

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 02nd June, 2022**
Pronounced on: 15th December, 2022

+ **CS(OS) 597/2013**

M/S AMRIT ESTATES (P) LTD.
Registered office at A-3,
Kailash Colony, New Delhi
through its director Shri Balbir Singh Kohli

.....Plaintiff

Represented by: Mr. Harshvir Singh Kohli,
Advocate.

versus

PUNJAB NATIONAL BANK
7, Bhikaji Cama Palace,
New Delhi
Through its Chairman/Managing Director

.....Defendant

Represented by: Mr. Gagan Mathur, Mr. M.D.
Jangra, Mr. Varun Kumar &
Mr. Shitanshu, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

NEENA BANSAL KRISHNA, J.

1. The plaintiff has filed this Suit for recovery of mesne profits/damages in the sum of Rs. 3,40,80,000/- for unauthorized use and occupation of the premises by the defendant for the period 01st April, 1989 to 31st January, 2002 by way of amended plaint dated 26th February, 2013/25th May, 2017.

2. The long and arduous journey for recovery of possession and thereafter, for recovery of damages/mesne profits began way back in the year end of 1989. In this long span of almost 33 years, this case has gone through many bumps and jumps before reaching the stage of final adjudication. While the plaintiff was successful in getting the possession on 31st January, 2002, the struggle to get the mesne profits continues even now.

3. The plaintiff-M/s Amrit Estates (P) Ltd. had rented out the suit premises bearing No. A-28, Kailash Colony, New Delhi (*hereinafter referred to as "Suit Property"*) to the defendant Punjab National Bank vide Lease Agreement dated 07th December, 1979 on a monthly rent of Rs. 19,000/- per month, for the purpose of Residential Staff Training College. Another Agreement for Fittings and Fixtures including articles and furniture dated 07th December, 1979, was entered into between the parties for which monthly charges of Rs. 6,000/- were payable. The total rent thus payable was Rs. 25,000/- per month.

4. According to the Lease Agreement dated 07th December, 1979, the premises were agreed to be let out for three years, commencing from 02nd November, 1979 with an option to renew it for further period from time to time as may be intimated by the defendant. It was further agreed that in case the tenancy continued, there would be an enhancement of 10% in rent after every three years and a fresh Lease Deed shall be executed.

5. The plaintiff has claimed that the cumulative rent was Rs.25,000/- and not Rs.19,000/- and the 10% enhancement had to be on the cumulative rent and not on Rs.19,000/-. However, the defendant enhanced the rent by Rs.1,900/- on Rs.19,000/- and not on Rs.25,000/-. Consequently, the plaintiff was left with no alternative but to serve a Notice calling upon the

defendant to pay the rent at the increased rate of Rs.25,000/- w.e.f. 07th December, 1987. The plaintiff, however, has restricted the arrears of enhanced rent as legally recoverable for the past three years.

6. It is further asserted that no fresh Lease Agreement was executed by the defendant and the lease stood determined by efflux of time and the occupation of the defendant became illegal and unauthorized after 31st March, 1989. The plaintiff served a Notice dated 04th February, 1989 seeking possession and arrears of enhanced rent in response to which an illegal and erroneous reply was given by the defendant.

7. The plaintiff further asserted that the property in question could fetch a rent at the rate of Rs. 16/- per sq. ft. The area of tenanted premises was about 15,000 sq. ft. and thus capable of getting rent of Rs.2,40,000/- per month.

8. Hence commences the chequered journey of litigation. **This suit was filed for recovery of possession, damages and mesne profits** in the year 1989, before this Court. On account of change of pecuniary jurisdiction, the case got transferred to the District Courts on 26th August, 1993 where the suit remained pending till 05th December, 2012. The issues were framed on 09th May, 1995 by the learned Additional District Judge. While the case was pending, the parties arrived at a Settlement on 31st May, 2001 and *the possession of the property in question was delivered to the plaintiff on 31st January, 2002.*

9. The plaintiff filed an application for amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908(*hereinafter referred to as “CPC, 1908”*) dated 21st February, 2012, which was allowed leading to enhancement of the suit valuation. Consequently, vide Order dated 05th

December, 2012, the suit was returned by the District Court under Order VII Rule 10A of CPC, 1908 to be presented in the Court of competent jurisdiction.

