



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 14th October, 2022

+ CS(OS) 339/2020, I.A. 2616/2021 (u/S 151 of CPC)

UMA HADA

..... Plaintiff

Through: Mr. Rajeev K. Virmani, Senior Advocate with Mr. Aditya Malhotra, Mr. Mohit Dang, Ms. Manpreet Kaur and Ms. Deveshi Madan, Advocates.

versus

SUNIL GUPTA

..... Defendant

Through: Mr. Neeraj Malhotra, Senior Advocate with Mr. Navlendu Kumar, Mr. Nimish Kumar, Ms. Shreya Singh and Mr. Anupam Kumar, Advocates.

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

AMIT BANSAL, J. (ORAL)

I.A. 3016/2022 (O-XII R-6 of CPC)

1. The present application has been filed on behalf of the plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) seeking following reliefs:.

“a. Pass a judgment in favour of the Plaintiff and against the Defendant for payment of a sum of Rs. 41,92,000/- (Forty one lakhs ninety two thousand only) as user and occupation charges of the Suit Property for the period November 2020 to December 2021 based on the predetermined agreed rate of Rs. 12,000/- (Rupees Twelve Thousand only) per day, and upon such judgment being pronounced, a decree be directed to be drawn



up;

b. In the alternative to prayer (a), pass a judgment in favour of the Plaintiff and against the Defendant for payment of a sum of Rs.37,82,350/- (Thirty Seven Lakhs Eighty Two Thousand Three Fifty Only) as user and occupation charges of the Suit Property for the period November 2020 to December 2021 based on judicially recognized principles on computation of such charges by adopting a 15% increase over the last paid rent of Rs.2,30,000/- per month, as computed in para 16 hereinabove, and upon such judgment being pronounced, a decree be directed to be drawn up;”

2. Notice in the application was issued on 23rd February, 2022 and the reply has been filed on behalf of the defendant on 13th October, 2022. No rejoinder has been filed on behalf of the plaintiff.
3. Senior counsel appearing on behalf of the plaintiff submits that he is not pressing prayer ‘a’ of the application and submits that the plaintiff would be satisfied if a judgment based on the alternate prayer ‘b’ is passed in favour of the plaintiff.
4. Brief facts necessary for deciding the present application are set out hereinafter:
 - i. On 25th August, 2016, the plaintiff and the defendant entered into an unregistered Lease Deed in respect of the suit property for a period of three years from 1st October, 2016 to 30th September, 2019 at a monthly rental of Rs.2,00,000/-. Rs. 4,00,000/- was paid as security deposit by the defendant to the plaintiff.
 - ii. Upon the expiry of the said Lease Deed, another Lease Deed dated 20th September, 2019 was entered into between the parties for the period from 1st October, 2019 to 31st October, 2020. The lease rental



in terms of the aforesaid lease was Rs.2,30,000/- per month.

iii. Upon the defendant's failure to pay the lease rent, the plaintiff issued a notice on 16th September, 2020 under Section 106 and Section 111(a) & (g)(1) of the Transfer of Property Act, 1882, calling upon the defendant to vacate the suit property by 31st October, 2020, the date of expiry of the lease. Since the defendant did not vacate the suit property, the present suit was filed seeking delivery of possession, damages/mesne profits and arrears of rent.

5. At the first hearing of the suit on 9th November, 2020, the Court directed the defendant to pay a monthly amount of Rs.2,30,000/- per month, being the last agreed rent. The defendant did not pay the aforesaid amount and hence, an application being I.A. No. 12358/2020 was filed on behalf of the plaintiff under Order XXXIX Rule 2 A of the CPC. Notice in the said application was issued on 21st December, 2020.

6. Thereafter, an application being under Order XII Rule 6 of the CPC was also filed on behalf of the plaintiff, in which a judgment and decree dated 3rd June, 2021 was passed in favour of the plaintiff for possession and payment of arrears of rent of Rs.14,10,000/- till October, 2020. It was further directed that the plaintiff shall also be entitled to simple interest at the rate of 18% per annum, w.e.f. the date of filing of the suit till the recovery of the amount.

