



2025:DHC:5098



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

% ***Judgment pronounced on : 01.07.2025***

+ **RFA 286/2021**

JET AIR PRIVATE LTD

.....Appellant

Through: Mr. Prashant Kumar, Mr. Amulya
Dhingra, Mr. Abhineek Arvind and
Mr. Chetan Rathor, Advs.

versus

NAVEEN KHANNA AND SONS HUF & ORS.....Respondents

Through: Mr. P. Banerjee with Mr. Naveen
Kumar Choudhary, Advs. for
Respondents except R-3(b)(iii).
Mr. Mukesh Goyal Adv. for R-
3(b)(iii)

+ **RFA 311/2021**

NAVEEN KHANNA AND SONS (HUF)

.....Appellant

Through: Mr. Naveen Kumar Choudhary and
Mr. P. Banerjee, Advs. for
Appellants except Appellant 3(b) (ii)
Mr. Mukesh Goyal Adv. for
Appellant No. 3(b)(ii)

versus

JET AIR PRIVATE LIMITED

.....Respondent

Through: Mr. Prashant Kumar, Mr. Amulya
Dhingra, Mr. Abhineek Arvind and
Mr. Chetan Rathor, Advs.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU



JUDGMENT

TARA VITASTA GANJU, J.:

1. The present Appeals seek to challenge an impugned judgment and decree dated 07.04.2021 passed by the Additional District Judge-04, Patiala House Courts, New Delhi in the matter titled as *M/s Naveen Khanna & Sons (HUF) & Ors. v. Jet Air Pvt. Ltd.* [hereinafter referred to as “Impugned Judgment”], both the Plaintiff before the learned Trial Court - Naveen Khanna & Sons (HUF) [hereinafter referred to as “NKS”] and the Defendant before the learned Trial Court - Jet Air Pvt. Ltd. [hereinafter referred to as “JAPL”] have filed their separate Appeals to challenge to the Impugned Judgment.

2. By the Impugned Judgment, the suit of NKS was partly decreed and mesne profits/damages at the rate of Rs.145/- per sq. ft. per month were awarded for the period from 01.04.2007 till 15.06.2008, subject to the adjustment of use and occupation charges already paid. NKS was also awarded interest at the rate of 9% per annum on the *mesne profit* from the date of accrual till the date of decree and future interest was awarded at the rate of 6% per annum. In addition, NKS was awarded litigation charges including pleader’s fees up to Rs.50,000/-.

3. In the Appeal filed by NKS, NKS has sought modification of the Impugned Judgment to a limited extent praying for:

- (i) Award of damages/*mesne profit* at the rate of Rs.250/- per sq. ft. per month or any such higher rate in accordance with the lease deeds produced and approved; and
- (ii) Grant of interest of 18% per annum on the use and occupation charges/damages/*mesne profit* from the respective due dates up to the



payments in full.

3.1 JAPL on the other hand has sought modification of the Impugned Judgement praying:

(i) To declare there was renewal of the lease deed with 20% increase in the initial rent, after the expiry of first term; and

(ii) set aside the award of damages/*mesne* profits.

4. Both Appeals were heard together and are being decided by this judgment.

5. By an order dated 14.03.2022, a Coordinate Bench of this Court in RFA 286/2021 directed a stay on the execution proceedings in respect of the Impugned Judgment subject to the deposit of Rs.75 lacs with the Registry of this Court. It was further directed that part of the amount deposited be released in favour of NKS.

5.1 Subsequently, the order dated 14.03.2022 was modified on 06.05.2022 by the Court directing that the entire amount of Rs.75 lacs shall remain deposited with the Registry of this Court.

CM APPL. 30124/2021 in RFA 311/2021

6. This is an Application under Order XLI Rule 27, Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] filed by NKS seeking to place on record a public document reflecting the money lending rates of interest for commercial banks. Notice in this Application was issued by a Coordinate Bench on 07.09.2021. Although a Reply was filed, no arguments opposing the Application were addressed by JAPL during the final hearing of the matter.

6.1 This Court has examined the document sought to be placed on



record. The Application has essentially been filed to place on record the interest rates issued by the Reserve Bank of India as available on its website reflecting the money lending rates of interest for commercial banks. Since this document is a public document and is available on official website of Reserve Bank of India, the document will not require any additional proof. In addition and in view of the fact that one of the contentions raised by NKS is in relation to the interest awarded, this Court deems it apposite to allow the present Application to enable the Court to pronounce judgment.

6.2 The document being the table on interest rates is accordingly taken on record. The Application is disposed of in the foregoing terms.