10. **Thereafter, the present suit for mandatory injunction for realization of the mesne profits/damages was filed before this Court.** The prayer in the suit is confined to the claim for a preliminary decree followed by a final decree, for determination of damages/mesne profits at the market rate of Rs.24,30,000/- w.e.f. 01st April, 1989. In addition, the arrears of enhanced rent of Rs.21,600/- along with the interest @ 18% per annum from the date of institution of the suit till the date of realization, is claimed.

11. The **defendant in its Written Statement took the preliminary objections** that the alleged Termination Notice was illegal and void and the defendant cannot be termed as an unauthorized occupant and the plaintiff is not entitled to recovery of the mesne profits/damages. It was also asserted that since the relationship of landlord and tenant existed between the parties, the suit is barred by the provisions of Delhi Rent Control Act. Moreover, the defendant-bank is a nationalized bank and therefore, the provisions of Public Premises Act are applicable to the suit property. Further, the plaintiff had filed an earlier suit No. 209/1989 titled as *Amrit Estates Pvt. Ltd. v. Punjab National Bank* for Perpetual Injunction on similar facts and based on the Lease Deed dated 07th December, 1979 but had failed to claim relief of possession and damages and therefore, the present suit is barred under Order II Rule 2 of CPC, 1908.

12. It was further asserted that it has been wrongly alleged that the Managing Director and other senior officials had arrived at a settlement with the plaintiff on 31st May, 2001. It is claimed that the Managing

Director/Chairman never agreed for enhancement of rent as is wrongly alleged by the plaintiff. It has been explained that even if the proposal was received from the plaintiff, it was required to be looked at different levels of the functionaries of the bank. Nothing final was agreed nor any settlement for payment of rent/damages in the alleged meeting held on 31st May, 2001 was finalized. Moreover, no individual officer of the bank, irrespective of status, is empowered to arrive at a settlement until it is approved by the Board of the Bank, which alone is competent to agree for a settlement. However, the defendant-bank admittedly handed over the vacant possession of the tenanted premises on 31st January, 2002. It is asserted that since the possession has already been handed over and the entire rent has also been paid by the plaintiff-Company, the suit is without any cause of action and is liable to be dismissed.

13. Moreover, the claim of the plaintiff for damages/mesne profits w.e.f. 01st April, 1989 is barred by time and the plaint has not been filed and verified in accordance with the rules and laws. The original plaint along with the record, including documents exhibited/unexhibited and the evidence has not been filed on record even though it was returned by the District Court.

14. **On merits**, the defendant-bank has admitted having been inducted as a tenant vide Lease Agreement dated 07th December, 1979 and the initial rent being fixed at Rs.19,000/- per month, in addition to Rs.6,000/- for fittings and fixtures. It is, however, denied that the tenancy got determined by efflux of time or by Notice making them liable for payment of damages/mesne profits.

15. An application bearing I.A. No. 10254/2013 under Order VII Rule 11 of CPC, 1908 was filed on behalf of the defendant for rejection of the plaint

on the ground that the relief claimed in the present suit was barred by limitation. It was asserted that the present suit was filed on 27th February, 2013, while the rent damages and mesne profits were being sought from 01st April, 1989 to 31st January, 2002. However, vide Order dated 18th May, 2017, this Court dismissed the application by observing that the learned Trial Court vide Order dated 05th December, 2012 passed in Suit No. 58/02/12 had returned the Civil Suit No. 58/02/12 'on account of pecuniary jurisdiction' along with the court fee to be filed afresh before the competent court of law having pecuniary jurisdiction. It was observed that on the return, the present plaint had only been re-filed in this Court, which had the competent jurisdiction. It was held the present suit had not been filed on 27th February, 2013, but was continuation of the earlier suit (filed in the year 1989) which was within limitation and thus the present suit is also within limitation. The application under Order VII Rule 11 of CPC, 1908 was accordingly dismissed.

16. It is evident from this Order dated 18th May, 2017 that though the plaint had been returned on 05th December, 2012, the present suit bearing No. CS (OS) 597/2013, which had been filed afresh on return of the suit by Civil Judge, was treated as continuation of the proceedings and the trial was undertaken from the stage where it was pending before the Civil Judge, District Court.

