ltd., 2017 (166) DRJ 687**, and **Atma Ram Properties (supra)**, as referred to by the appellants, respondent No.3 and respondent Nos. 1 and 2 / plaintiffs. The Court was of the view that the Judgment of the Supreme Court in the case of **Atma Ram Properties (supra)** is squarely applicable to the case at hand. The Court referred to paragraph 16 of the Judgment in the case of **Atma Ram Properties (supra)**. The Trial Court held that from the perusal of the said Judgment in the case of **Atma Ram Properties (supra)** it is very clear that on the day on which the eviction orders were passed by the Court of Rent Controller / ARC, the possession of the tenants / sub-tenants became unauthorized, irrespective of the fact whether the statutory remedies have been availed by the tenants.

18. In view of the proposition of law laid down in the case of **Atma Ram Properties (supra)** it was held that the appellants and respondent No.3 (defendants in the suit) are liable to pay *mesne* profits. The Trial Court noted the fact, that *mesne* profits have been claimed for three years preceding the filing of the suit and on the basis of the evidence produced and on the basis of the testimony of the witnesses being PW-2 / PW-3 / PW-4 and also the fact that DW-1 admitted that the property bearing No. HS-1, Kailash Colony, New Delhi is situated near the suit property / premises in dispute, the use and occupation charges were awarded @ ₹50,000/- per month as sought by the respondent Nos. 1 and 2 / plaintiffs. The issue was decided in favour of respondent Nos.1 and 2 / plaintiffs and



against the appellants and respondent No.3 (defendants in the suit).

19. On the aspect of interest, the Trial Court has granted @ 6% simple interest per annum on the amount of ₹18,00,000/- (*mesne* profits for a period of three years prior to the filing of the suit) from the date of filing of the suit till realization.

20. Mr. Rajesh Yadav, learned Senior Counsel appearing for the appellants (defendants in the suit) would contest the impugned Judgment / Decree by the Trial Court stating that the same has been passed without appreciating the facts and evidence on record and also the law laid down by the Supreme Court. According to him, the appellants and respondent No.3(defendants in the suit) had approached the Supreme Court against the order / Judgment dated January 03, 2012, passed by this Court in CM (M) Nos. 65/2007 and 70/2007 and the Supreme Court vide its order dated May 08, 2012, having granted the appellants and respondent No.3(defendants in the suit) one year time to vacate the suit property / premises, and to hand over its peaceful possession to the respondent Nos. 1 and 2 / plaintiffs, the possession of the appellants and respondent No.3 (defendants in the suit) was never unauthorized or illegal. In fact, he laid stress on the fact that the Supreme Court had granted one year time to the appellants and respondent No.3(defendants in the suit) considering the facts and features of the case. He stated that the reliance placed by the Trial Court on the Judgment in the case of ***Atma Ram Properties (supra)*** is completely erroneous inasmuch as the Trial Court has read as if, the Supreme Court has held during the pendency of the appeals and / or petitions under Article 226 / 227 of the Constitution of India before the High Court and / or during the pendency of the SLPs before the Supreme Court, the tenant automatically becomes



unauthorized occupant and the landlord gets a right to prosecute the tenant for *mesne* profits. That apart, it is his submission that Section 2 (12) of the CPC defines the *mesne* profits as: “...which the person in the wrongful possession of such property actually received or might with the ordinary diligence have received therefrom,....”.

21. But in this case, the appellants and respondent No.3(defendants in the suit) were not in wrongful possession, in view of the order passed by the Supreme Court. They are liable to pay ₹250/- per month and nothing more. That apart, he states that if the respondent Nos. 1 and 2/plaintiffs had any claim for *mesne* profits / user charges, they should have approached the Supreme Court and sought directions with regard to the same. Having not done that, respondent Nos. 1 and 2 / plaintiffs could not have filed a suit for damages / *mesne* profits.

22. In comparison with the property as rented out by PW-3 was a corner road facing plot with easy entry and the best possible location as compared to the suit property/premises which fall between two shops and other plots on the remaining two sides with no entry, or exit if not via the said two shops. The location of the suit property / premises in question with no face entry or exit and is situated between two shops can in no way have fetched the same amount. That apart, the Trial Court has failed to appreciate that the property bearing shop No. HS-1 measured 245 sq. ft. plot against the suit property being 129 sq. ft. and as such ₹50,000/- could not have been awarded by the Trial Court.