RFA 286/2021 & RFA 311/2021

7. The brief facts are that, NKS is the owner of an area admeasuring 4400 sq. ft. situated on the first floor of the multi-stored building known as “Himalaya House”, 23 Kasturba Gandhi Marg, New Delhi-110001 [hereinafter referred to as “subject premises”]. The subject premises was let out to JAPL under and by virtue of a registered lease deed dated 23.04.2004 at a monthly rent of Rs.2,82,480/- for a period of three years commencing from 01.04.2004 to 31.03.2007 [hereinafter referred to as “lease deed”].

8. The lease deed expired on 31.03.2007 and a suit for ejectment, use and occupation charges/mesne profit and interest was filed by NKS. During the pendency of the suit, the possession of the subject premises was handed over by JAPL to NKS on 15.06.2008. The suit was thus, contested on the question of entitlement and the quantum of mesne profits/damages.



9. As stated above, the suit was partly decreed by the learned Trial Court awarding mesne profits/damages at the rate of Rs.145/- per sq. ft. per month for the period from 01.04.2007 till 15.06.2008, subject to the adjustment of use and occupation charges already paid.

10. It is the case of JAPL that the lease deed had a vested right of renewal with an increase of 20% in rent after the expiry of its first term and thus JAPL was only liable to pay rental, use and occupation charges at the rate of 20% increase over the previous monthly rental of Rs.64.2/- per sq. ft. totalling to Rs.77/- per sq. ft. for the period from 01.04.2007 onwards. It is not disputed that the payment at the rate of Rs.77/- per sq. ft. was made for the period of extended occupation from 01.04.2007 to 15.06.2008 [hereinafter referred to as “extended period”].

Contentions of JAPL

11. The learned Counsel for JAPL has contended that in exercise of the vested right of renewal under the lease deed, JAPL sent a communication regarding its intention to renew the lease deed on 28.12.2006 under postal certificate (UPC) to NKS. Subsequently, on 02.01.2007, a communication seeking extension of the lease was also delivered to an employee of NKS. This was followed by a communication dated 12.03.2007 as well. However, despite these communications JAPL received a legal notice on 19.03.2007 calling upon JAPL to vacate the subject premises, claiming JAPL failed to exercise the renewal option on or before 31.12.2006. The legal notice was replied to on behalf of JAPL on 26.03.2007 *inter alia* stating that the option for renewal of the lease deed for a term of three years commencing 01.04.2007 had been exercised by JAPL by its letter dated 28.12.2006. Despite the exercise, a suit for ejectment was filed by



NKS seeking eviction of JAPL from the subject premises.

11.1 It is thus contended that since the renewal option was exercised in time, JAPL would only be liable to make payment for the extended period at the renewal rate of Rs.77/- per sq. ft. and not at the rate of Rs.145/- per sq. ft. as awarded by the learned Trial Court.

11.2 It is averred that the only requirement of JAPL was to send a notice three months prior to the expiry of the lease deed which was sent by them on 28.12.2006. It was further contended that the service of this renewal notice was affected by UPC and by hand, and that UPC is a recognized mode of service.

11.3 It is further the contention of JAPL, that renewal of Lease deed will be governed by Clause I (f) of the Lease Agreement which references renewal and that there is no mode or manner prescribed in the renewal clause for how the notice of renewal ought to be served. It was argued that Clause VI of the Lease deed does not decide mode of delivery but only proof of delivery and that the Clause VI is not a bar as to the mode of sending notices for renewal by other modes of service. Reliance was also placed on a judgment by Supreme Court of New South Wales in Australia in **BCFK Holdings Pty Ltd v Rork Project: Pty Ltd**¹ where it was held that if the party becomes aware that Notice had been issued, then the party cannot assert that Notice wasn't served simply because it was not sent in accordance with the terms previously agreed by the parties.

11.4 The learned Counsel for JAPL contends that the Impugned Judgment to the extent it has found that NKS is entitled to *mesne profits* is incorrect.

¹ [2022] NSWSC 1706



Since JAPL exercised its option for renewal and the renewal rate of rent was Rs.77/- per sq. ft., and no *mesne profits* would be due and payable other than the increased rental amount.

11.5 It is further averred that Clause VI is akin to Section 27 of the General Clause Act, 1897 and it is settled law that the presumption under Section 27 is rebuttable. Therefore, the deeming provision cannot overrule the actual facts and evidence at hand which show service of the notice of renewal. As such, the learned Trial Court has erred in its finding.