17. In this context reference may be made to the judgment of this Court in Janak Datwani vs. CAN Exports Pvt. Ltd. & Ors., TR.P.(C.)57/2019 delivered on 25th July, 2019, wherein it was observed that normally if a Court ceases to have jurisdiction to entertain a suit, the correct course is to return the plaint to enable the party to present the same in a Court of

competent jurisdiction as provided under Order VII Rule 10 of the CPC. However, in cases where the suit is to be presented to the Court where it was initially filed on account of amendment in the valuation of the suit and the suit was initially transferred on account of change of pecuniary jurisdiction, in such a scenario, the procedure to be followed by the District Court ceasing to have jurisdiction is to have the matter placed before this Court. In such cases, this Court is not denuded of its powers under Section 24 of the CPC notwithstanding the fact that a direction has been issued to return the plaint.

18. Therefore, though the plaint had been returned under Order VII Rule 10 CPC but it was in effect a transfer and the plaint was re-instituted and re-numbered vide C.S.(OS) 597/2013 is nothing but continuation of the earlier Suit No.20/2003 and the proceedings conducted therein shall be read in the present suit.

19. **Issues** were framed vide Order dated 09th May, 1995, which are as under:

- “1. *Whether the plaint has been signed and verified by a duly authorized person on behalf of plaintiff? OPD.*
2. *Whether the suit is barred by the provisions of the Delhi Rent Control Act, 1958? OPD.*
3. *Whether the suit premises are governed by the provisions of Public Premises Act as contended by the defendant? OPD.*
4. *Whether the suit is barred under Order II Rule 2? OPD.*
5. *Whether the tenancy of the defendant stood terminated by efflux of time? OPP.*
6. *Whether the notice of termination of tenancy is illegal, null and void? OPD.*
7. *Whether the defendant is unauthorized occupant of the suit premises and liable to pay any damages/mesne profits for use and occupation of the premises if so, at what rate and for what period? OPP.*

8. *Whether the Plaintiff is entitled to the recovery of the possessions of the suit premises? OPP.”*

20. **PW-1 Mr. Balbir Singh Kohli**, one of the Directors of the plaintiff-Company, proved the Resolution dated 23rd September, 1989, which is exhibited as PW-1/1. He deposed that the site plan of the premises is PW-1/2, in respect of which one lease deed was executed in respect of the premises which was exhibited as PW-1/4, and other Deed was for higher charges which was exhibited as PW-1/5. He proved the Notice under Order XII Rule 8 of CPC, 1908 read with Section 66 of the Evidence Act, 1872 along with the postal receipt as Ex.PW-1/7 & Ex.PW-1/6 respectively and the other letters exchanged between the parties as Ex.PW-1/9 to 15. Copy of the Notice is exhibited as PW-1/16. He further deposed that the plaintiff is entitled to damages at the rate of Rs.2,40,000/- per month w.e.f. 01st April, 1989.

21. **PW-2 M.A. Sikendar** brought the summoned record pertaining to Lease Agreement 30th January, 1997, relating to premises No. A-39, Kailash Colony, New Delhi, which had been rented out at the rate of Rs. 16.80/- per sq. ft. for the area measuring 29300 sq. ft. for three years, starting from 16th January, 1996 to 15th January, 1999. As per the Lease Agreement dated 15th January, 1990 executed between the parties in respect of the same premises the rent was agreed for Rs.8.50 per sq. ft. per month for the period of six years w.e.f. 16th January, 1990.

22. **PW-3/Prem Narain Gupta** produced the original Lease Deed dated 18th September, 1987 executed by Shri Amarjit Singh, Director in respect of premises No. 6, Jamrudpur, New Delhi and deposed that the prevailing rate

of rent was Rs. 25/- per sq. ft. since 1998 and prior to that, the rate of rent was Rs. 13/- per sq. ft.

23. The defendant in support of its case examined **DW-1 Umesh Gaur**, who tendered his affidavit of evidence as Ex. DW-1/8 reaffirming their assertions made in the Written Statement.

24. The detailed evidence of the parties shall be considered subsequently.

25. The Written Submissions have been filed by the plaintiff as well as the defendant.

26. Learned counsel for the plaintiff has argued that the testimony of the plaintiff along with that of PWs-2 and 3 clearly establishes the prevailing rate of rent in the vicinity. It is further submitted that a meeting took place on 31st May, 2001 between Shri Balbir Singh Kohli, Authorized Representative of the plaintiff-Company with the higher officials of the defendant, wherein it was agreed that the defendant would pay damages for use and occupation of the suit premises as follows:

- (i) from 01st October, 1992 to 30th September, 1995 at the rate of Rs.85,000/- per month;
- (ii) from 01st October, 1995 to 30th September, 2000 at the rate of Rs.1,02,000/- per month (increase of 20%);
- (iii) from 01st October, 2000 at the rate of Rs.1,22,400/- till the date of vacating of premises.