23. On the other hand, Mr. Siddharth Aggarwal, learned counsel appearing for the respondent Nos. 1 and 2/plaintiffs contested the submissions made by Mr. Yadav by stating that no fault can be found in the



impugned Judgment / decree as the Trial Court has rightly relied upon the Judgment of the Supreme Court in the case of ***Atma Ram Properties (supra)*** and granted the relief in favour of respondent Nos.1 and 2 / plaintiffs herein. According to him, the possession of the appellants and respondent No.3(defendants in the suit) became unauthorized, wrong, and illegal w.e.f. the passing of the order of eviction dated April 19, 2003. He also stated that the respondent Nos.1 and 2 / plaintiffs had no knowledge about the filing of the petition before the Supreme Court and filing of an undertaking by way of an affidavit by the appellants and respondent No.3 (defendants in the suit) on the record of the Supreme Court. No copy of the alleged undertaking was ever received by respondent Nos.1 and 2 / plaintiffs.

24. The order dated May 08, 2012, has no effect upon the rights of respondent Nos.1 and 2 / plaintiffs to claim damages for use and occupation from the appellants and respondent No.3(defendants in the suit) on account of their unlawful and illegal possession after the passing of the order of eviction on April 19, 2003, at the prevalent market rate / rent. He also stated that the Supreme Court has not permitted the appellants and respondent No.3(defendants in the suit) to continue the use and occupy the premises in reference till at least May 07, 2013, on payment of the normal contractual rate of rent i.e., ₹250 per month. He also stated that the reliance placed by Mr. Yadav on the Judgment of this Court in the case of ***Chander Mohan Chadha (supra)*** is also misplaced inasmuch as in the said Judgment the Co-ordinate Bench of this Court has followed the dicta of the Supreme Court in the case of ***Atma Ram Properties (supra)***. He seeks dismissal of the appeal.



25. Further, on the case urged by Mr. Yadav that the Trial Court has failed to appreciate that the property bearing shop No. HS-1 measured 245 sq. ft. plot as against the suit property being 129 sq. ft., could not have fetched ₹50,000/- per month is concerned, he stated in the absence of any evidence placed by the appellants and respondent No.3 (defendants in the suit) in that regard that it would have fetched lesser amount, the order of the Trial Court cannot be interfered with.

26. Having heard the learned counsel for the parties, the issue which arises for consideration is in very narrow compass whether Trial Court was justified in granting *mesne* profits in favour of the respondent Nos.1 and 2 / plaintiffs for unauthorized occupation of the suit property after the order of eviction dated April 19, 2003.

27. I must state here that on September 09, 2021, a statement was made by the counsel for the appellants that they are not pursuing the appeal against the respondent No.3. The said statement was taken on record. Despite direction, no amended memo of parties is filed.

28. The submission of Mr. Yadav primarily was in view of the order dated May 08, 2012, passed by the Supreme Court which is reproduced as under, by which the Supreme Court has granted one year time to the appellants and respondent No.3 (defendants in the suit) to vacate the suit premises and handover its peaceful possession to respondent No.1 and 2 / plaintiffs, the occupation of the suit property till the expiration of one year was justified and they cannot be considered as unauthorized occupants. The relevant part of the Supreme Court order dated May 08, 2012, is reproduced as under:-

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After having heard learned counsel for the petitioners and after having gone through the impugned order and the record, we find no ground to interfere with it and the special leave petitions are dismissed.

However, looking to the facts and features of the case, we deem it fit and proper to grant one year's time to the petitioners to vacate the suit premises and handover its peaceful possession to the respondents-decree holder, subject to their filing usual undertaking in this Court within four weeks from today."

29. I am unable to agree with the submission of Mr. Yadav. The Judgment of the Supreme Court in the case of ***Atma Ram Properties (supra)*** is very clear wherein the Supreme Court in paragraphs 16, 17, and 19 has held as under:

"16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.

*17. In the Delhi Rent Control Act 1958, the definition of 'a tenant' is contained in Clause (I) of Section 2. Tenant includes 'any person continuing in possession after the termination of his tenancy' and does not include 'any person against whom an order or decree for eviction has been made'. This definition is identical with the definition of tenant dealt with by this Court in *Chander Kali Bai & Ors. case (supra)*. The tenant-respondent herein having suffered an order for eviction on 19.3.2001, his tenancy would be deemed to have come to an*



end with effect from that date and he shall become an unauthorized occupant. It would not make any difference if the order of eviction has been put in issue in appeal or revision and is confirmed by the superior forum at a latter date. The date of termination of tenancy would not be postponed by reference to the doctrine of merger.

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19. To sum up, our conclusions are:-

(1) while passing an order of stay under Rule 5 of Order 41 of 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 in so far 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 (I) 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.”

