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

+ RSA 189/2024, CM APPLs. 64369/2024, 64370/2024, 64371/2024
& 64372/2024

UNION OF INDIA & ANR.

.....Appellants

Through: Mr.Anil Kumar Saxena, SPC with
Mr.Rajendra Rawat, Adv.

versus

NEW FRIENDS COLONY CO-OPERATIVE HOUSE BUILDING
SOCIETY LIMITED

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **04.11.2024**

1. Heard learned counsel appearing on behalf of the appellant-defendants.
2. The instant appeal has arisen out of the judgment and decree dated 26.07.2019, passed by the Additional District Judge, South-East, Saket Courts, New Delhi, whereby the judgment and decree dated 30.10.2017, passed by learned Civil Judge, (Central), Tis Hazari Court, Delhi in civil suit no.95759/16/01, decreeing the civil suit filed by the respondent-plaintiff, has been affirmed.
3. The facts of the case indicate that the respondent-plaintiff instituted a civil suit for recovery of possession and damages/*mesne* profit by claiming that the appellant-defendant i.e., a Post Office, South East Division, New Delhi was inducted as tenant by the respondent-plaintiff i.e. New Friends



Cooperative House Building Society.

4. It was the case of the respondent-plaintiff that on account of non-payment of arrears of rent, the tenancy got terminated. The respondent-plaintiff, in addition to the relief of possession, also prayed for the decree of damages and *mesne* profit.

5. The appellant-defendant contested the civil suit, claiming that the suit was neither filed by an authorised person nor any lease agreement was executed between the parties.

6. The Trial Court, after conducting the trial, decreed the civil suit in favour of the respondent-plaintiff. It also appears from the facts case that during the pendency of the civil suit, the possession of the suit premises was handed over to the respondent-plaintiff on 31.03.2006. The Trial Court, however, awarded arrears of rent of Rs.2000/- with effect from 01.09.2000 till 31.12.2000 and damages/*mesne* profits with effect from 01.01.2001 till the date of filing of the suit i.e. till 09.05.2001, at the rate of 100/- per day (Total Rs.10,000/-).

7. While relying upon the rent agreement of the surrounding areas and considering the location the suit property, the respondent-plaintiff was also awarded *mesne* profit/damages at the rate of Rs.100/- per day with effect from 09.05.2001 till 31.03.2006 along with interest at the rate of 10% per annum.

8. The aforesaid judgment and decree came to be challenged by the appellant-defendant before the First Appellate Court. The First Appellate Court, while finding no reason to entertain the appeal, affirmed the decision of the Trial Court. The appellant-Union of India had therefore, preferred the instant second appeal.



9. Learned counsel appearing on behalf of the appellant-defendant contends that the respondent-plaintiff had failed to establish the claim for damages and has not produced any evidence. Learned counsel further submits that it was not contended that the respondent-plaintiff did not make the payment of rent. He further submits that there is nothing on record to indicate any tenancy on a monthly basis and therefore, there arose no cause of action to file the civil suit.

10. I have considered the aforesaid submissions and have perused the record.

11. The First Appellate Court, in the impugned judgment and decree, noted that the defence of the appellant-defendant was struck-off and therefore, the assertion made by the respondent-plaintiff was accepted, as they remained uncontroverted and unchallenged.

12. A perusal of the judgment and decree passed by the Trial Court further indicates that the Trial Court had considered the evidence of *Mr. Nand Kishore Katyal*, who was produced on behalf of the respondent-plaintiff.

13. Since the possession of the suit premises was already handed over to the respondent-plaintiff on 31.03.2006, therefore, the Trial Court rightly did not adjudicate upon issue no.1, which was *'Whether plaintiff is entitled for the decree of ejectment as claimed in prayer clause (a) of the plaint?OPP'*.

14. Issue no.2, however, was with respect to *'Whether the plaintiff is entitled for the decree of Rs.2000/- as claimed in prayer clause (b) of the plaint?OPP'*

15. The Court, in paragraph no.14 of the aforesaid judgment and decree found that *'unrebutted testimony of its witness, PW-1 remained that*



respondent/plaintiff is entitled for a sum of Rs.2000/- on account of non-payment of rent for the time period 01.09.200 till 31.12.2000. The said witness PW-1 was not cross-examined with respect to the said deposition.'

16. The Court, therefore, found that the evidence of PW-1 to be true. Paragraph no.14 of the aforesaid judgment reads as under:-

"14. Unrebutted testimony of its witness, PW-1 remained that plaintiff is entitled for a sum of Rs. 2,000/- on account of non-payment of rent for the time period 01.09.2000 till 31.12.2000. PW-1 was not cross-examined with respect to the said deposition. I have no reason to doubt the said claim of plaintiff witness to be false. Accordingly, same is believed by me to be true . .\foresaid issue is decided in favour of plaintiff. "

17. With respect to issue no.3 and 4, the Trial Court in paragraph no.17 to 21, has held as under:-

"17. Unrebutted testimony of plaintiff witness remained that w.e.f 01.01.2001, till filing of this suit i.e on 09.05.2001, defendants were liable to pay mesne profits at the rate of Rs. 100/- per day amounting to Rs. 10,000/-. That claim of plaintiff was not untenable rather was on the reasonable side, considering the location of the property in question. Accordingly, I hold that plaintiff is entitled to a sum of Rs. 10,000/-, as claimed above as mesne profits.