The defendant despite having entered into a settlement has failed to abide by it and pay the damages. It is asserted that the plaintiff is, therefore, entitled to damages as claimed by it.

27. Learned counsel for the defendant stated that though PW-2 M.A. Sikendar and PW-3 Prem Narain Gupta have deposed in respect of the Lease Deeds but both the Lease Deeds have neither been exhibited nor have they been placed on record. The oral testimony of the two witnesses in respect of the contents of the lease deeds is not admissible.

28. It is further argued that the plaintiff had been receiving the rent/hire charges up to 31st January, 2002 on which date, the peaceful and vacant possession was handed over to the plaintiff. The alleged Agreement, on which reliance has been placed on behalf of the plaintiff to claim enhanced rent from 1990 till the date of eviction, has been denied. It is argued that the alleged Settlement never got materialized between the parties and the plaintiff in the absence of any cogent evidence to establish the prevailing market rate of rent for the similar properties for the same period, cannot claim the mesne profits as has been asserted. It is argued that the plaintiff has not been able to establish its claim for enhanced *mesne profits* and the Suit is liable to be dismissed.

29. **Submissions heard. My issue wise findings are as under:**

ISSUE NO.1

1. Whether the plaint has been signed and verified by a duly authorized person on behalf of plaintiff? OPD.

30. The plaintiff in support of its case has examined PW1 Balbir Singh Kohli, Director of the plaintiff Company, who has approved the Resolution dated 23rd September, 1989 Ex.PW1/1 passed by the Board of Directors in a meeting authorizing Mr. Balbir Singh Kohli to sign and verify the plaint and to institute the Suit on behalf of the plaintiff Company. The original Minute Book was also produced which was seen and returned. There is no cross-

examination of PW1 in regard to his authorization to sign, verify and institute the present Suit.

31. The defendant in support of its case has examined DW1 Umesh Gaur, but his testimony is absolutely silent in regard to the proper institution of the Suit under the signatures of Mr. Balbir Singh Kohli. The onus of proving this Issue was on the defendant who has failed to produce any evidence or to challenge the Board of Resolution or the Minutes of Meeting as proved by PW1 Balbir Singh Kohli.

32. It is thus held that the Suit has been signed and instituted by a duly authorized person. The Issue is decided against the defendant.

ISSUE NO.2

2. *Whether the suit is barred by the provisions of the Delhi Rent Control Act, 1958? OPD.*

33. A preliminary objection has been taken on behalf of the defendant that the Suit is barred under the Delhi Rent Control Act, 1958. However, it is an admitted case that the Suit Property was rented out to the defendant in the year 1979 at the rate of Rs.19,000/- per month, aside from Rs.6,000/- per month for the fittings and fixtures. The total rent payable was Rs.25,000/- per month.

34. Section 3 of the Delhi Rent Control Act, 1958 was inserted to include Clause C w.e.f. 01st December, 1988 which provided that this Act shall not apply to any premises whether residential or not, whose monthly rent exceeds Rs.3,500/-. The present Suit has been first instituted in the year 1989 at the time when the amendment had become effective. Any suit

premises having rent of more than Rs.3,500/- per month was excluded from the jurisdiction of Delhi Rent Control Act, 1958.

35. The present Suit is, therefore, not barred under Section 50 of the Delhi Rent Control Act, 1958 and is maintainable in this Court.

36. This Issue is decided against the defendant and in favour of the plaintiff.

ISSUE NO.3

3. *Whether the suit premises are governed by the provisions of Public Premises Act as contended by the defendant? OPD.*

37. A preliminary objection has been taken on behalf of the defendant that the Suit Property is governed by Public Premises Act and the Suit is not maintainable in this Court. The Public Premises Act is applicable to the Government Premises which are rented out by the Government to a private person. In the present case, the Suit Property which is the personal property of the plaintiff, had been taken on rent by the defendant which happens to be a Public Sector Undertaking. The present Suit which is for recovery and possession of *mesne profits* has been filed by an individual in respect of his personal property and the Public Premises Act is not attracted to the present Suit.

38. The Suit is maintainable before the Civil Court. This Issue is decided against the defendant and in favour of the plaintiff.