7. The defendant in his written statement set up a defence that there was an oral Agreement to Sell entered into between the parties in respect of the suit property, in terms of which, the sale consideration was fixed at Rs.2,50,00,000/-. The aforesaid defence was rejected by this Court in the judgment dated 3rd June, 2021 as being sham and bogus.



8. An appeal against the aforesaid judgment and decree dated 3rd June, 2021 was filed on behalf of the defendant, which was dismissed as withdrawn by the Division Bench of this Court vide order dated 12th August, 2021. Paragraphs 8 and 9 of the aforesaid judgment are set out below:

“8. After substantial arguments, since we did not find any merit in this appeal and we started dictating the order in this appeal and also, made it clear that we are intent on imposing heavy and exemplary costs on the Appellant, Learned Sr. Counsel for the Appellant, on instructions of Mr. Navlendu Kumar who has spoken to the Appellant while the proceedings were on, seeks leave to withdraw the appeal.

9. Only because the Appellant has, at this stage, sought a leave to unconditionally withdraw the Appeal, we are permitting the said withdrawal and with no costs.”

9. In the execution proceedings filed on behalf of the plaintiff, a statement was made by the defendant on 3rd September, 2021 that he shall continue to pay the rent during the period of his occupation. Paragraph 5 of the said order is set out below:

*“5. Learned senior counsel for Judgment Debtor on instructions further submits that **the Judgment Debtor shall vacate the subject premises on or before 31.12.2021; shall continue to pay the rent and shall clear arrears of rent on or before 28.02.2022.**”*

10. Pursuant to the said order, an undertaking was filed on behalf of the defendant on 28th September, 2021. The relevant portion of the said undertaking is set out below:

*“3. **The JD submits & undertakes that Judgment Debtor shall vacate the subject premises i.e., W-6/19, Sainik Farm, New Delhi on or before 31.12.2021 and shall pay the rent (in***



fact has paid it) and shall clear arrears of rent on or before 28.02.2022.”

11. Pursuant to the said undertaking, *mesne* profit at the rate of Rs.2,30,000/- as per the lease rent was paid by the defendant to the plaintiff from September, 2020 to December, 2020.

12. Subsequently, the present application was filed on behalf of the plaintiff. It is pertinent to note that in the reply filed on behalf of the defendant to the present application, the defendant once again took the plea of the said oral Agreement to Sell (paragraph 4 of the reply), which defence had already been rejected by this Court in the judgment dated 3rd June, 2021, as sham and bogus.

13. Senior counsel appearing on behalf of the plaintiff has relied upon the judgment of this Court in ***Chander Kirti Rani Tandon v. M/s VXL Lodging N. Boarding Services Pvt. Ltd.***, 2013 SCC OnLine Del 406, to contend that the Court can award *mesne* profits above the lease rent and therefore, 15% enhanced amount should be awarded to the plaintiff as *mesne* profits.

14. Senior counsel appearing on behalf of the defendant submits that *mesne* profits can only be awarded by the Court upon the parties leading evidence. He further submits that in the present case, the period for which *mesne* profits have to be awarded was during the period of the pandemic, when the rents substantially had fallen down. He relies upon the judgment of this Court in ***Kusum Enterprises And Ors. v. Vimal Kochar & Another***, 2007 14 DLT 172 in support of his submissions.

15. In ***Chander Kirti Rani*** supra, this Court relying upon earlier judgments passed by this Court came to the conclusion that the Court can take judicial notice of increase in rents by applying provisions of Sections



57 and 114 of the Evidence Act, 1872. Applying the aforesaid principles to the case before the Court, the Court ordered payment of *mesne* profits after 15% enhancement of rent over the lease rent.

16. In the present case, while issuing notice on the first hearing of the suit on 9th November, 2020, this Court had directed the defendant to continue to pay a sum of Rs.2,30,000/- per month being the last agreed rent to the plaintiff. Admittedly, the aforesaid rent was not paid by the plaintiff and therefore, an application under Order XXXIX Rule 2 A of the CPC was filed on behalf of the plaintiff on 14th December, 2020. However, the defendant failed to comply with the aforesaid order of the Court and did not pay the aforesaid amount of Rs. 2,30,000/-.