11.6 The other contention raised by learned Counsel for JAPL is in support of its averment qua the *mesne profits*. JAPL has placed on record two lease deeds to contend that the subject premises was on the first floor and the rate of rental was at Rs.145 per sq. ft. as also found by the learned Trial Court in the Impugned Judgment was not correct. Reliance was placed upon two lease deeds of the premises in the same building on the other floors having a rate of rent @ Rs. 87/- per sq. ft. and Rs.120/- per sq. ft. to submit that the mesne profits have been calculated at a higher rate by the learned Trial Court. Learned Counsel avers that the mesne profits should have been awarded @ Rs. 85/- to Rs. 90/- per sq.

Contentions of NKS

12. Learned Counsel for NKS submits that the lease deed was a registered document and its clause for renewal was clear and it stated that three months prior to expiry of the lease, a notice was required to be sent by JAPL through registered post acknowledgment [registered AD] to exercise the option for renewal. The notices sent by UPC were not received by NKS. Since the notice was to be sent by registered AD as was stated in the lease deed, the option was not validly exercised by JAPL. The legal



notice for vacation of the subject premises was sent to JAPL and once a lease deed is determined, JAPL is liable to pay *mesne profits* and thus, the finding of the learned Trial Court that mesne profits was payable for use of the subject premises after 31.03.2007, is correct.

12.1 Learned Counsel for NKS however does challenge the Impugned Judgment to the extent of the rate as fixed for *mesne profits*, use and occupation charges. It is averred that rate fixed by the Impugned Judgment is incorrect and it should be Rs.250/- per sq. ft which is the prevalent rate for like premises during that period. In this regard, learned Counsel for the NKS seeks to rely upon three lease deeds which evidence a rate of rental between Rs.150/- and Rs. 200/- per sq. ft. to submit that award of damages is on the lower side, given the prevailing market rent of about Rs. 200-250/- per sq ft. per month.

12.2 The learned Counsel of NKS, also highlighted the fact that JAPL had not denied the rate of rent being Rs. 250/- per square feet per month at the relevant time in its Written Statement, thus, as per Section 58 of Evidence Act, 1872 it is an admitted fact that does not need to be proved. Reliance is placed on the judgments in *Standard Chartered Bank v. Andhra Bank Financial Services Ltd. & Ors.*² and *M. Venkataramana Hebbar (Dead) by LRs v. M. Rajagopal Hebbar & Anr.*³ in this behalf.

12.3 The other issue raised by the learned Counsel for NKS was that the interest as awarded by the learned Trial Court was not commensurate to commercial transactions. Learned Counsel for NKS submitted that the subject premises were taken on rent in a commercial building near

² (2016) 1 SCC 207

³ (2007) 6 SCC 401



Connaught Place, New Delhi and thus under Section 80 of the Negotiable Instruments Act, 1881 [hereinafter referred to as “NI Act”], the interest should have been accorded at the rate of 18% per annum and not 9% *pendente lite* and 6% for future interest. Reliance in this regard is placed on ***Orient Abrasives Ltd. v. Hariganga Alloys and Steels Ltd.***⁴ wherein Coordinate Bench of this Court, in case of suit for recovery has granted interest at the rate of 18% per annum under Section 80 of the NI Act.

12.4 It was further contended that the award by the learned Trial Court of pre-suit and *pendente lite* interest being at a different rate than the future interest was arbitrary.

12.5 NKS relied on Clause VI of the lease deed to submit that it is clearly set out therein that the communication for renewal needed to be sent out by Registered A.D only, and there could be no deviation prescribed. Reliance is placed on the judgement of the Supreme Court in ***Nazir Ahmad v. King-Emperor***⁵ to contend that if a procedure is prescribed to be done in a particular manner then it has to be done in that particular manner only, or need not be done at all.

Analysis

13. By its Order dated 29.08.2024, this Court had directed the parties to file a joint calculation of the amounts received at the time of handing over the subject premises by NKS to ascertain the actual amounts paid by the parties. Accordingly, a joint calculation dated 10.02.2025 has been filed which records that an enhanced rent at the rate of Rs. 77/- per square feet per month i.e. Rs. 3,38,800/- per month was paid by JAPL, for the duration

⁴ 1993 SCC OnLine Del 5

⁵ 1936 SCC OnLine PC 41



April 1, 2007 to June 15, 2008. Additionally, it sets out that the security deposit lying with NKS in the tune of Rs. 15,84,000/-, was handed back to JAPL, at the time of their handing over of the possession of the subject premises.