ISSUE NO. 4

4. Whether the suit is barred under Order II Rule 2? OPD.

39. The defendant has taken an objection that the plaintiff as per its own averment, had earlier instituted the Suit for Permanent Injunction against the defendant and has now filed the subsequent Suit for possession/*mesne profits*. It is claimed that the plaintiff could have sought the reliefs claimed in the present Suit, in its earlier Suit of injunction and having failed to do so, the present Suit is barred under Order II Rule 2 of CPC, 1908.

40. The objection taken about the present Suit being barred under Order II Rule 2 of CPC, 1908 is completely fallacious. The plaintiff has explained that the Suit Property had been let out to the defendant for the purpose of being used as a Training Institute for the staff of the defendant. The Suit Property was found to have been vacated and there was an apprehension that the defendant may start using the Suit Property for other purposes. It is only to protect the Suit Property that a Suit for Permanent Injunction was filed against the defendant.

41. The cause of action in the earlier Suit was absolutely different from the present Suit, and the objection of the present Suit being barred under Order II Rule 2 of CPC, 1908 is not tenable and is hereby rejected. This Issue is decided against the defendant and in favour of the plaintiff.

ISSUE NOS. 5 and 6

5. Whether the tenancy of the defendant stood terminated by efflux of time? OPP.

6. Whether the notice of termination of tenancy is illegal, null and void? OPD.

42. Admittedly, the parties entered into the Lease Agreement *vide* Lease Deed Ex.PW1/4 and a separate Hire Charges Agreement Ex.PW1/5 was also executed.

43. According to Clause 3 of the Lease Agreement, the period of Lease was agreed to be three years commencing from 02nd November, 1979 and the Lessee i.e. the defendant Bank had the option to renew it for further period from time to time as may be intimated by the Lessee i.e., the defendant Bank.

44. Clauses 3, 4 and 18 of the Lease Agreement read as under:

“Clause 3–

That the period of the lease granted by the lessor to the lessee for the premises has been agreed to for THREE YEARS commencing from 02-11-1979 and the lessee shall have the option to renew it for further periods from time to time as may be intimated by the lessee.

Clause 4–

That after expiry of the said tenancy period, the lessor wishes to continue the tenancy, then in that case an enhancement of 10% in rent shall be made after every three years and a fresh lease deed will be executed for each extension of period which shall never be less than three years.

Clause 18–

That the Bank shall have the right to vacate the premises by giving 30 days’ notice in writing of its intention to do so irrespective of the period fixed.”

45. The Clause 3 of the Lease Agreement reflects that it was the defendant which had the option to renew it after the expiry of the initial period of three years from the commencement of tenancy. Clause 4 provided

that in case of the Lessee intending to continue with the tenancy, the rent shall be enhanced by 10% in every three years and a fresh Lease Deed shall be executed for such extension. Clause 18 of the Lease Deed gave the right to the Bank for vacating the premises at any time irrespective of the Rent Agreement by giving a 30 day Notice.

46. The Lease Deed, therefore, provided for unilateral extension of the tenancy on the will of the defendant Bank with the only condition being that the rent shall be enhanced by 10% in every three years.

47. There is no dispute or challenge that after the expiry of initial three years, the tenancy was renewed for a further period of three years and the rent was enhanced by 10%.

48. The defendant-Bank admittedly enhanced the rent in terms of Lease Deed by 10% from Rs.19,000/- to Rs.20,900/- per month being the 10% of the previous rent. A challenge has been raised by the plaintiff that the defendant had failed to enhance the Hire charges in the sum of Rs.6,000/- per month by 10%, despite the Agreement between the parties.

49. It has been rightly asserted on behalf of the defendant that while the Lease Agreement Ex.PW1/4 specifically provided for enhancement of rent by 10% on its renewal, but the fittings and fixtures Agreement Ex.PW1/5 did not contain any such Clause of an automatic enhancement by 10% in every three years. There was no consensus between the parties in regard to the enhancement of the hire Charges in the Agreement and the same could not have been claimed by the plaintiff unilaterally on the basis of clause existing in the Lease Agreement Ex.PW1/4.

50. PW1 has admitted in his cross-examination that the Income Tax Department had attached the rent being paid by the defendant towards the

outstanding dues of the plaintiff towards income tax. The defendant Bank in terms of the Attachment Order, was admittedly regularly paying the rent to the Income Tax Department. It is further admitted that since the Appeals were pending, the rent up to 1988-89 was paid to the Income Tax Department under the Attachment Order of Income Tax Authorities.