18. So far as, mesne profits after filing of this suit that on 09.05.2001 till vacation of the said property by defendants on 31.03.2006, plaintiff had relied upon copy of rent agreement of properties located in New Friends Colony. which was the area where suit property in question is located. /l.s per those rent agreements dated 28.02.2001 Ex PW-1/11, a monthly rent of Rs. 9,000/- was agreed between the parties for a property located on ground floor. That lease deed was executed between New Friends Cooperative House Building Society through its President M.L. Jaggi as Lessor with M/s. Roshan Lal Gupta through its partner Anil Kumar Gupta as Lessee. It was a lease deed . I executed for a period of 3 years subject to further renewal by increasing rent by 10%. Plaintiff through evidence of PW -1 also relied upon rent agreement of M.L. Jaggi HUF with M/s. Vandana Luthra with respect to property bearing no. 978 A, New Friends Colony, New Delhi but said lease deed was not found by me on record so it was the lease deed Ex. PW-1/11 which is considered by / me for the purpose of appreciating the claim of plaintiff. Claim of plaintiff is that defendants are liable to pay mesne profit at the rate of Rs.



9,000/- per month as was made in the said lease deed Ex. PW-1/11 with respect to property located in similar locality.

19. In support of their contention, plaintiff relied upon judgment of Hon'ble High Court of Delhi titled as Udayan Sinha & ors Vs. Fertilizers and Chemicals Travancore decided on 05.05.2016 in RFA no: 856/2015. In the said case law of Hon'ble High Court of Delhi in para 19 of the judgment had observed:

Para 19 - Computation of mesne profits, specifically in case of residential premises, always entails some element of genuine, intelligent and honest guess work. Reference in this regard can be made to (I) International Pvt. Ltd. Vs. Saraswati Industrial Syndicate 1992 (2) RCR 6; (ii) M.R. Sahni Vs. Doris Randhawa AIR 2008 Del. 110; (iii) Consep India Pvt. Ltd. Vs. CEPCO Industries Pvt. Ltd. MANU/DE/0700/2010; (iv) P.E.C. Limited Vs. Samir Prakash MANU/DE/2781/2011; (v) Water and Power Consultancy Services (India) Ltd. Vs. Renu Gupta MANU/DE/2738/2012; and, (iv) Inder Sain Bedi Vs. M/s. Chopra Electricals MANU/DE/5155/2012. It is virtually impossible to get evidence to prove the exact rate thereof as the rent of residential premises is dependent on a large number of variable factors like flow of space, ventilation, fixtures, fittings, amenities, design, size of rooms/kitchen, etc. and there may be a substantial difference in rent of adjoining houses.

20. Aforesaid observations of Hon'ble High Court of Delhi, therefore indicate that it is impossible to get evidence regarding possible rent of the premises involved in a case, which they can fetch. It will depend upon independent and honest guess work of the presiding officer. So, in this case also such like guess work had to be made by this Court for the purpose of computation of mesne profits.

21. The mesne profits which had to be calculated were for the period starting from date of filing of this suit i.e 09.05.2001 till vacation of the property in question by defendants on 31.03.2006. Admittedly property in question is located in an area which contains legalize property. The area in question is not that where residential and commercial properties in totality are illegal in nature. As such, it has not come on record that property in question was illegal in nature. Moving further, property in question was a commercial property utilized by defendants for running post-office which consists of WC also. It is admeasuring 22'x0"xl1'x0". It cannot be seen at parity with the property mentioned in lease deed Ex. PW-1/11 for the reason that area of property concerned rented out by Ex. PW-1/11 is not mentioned in the said lease deed. So, the said lease deed was of no help for the purpose of calculation of mesne profits. Further, it is the case of the plaintiff that suit property in question was in dilapidated condition during the time it was occupied by defendants. So, to hold that said dilapidated property will fetch rent similar to the property which was renovated will again be improper. It has not come on



record as to how had rent property of like nature similar to that of property in question in dilapidated condition would fetch rem. Further, plaintiff did not prove the extent to which suit property in question was dilapidated. The net result is as such this Court has no ground to hold that rate of rent fetched by suit property in question between 09.05.2001 till 31 .03.2001 was equivalent to rent at the rate of Rs. 9,000/ ~per month. At the same time, considering the fact that plaintiff itself had claimed damages at the rate of Rs.100/- per day, I hold that plaintiff is entitled to the mesne profit at the rate of Rs. 100/- per day w.e.f 09.05.2001 till 31.03.2006, In addition to that considering the fact that property in question was a commercial property, plaintiff is entitled to receive simple interest at the rate of 10% per annum on the aforesaid amount of mesne profit. Aforesaid issue is decided in favour of plaintiff accordingly."

18. In view of the aforesaid discussion and the findings recorded by the Trial Court, which stood affirmed by the First Appellate Court, this Court does not find any substantial question of law which requires adjudication.

19. Furthermore, no satisfactory reasons have been afforded by the appellant-defendant with respect to the delay of 627 days in filing the appeal.

20. In view of the aforesaid, the instant appeal, along with pending applications, fails and therefore, stands dismissed not only on merits but on delay as well.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 4, 2024/MJ