14. It is apposite to set out the relevant extract of these joint calculations submitted by both the parties is below:

*“2. Appellant revised/enhanced rent @ 20% over the last paid rent (clause I (e) of the lease deed page 82) **which was Rs. 77/- per square feet per month i.e. Rs. 3,38,800/- per month. The Respondents have** accepted the rent at the enhanced rate in terms of Order dated April 17, 2007 and May 7, 2007 passed by the Learned Trial Court. Monthly amount towards the occupation of the suit property received by the Respondents from the Appellant w.e.f. April 1, 2007 to June 15, 2008 is reflected in the chart below:*

S. No.	PARTICULAR	AMOUNT PAYABLE	AMOUNT RECEIVED TOWARDS RENT
1.	6 (Six) months advance rent paid by the Respondent @ Rs. 3,38,800/- per month which comes to Rs. 20,32,800/- (Rs. 3,38,800 X 6 months) in terms of communication dated April 12, 2006 as recorded in Order dated May 7, 2007	Rs.20,32,800/-	Rs.20,32,800
2.	April 2007	Rs. 3,38,800/-	Rs. 1,69,400/- (whereas 50% of the monthly amount was received in advance in terms of serial no.1, for the months of April 2007 to March 2008)



3.	May 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
4.	June 1, 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
5.	July 1, 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
6.	August 1, 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
7.	September 1, 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
8.	October 1, 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
9.	November 1, 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
10.	December 1, 2007	Rs. 3,38,800/-	Rs. 1,69,400/-
11.	January 1, 2008	Rs. 3,38,800/-	Rs. 1,69,400/-
12.	February 1, 2008	Rs. 3,38,800/-	Rs. 1,69,400/-
13.	March 1, 2008	Rs. 3,38,800/-	Rs. 1,69,400/-
14.	April 1, 2008	Rs. 3,38,800/-	Rs. 3,38,800/-
15.	May 1, 2008	Rs. 3,38,800/-	Rs. 3,38,800/-
16.	June 1, 2008 to June 15, 2008	Rs. 1,69,400/-	Rs. 1,69,400/-
	TOTAL	Rs. 49,12,600/-	Rs. 49,12,600/-

3. At the time of handing over the possession of the suit property by the Appellant to the **Respondents, security amount of Rs.15,84,000/- as mentioned in Clause I (c) of the lease deed page 80, was handed over by virtue of Pay Order to the Appellant by the Respondents without prejudice to their rights and contentions. The refund of the security amount was recorded in the Order dated August 11, 2008 by the Learned Trial Court.**”

[Emphasis Supplied]

15. On a query raised as to whether the learned Trial Court had correctly adjudicated the matter since the dispute was a commercial dispute, it was clarified by the parties that the suit was filed by NKS in the year 2007 in this Court but was transferred to the District Courts pursuant to the Notification No.F.No.L-19015/04/2012-Jus dated 26.10.2015⁶. Although, the evidence commenced on 17.12.2009, it was only concluded on 27.02.2018 and the Impugned Judgment was passed on 07.04.2021. The suit filed as an ordinary civil suit and continued as such before the learned Trial Court. The Impugned Judgment was also passed by the Civil Court.

15.1 Since the suit was valued at Rs.36,46,426/-, the suit would not be

⁶ Issued by the Government of India, Ministry of Law, Justice and Company Affairs, published in Gazette of India Extraordinary, Part II, Section 3 sub-section (ii).



amenable to jurisdiction of the Commercial Courts under the Commercial Courts Act, 2015 [hereinafter referred to as "CC Act"] in view of Section 19 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 [hereinafter referred to as "Amendment Act of 2018"]. Section 19 of the Amendment Act of 2018 states that the amendment would apply to cases in relation to commercial disputes filed on or after the date of the commencement of Amendment Act of 2018 in the following terms:

“19. Save as otherwise provided, the provisions of this Act shall apply only to cases relating to commercial disputes filed on or after the date of commencement of this Act.”

15.2 Accordingly, the Act as applicable pre-amendment would apply which provides that disputes of a specified value of less than Rs. 1 crore would only stand transferred to the Commercial Courts. Thus, the disputes was to be rightly adjudicated by the Civil Court.

16. Certain undisputed facts are required to be set out for the purposes of adjudication of these Appeals:

- (i) A registered lease deed dated 23.04.2004 was executed by the parties.
- (ii) The period of lease was 3 years from 01.04.2004 to 31.03.2007.
- (iii) There was an option for renewal in the registered lease deed for another 3 years, however the renewal clause contained a stipulation that the option was to be exercised by the lessee JAPL at least 3 months prior to the expiry of the lease in writing.
- (iv) NKS sent a notice dated 19.03.2007 asking JAPL to hand over vacant possession of the subject premises by 31.03.2007. Subsequently,



a suit for ejectment, payment of use and occupation charges, *mesne* profits and interest was filed by NKS. The suit was decreed by the Impugned Judgment which has been challenged by both the NKS and JAPL.