51. PW1 Balbir Singh Kohli has deposed that the tenancy of the defendant was terminated w.e.f. 31st March, 1989 *vide* Legal Notice dated 04th February, 1989 Ex.PW1/16. **The defendant in its Written Statement** had not denied the service of Legal Notice Ex.PW1/16, but had only asserted that the plaintiff had no right to terminate the tenancy and the Legal Notice was null and void as it was in lawful occupation of the Suit Property in the capacity of a tenant, and the rent was being paid without default by the defendant Bank.

52. The defendant may have been induced as a tenant, but no evidence has been led on behalf of the defendant that after the renewal of the Lease Agreement since 1982 till 1985 it ever exercised its right for renewal of the tenancy, but had continued to pay the rent to the Income Tax Department @ Rs.21,100/- and Rs.6,000/- for the fittings and fixtures as it had been paying earlier pursuant to the Attachment Order of the Income Tax Department orders.

53. In terms of Clauses 3 and 4 of the Lease Deed, the defendant had a right for extension of the Lease Deed, subject to enhancement of rent by 10% which has not been done. There is no evidence produced by the defendant to show that there was any renewal of the tenancy after its expiry in 1985.

54. The plaintiff has specifically claimed that it terminated the tenancy w.e.f. 31st March, 1989 *vide* Legal Notice dated 04th February, 1989 w.e.f. 31st March, 1989. The tenant having failed to have exercised its option of renewal of enhancement of rent, cannot claim to be a permanent tenant in the Suit Property. The plaintiff was well within its right to terminate the tenancy which in any case stood expired by efflux of time. Considering that the plaintiff is claiming termination of tenancy by efflux of time and also pursuant to legal notice Ex. PW1/16 w.e.f. 31st March, 1989, it is held that the tenancy stood validly terminated and the defendant became an unauthorized occupant in the Suit Property after the termination of the tenancy. There is no ground made out of the defendant being a tenant after termination of tenancy and the defendant being an unlawful occupant is held to be liable to pay *mesne profits* to the plaintiff.

55. The issues No. 5 & 6 are decided against the defendant and in favour of the plaintiff.

ISSUE NO. 7

7. *Whether the defendant is unauthorized occupant of the suit premises and liable to pay any damages/mesne profits for use and occupation of the premises if so, at what rate and for what period? OPP.*

56. Having concluded in Issue No. 5 & 6 that the defendant is an unauthorized occupant of the Suit Property and is liable to pay the damages/*mesne profits* for use and occupation of the Suit Property, the *mesne profits* are now required to be determined.

57. The question which arises is the period and the rate for which the plaintiff is entitled to *mesne profits*. The PW1 Balbir Singh Kohli had deposed in his testimony recorded on 15th April, 1998 that the prevalent market rate was Rs. 16 per sq. ft. per month at the time of termination of tenancy, and at present, the rate of rent is not less than Rs. 50 per sq. ft. per month.

58. PW1 Balbir Singh Kohli in his cross-examination has explained that he was claiming the prevailing rate to be Rs. 16 per sq. ft. as when the Suit was filed in the year 1989, the premises bearing No. A-39, Kailash Colony, New Delhi was fetching the rent @ Rs. 9/- per sq. ft. He also explained that this property belonged to Smt. Amrit Kaur and the tenant was Indira Gandhi Open University and they had obtained a copy of the Lease Deed between the aforesaid landlord and the tenant. However, no Lease Deed, the copy of which was allegedly obtained by the plaintiff, has been proved in the testimony of PW1.

59. PW1 further admitted in his cross-examination that he cannot get the details of prevailing rate in the vicinity of Kailash Colony in the year 1989 or thereafter. No cogent evidence in regard to the prevailing rate of interest has been led by PW1 Balbir Singh Kohli.

60. The plaintiff had also examined PW2 M.A. Sikendar from M/s. Navodaya Vidyalaya Samiti, an autonomous body under the Department of Education at Delhi (as explained in the cross-examination) who produced a Lease Agreement dated 30th January, 1997 relating to Premises No. A-39, Kailash Colony, New Delhi, wherein the rate of rent was stated as to be Rs. 16.80 per sq. ft. for the area measuring 29,300 sq. ft. The premises comprised basement, lower ground floor, Duplex flats, flat on first and

second floor, lift room etc. for the period of three years from 16th January, 1996 to 15th January, 1999. Earlier also a similar Lease Agreement was executed on 15th January, 1990, wherein the same premises had been let out @ Rs.8.50 per sq. ft. per month for a period of six years w.e.f. 16th January, 1990. This witness in his cross-examination has admitted that the original Agreement dated 15th January, 1990 was not registered. Interestingly, though the witness had deposed about the Lease Deed, but the copy of the same was never placed on record. In the absence of the Lease Deed, it is difficult to ascertain the nature of construction, its location and vicinity to draw parity of rent.