(emphasis supplied)

30. It is very clear with the passing of the eviction order by the Rent Controller / ARC, the possession of the tenant becomes unauthorized

31. Mr. Yadav has relied upon the Judgment of this Court in the case of ***Chander Mohan Chadha (supra)***. In that regard, the Trial Court while addressing the said Judgment has rightly recorded the following paragraph which reads as follows:

“xxxx xxxx xxxx

the right of the plaintiffs to mesne profits/damages for use and occupation would accrue only after the eviction order under the Delhi Rent Control Act was upheld by the last Court. If it were to be held that the landlord would be entitled to mesne profit even prior to the period the tenant is evicted from the premises in accordance with the procedure prescribed under the Rent Act, it would amount to defeating the provisions of the Rent Act by, on the one hand protecting the tenant from eviction till the RC is satisfied of a ground of eviction having been made out and on the other hand penalising the tenant with market rate.

xxxx xxxx xxxx”

RFA 100/2021



“64. However, I find that though I had in orders dated 8th February, 2017 and 20th February, 2017 observed that Atma Ram Properties (P) Ltd. supra was in the context of the powers of the Appellate Court to impose conditions while granting interim stay of order of eviction but on further consideration thereof I find the Supreme Court to have nevertheless also gone into the aspect of liability of a tenant protected under the Rent Act for mesne profits and to have held (i) that under Section 2(l)(ii) of the Delhi Rent Control Act, the tenancy terminates with the passing of the order of eviction; (ii) that 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; (iii) that the landlord is not bound by the contractual rate of rent effective for the period preceding the date of decree; (iv) that the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the order of eviction stands merged with the order passed by the superior forum at a later date; (v) that it would not make any difference if the order of eviction has been put in issue in appeal and is confirmed by the Appellate Court at a later date; (vi) that the date of termination of tenancy would not be postponed to the date of order of the Appellate Court.

65. Though the aforesaid dicta is of a two Judges Bench and the dicta in Hasmat Rai supra was of a Bench of three Hon'ble Judges but I may notice that though Hasmat Rai is not noticed in Atma Ram Properties (P) Ltd. supra but Atma Ram Properties (P) Ltd. is based on another earlier dicta in Chander Kali Bai v. Jagdish Singh Thakur MANU/SC/0366/1977 : (1977) 4 SCC 402. Moreover, the observations in Hasmat Rai supra were not in the context of award of mesne profits, while the observations in Atma Ram Properties (P) Ltd. supra are directly in the context of mesne profits. I am thus bound by Atma Ram Properties (P) Ltd. supra.

67. Accordingly, I hold entitlement of the plaintiffs to mesne



profits from the date next to the order of eviction i.e. w.e.f. 9th April, 1996.”

(emphasis supplied)

33. If that be so, this Court is of the view that the Trial Court is right in stating that it is clarified in **Chander Mohan Chadha (supra)** that **Atma Ram Properties (supra)** is applicable and the respondent Nos.1 and 2 / plaintiffs are entitled to *mesne* profits. In fact, in the case of **Chander Mohan Chadha (supra)**, the observation of this Court “*I am thus bound by Atma Ram Properties (P) Ltd. supra.*” clearly depicts that the issue in question is covered by the Judgment in the case of **Atma Ram Properties (supra)**. The plea of Mr. Yadav that the respondents 1 and 2 should have approached the Supreme Court seeking direction for payment of user charges is misplaced, in view of clear position of law. Even if the Supreme Court has not passed order on user charges while granting time to vacate the premises, it shall not preclude the respondents 1 and 2 to file a suit for *mesne* profits.

34. Even on the issue of *mesne* profits, the submission of Mr. Yadav that the Trial Court has failed to appreciate the property bearing shop No. HS-1 was a 245 sq. ft. plot as against the suit property being 129 sq. ft. and the amount of ₹50,000/- could not have been awarded by the Trial Court is not borne from the record, as no such plea was taken.

35. Even otherwise, I find the lease deed dated April 16, 2010, was placed on record with regard to the property No.HS-1, Kailash Colony Market, New Delhi on ground floor admeasuring 122.50 sq. ft. super area each (totaling 45 sq. ft. super area) and further, no evidence has been placed on record by the appellants and respondent No.3 (defendants in the suit)



that a property of the size of the suit property shall fetch a lesser rent / user charges.

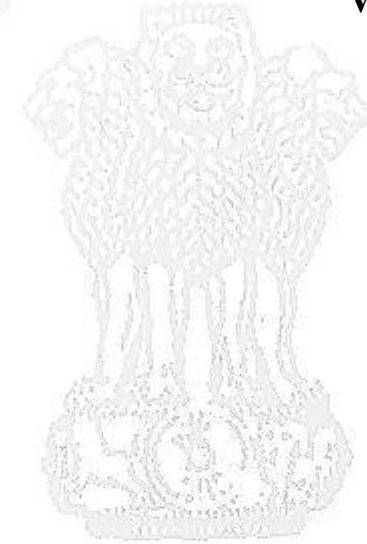
36. Hence, the plea is rejected. In view of my above discussion, I do not see any merit in the appeal, the same is dismissed.

CM No. 6374/2021 (for stay)

In view of the order passed in the appeal, the present application is dismissed.

V. KAMESWAR RAO, J

MAY 19, 2022/jg



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