17. In the execution proceedings, the statement of the defendant was recorded on 3rd September, 2021 that he will continue to pay the rent and clear the arrears of rent on or before 28th February, 2022. In the undertaking filed on 29th September, 2021 on behalf of the defendant also, it has been clearly stated that he shall pay the rent and in fact paid Rs.2,30,000/- for the month of September, 2021. The same amount was also paid by the defendant for the months of October, 2021 to December, 2021. Ultimately, the possession was handed over by the defendant to the plaintiff on 31st December, 2021.

18. The Division Bench of this Court has observed in ***Rajeev Tandon & Anr. v. Rashmi Tandon***, 2019 SCC OnLine Del 7336, that for the purposes of Order XII Rule 6 of the CPC, the admissions can be in the pleadings or in the documents filed on behalf of the parties. The admissions can also be constructive admissions, which can be inferred from the vague and evasive denial in the written statement. In ***P.P.A Impex Pvt. Ltd v. Mangal Sain***



Metal, 2009 SCC OnLine Del 3866, the Division Bench of this Court has observed that the approach to be taken under Order XII Rule 6 of the CPC is akin to that to be taken while considering a leave to defend application in a Order XXXVII suit. The Courts are already groaning under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to trial.

19. In light of the above, the defendant cannot contend at this stage that a sum of Rs.2,30,000/- per month as *mesne* profits would be on the higher side. It was the defendant himself, who had accepted the figure of Rs.2,30,000/- and paid occupation charges on the aforesaid basis for the months of September, 2021 to December, 2021. Vide order dated 9th November, 2020, this Court had directed the defendant to continue making the monthly payment of Rs.2,30,000/- during his occupation of the suit property. In fact, the defendant is in contempt by not complying with the said direction of this Court.

20. The senior counsel on behalf of the plaintiff presses that *mesne* profits be awarded with 15% enhancement over the lease rent, as was done in the case of *Chandra Kirti* (supra). In my view, there cannot be any absolute proposition of law that in all cases *mesne* profits have to be awarded at a rate of 15% over the lease rent. The award of *mesne* profits in every case has to be based on the facts and circumstances of the case, though judicial notice can be taken by the Court of prevailing circumstances. In the facts and circumstances of the present case and taking into account that the period for which the *mesne* profits are claimed, was during the COVID-19 pandemic period, it is deemed appropriate if *mesne* profits are awarded on the basis of



the last paid lease rent, i.e., 2,30,000/- per month.

21. Reliance placed on behalf of the defendant on the judgment in *Kusum Enterprises* is completely misplaced as in the present case, the plaintiff has given up its prayers for *mesne* profits of Rs.12,000/- per day as provided in the lease. Further, in the present case, I have awarded the *mesne* profits on the basis of the last paid rent.

22. From the discussion above, I am of the considered view that no trial is required in the present case for determination of *mesne* profits and it would be a waste of judicial time to put the same for trial.

23. Resultantly, the application under Order XII Rule 6 of the CPC is allowed and the plaintiff shall be entitled to the *mesne* profits at the rate of Rs.2,30,000/- for the period from November, 2020 to December, 2021. Out of the aforesaid period, the plaintiff has already received the *mesne* profits for the period September, 2021 to December, 2021. Further, the defendant shall also be entitled to adjust the amount of Rs.4,00,000/- paid by the defendant towards the security deposit.

24. The application stands allowed in above terms.

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25. Accordingly, a decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.19,00,000/- as user and occupation charges in respect of the suit property, with interest at the rate of 9% per annum w.e.f 1st of the succeeding month for which the payment fell due (e.g. for November, 2020, interest will be paid with effect from 1st December 2020 on unpaid amount). The interest shall be payable till the plaintiff receiving decretal amount. However, if the decretal amount is not paid by the defendant to the plaintiff on or before 15th January, 2023, the interest for the



period thereafter shall be @ 18% per annum till the realization of the decretal amount. The plaintiff shall also be entitled to costs of the suit.

26. The suit is decreed in terms of the above.
27. Let decree sheet be drawn up.
28. All pending applications stand disposed of.

OCTOBER 14, 2022
at

AMIT BANSAL, J.