61. The plaintiff had also examined PW3 Prem Narain Gupta Clerk, working with Iqbal Properties on 16th March, 2001 to prove the prevailing rate of rent during the relevant period. He deposed that he had brought the original Lease Deed dated 18th September, 1987 but the copy of the same was never placed on record, nor was Lease Deed exhibited. He deposed that the rent was initially Rs.13/- per sq. ft. in respect of Premises No. 6, Jamrudpur, New Delhi, while the present rate of rent was Rs. 25 per sq. ft. since 1998. The witness in the cross-examination stated that he was not aware of the measurement of the plot in question.

62. What emerges significantly is that PW-2 and PW-3 though had deposed on the basis of Lease Deeds, but neither were the Lease Deeds placed on record, nor were they exhibited. In the absence of the Lease Deed, it is difficult to ascertain the nature of construction, its location and vicinity to draw parity of rent. The testimony of PW-2 & PW-3 therefore is of little assistance to prove the prevailing rate of rent in the locality.

63. DW-1 Umesh Gaur in his testimony recorded on 07th December, 2018 had deposed that as per the information received from the records, one Mr. Anand, owner of the Premises No. E-239, East of Kailash, New Delhi had let out the built-up area of 1200 sq. ft. on a monthly rent of Rs.7,000/- which comes to Rs. 5.83 per sq. ft. per month, in the year 1989-1990. He further deposed that one Mr. Rajiv Tyagi, Advocate-on-Record in the Supreme Court of India, had informed the Bank officials that he had rented the first floor of the building situated in the vicinity of Kailash Colony in the year 1990 having usable area of 1300 sq. ft. at the rate of Rs.6,500/- per month which comes approximately Rs. 5 per sq. ft. with a clause of 10% increase in every two years and that in the year 2001, he was charging the rent at the rate of Rs.10,000/- per month.

64. Though DW-1 had made a reference of the prevailing rent in respect of property in East of Kailash and in the vicinity of Kailash Colony but had admitted in his cross-examination that East of Kailash Colony is a different locality from Kailash Colony, where the property is situated and as per his knowledge, the rent in the different localities are different. He also deposed that he had never personally met Mr. Rajiv Tyagi, Advocate nor had he seen any rent agreement pertaining to Mr. Rajiv Tyagi.

65. From his own admissions in the cross-examination, it is quite evident that no cogent and admissible evidence has been let on behalf of the defendant in respect of the prevailing rate of rent.

66. Neither the plaintiff has been able to produce any cogent evidence in respect of the prevailing market rate nor has the defendant been able to prove any evidence in this regard.

67. The other aspect which needs to be examined is whether the parties agreed to payment of any user and occupation charges. The plaintiff had claimed that on 31st May, 2001, a meeting took place between Mr. Sardar Singh Kohli, Authorized Representative of the plaintiff-Company and the senior officials of the defendant-Bank, wherein it was agreed by the defendant-Bank to pay damages for use and occupation of the Suit Property in the absence of Lease Deed in the following manner: -

S.No.	Period	Rate of rent (per month)	Remarks, if any
1.	01 st October, 1990 to 30 th September, 1995	Rs. 85,000/-	
2.	01 st October, 1995 to 30 th September, 2000	Rs. 1,02,000/-	With an increase of 20%
3.	01 st October, 2000 till the date of vacation	Rs. 1,22,400/-	With an increase of 20%

68. The Suit Property stands vacated on 31st January, 2002.

69. **The defendant in its Written Statement** to the amended plaint had denied there being any such settlement between the parties. However, at the initial stage, various documents had been filed on behalf of the plaintiff which were admitted by the defendant. The first is the Letter dated 22nd January, 1992 Ex.P1 which was written by the defendant to the plaintiff,

wherein the Bank had expressed its willingness, pursuant to the meeting held with the plaintiff, to accept the rent in principal @ Rs.75,000/- per month w.e.f. 01st October, 1990 and hire charges Rs.20,000/- per month w.e.f. 01st October, 1990. The increase in rate of rent was agreed in principal, subject to the conditions that the pending Suit shall be withdrawn; a fresh Lease Deed shall be executed and repairs/replacement of all fixtures/fittings shall be undertaken. There was a reiteration of these terms in the subsequent Letter dated 14th October, 1992 Ex.P2, admittedly written by the defendant-Bank to the plaintiff. The third Letter dated 15th February, 1995 Ex. P3 addressed by the defendant-Bank to the plaintiff, had indicated the verbal acceptance for the extension of the Lease Deed by the plaintiff for a period of three years upto 30th September, 1999 with an increase in rent and hire charges @ 20% from October, 1996 which had been verbally accepted.

70. The defendant further conveyed its proposal of accepting the enhanced rate of rent with the only condition that the hire charges @ Rs. 20,000/- per month shall be payable only after the replacement of permanent fixtures/fittings, electrical items and the works agreed to be executed by the plaintiff. All other items as contained in the earlier two Letters Ex.P1 and P2, were reiterated.

71. The defendant-Bank thereafter addressed another Letter dated 24th March, 1995, again making a reference to the earlier Letters dated 22nd January, 1992 Ex. P1 and 14th October, 1992 Ex.P3 reaffirming its proposal as given by Letter dated 15th February, 1995 Ex. P3 and sought confirmation from the plaintiff. The possession of the Suit Property was handed over *vide* Letter 31st January, 2002 Ex.P5.

72. This was followed by Letter dated 02nd June, 2001 Ex.P6 addressed by the plaintiff to the defendant incorporating the meeting held on 31st May, 2001 between the Authorized Representative of the plaintiff and the officers of the defendant-Bank specifying the rate of rent payable from 01st October, 1990 till the date of vacation. Interestingly, the letter has been admitted by the defendant, though its contents have been denied.

73. Similar is the Letter dated 20th February, 2002 Ex.P7 addressed by the plaintiff to the defendant reaffirming the contents of earlier Letter dated 31st May, 2001 which interestingly also has been admitted by the defendant, but its contents have been denied.

74. It is evident from the trail of letters as mentioned above that the defendant itself agreed to pay the use and occupation charges in the following manner: -

S.No.	Period	Rate of rent (per month)	Remarks, if any
1.	01 st October, 1990 to 30 th September, 1995	Rs. 85,000/-	
2.	01 st October, 1995 to 30 th September, 2000	Rs. 1,02,000/-	With an increase of 20%
3.	01 st October, 2000 till the date of vacation- 31.01.2002	Rs. 1,22,400/-	With an increase of 20%

75. There cannot be any evidence better than the admissions of a party.

76. Considering that the defendant itself had offered to pay the rent @ Rs.75,000/- per month and @ Rs.20,000/- for fittings/fixtures w.e.f. 01st October, 1990 with an increase of 20% after a period of three years, the plaintiff is held entitled to the mesne profits as stated above. However, it is not disputed that the defendant had continued to pay the rent/ user and occupation charges at the initial agreed rate till the date of vacating the premises, which are liable to be adjusted from the due amount.

ISSUE NO. 8

8. *Whether the Plaintiff is entitled to the recovery of the possessions of the suit premises? OPP.*

77. The plaintiff has already received the peaceful and vacant possession of the Suit Property on 31st January, 2002 from the defendant. This Issue has, therefore, become infructuous.

78. It may also be mentioned that the plaintiff had subsequently amended its Suit restricting it to the relief of mesne profits for use and occupation charges by the defendant.

RELIEF:

79. In view of the findings on the Issues, the Suit of the plaintiff for mesne profits and for use and occupation charges is hereby decreed and the defendant is directed to pay the same at the rate as determined in Issue no.7 subject to adjustment of any amounts which have been paid by the defendant during this period, as follows:

- (i) from 01st October, 1992 to 30th September, 1995 at the rate of Rs. 85,000/- per month;
- (ii) from 01st October, 1995 to 30th September, 2000 at the rate of Rs. 1,02,000/- per month;
- (iii) from 01st October, 2000 at the rate of Rs. 1,22,400/- till the date of vacating of premise. 31.01.2002.

80. The deficient court fee be paid. Parties to bear their own costs.

81. Decree sheet be prepared accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 15, 2022
S.Sharma