(v) The possession of the subject premises was handed over to NKS by JAPL on 15.06.2008.

(vi) During the extended period, user charges @ Rs. 77 per sq. ft. per month were paid by JAPL to NKS. The Security Deposit amount of Rs. 15.84 lacs was returned by NKS to JAPL at the time possession was handed over.

17. The Learned Trial Court while deciding the issue of the validity of renewal of lease had held that the renewal was required to be exercised by JAPL by way of registered post with acknowledgment due and the same was required to be considered appropriately, given the procedure for renewal in terms of Clause VI of the lease deed. Since JAPL failed to exercise the option to renew the lease in terms of renewal clause, it was liable to pay *mesne* profits/damages which were ascertained to be @ Rs.145 per sq. ft. per month by the learned Trial Court.

18. In order to better appreciate the contentions of the parties, it is apposite to set out certain relevant clauses of the lease deed which have been relied upon by the parties. Clause I (e) and I (f) of the lease deed were the clauses dealing with enhancement and duration of the lease. Clause I (e) termed as 'Enhancement', provided that if the option for renewal was exercised by the lessee in terms of the lease, the rental shall be paid at an increase of 20% over the last rent paid i.e., Rs.77 per sq. ft. per month for 3



years commencing 01.04.2007 to 31.03.2010 and Rs.92.5 per sq. ft. per month for 3 years from 01.04.2010 to 31.03.2013.

18.1 Clause I (f) which is termed as “Duration” set out the duration of the lease as well as the manner how the renewal option would be exercised. It states that the lease may be renewed twice for a period of 3 years, each subject to a 20% enhancement on rent with the final term ending on 31.03.2013. It further stated that the lessee is required to give a notice of 3 months prior to the expiry of the term of the lease. It further stated that the notice will entitle a renewal at an enhanced rent and enhanced security deposit but on the same terms and conditions. This clause further states that at the renewal, a fresh lease deed shall be executed and registered between the parties.

18.2 Clauses I (e) and I (f) of the lease deed are set out below:

“ENHANCEMENT

e) In the event of the exercise of the option of renewal by the LESSEE as provided herein, the Rent payable to the LESSORS by the LESSEE as mentioned in Clause 1(a) shall be enhanced by 20% over the last rent paid at the expiry of the current term of the Lease i.e. it shall be @Rs.77/- per sq. ft. per month for the lease, if any, for three years commencing with effect from 1st April 2007 and @Rs.92.50 per sq. ft. per month for the lease, if any, for the three years commencing with effect from 1st April 2010 till 31st March, 2013.

Similarly, in case of any renewal(s) the Lessee shall also pay/ deposit, advance rent equivalent to 6 (six) months rent at the then applicable rate on or before the last day of the 1st month of the renewed period i.e. on or before the 30th April 2007 and 30th April 2010, as the case may be, which shall be adjusted during the first year of each respective renewal in the manner stated in Clause 1(b) hereof above.

DURATION

*f) That the present lease is for a period of 3 (three) years i.e. upto 31st March, 2007. Thereafter, the lease may be renewed twice for a further period of 3 (three) years each, subject to Clause 1(e) here in above mentioned, on the same terms and conditions on rent enhanced by 20% as stated in clause 1(e) above, but with the exception that there **shall not be***



*any renewal option in the lease for the final term from 01/04/2010 till 31/03/2013. **The LESSEE shall express its intention to renew the lease for a further period of three years by giving a notice of 3 (Three) months to the LESSORS before expiry of the present term of lease. Any such notice will entitle the LESSEE for renewals of the lease on enhanced rent and security deposit and on the same terms and conditions contained herein. Fresh Lease Deed will be prepared and got registered at the time of all such renewals.** All renewals and terminations either by the LESSORS or by the LESSEE shall be for the entire super built area admeasuring 4400 sq. ft. (Four thousand Four Hundred sq. ft. only), as shown in the plans attached.”*

[Emphasis Supplied]

19. The termination of the lease deed was provided for any two parts. Firstly, Clause I (g) of the lease provides that in the event that the option for renewal was not exercised in time, the lease would expire by efflux of time. Secondly, Clause IV of the lease deed also details out termination by efflux of time along with the remedies for breach. Clause IV further provides that in the event of a breach, the lease may be terminated by giving a 15-day notice in writing. Clause I (g) and IV are set out herein below:

“TERMINATION

*g) That for the first 36 (thirty-six) months following the commencement of the Lease, neither the LESSORS nor the LESSEE can terminate the lease, subject of course to the rights of the LESSORS to terminate the Lease as provided for in clause IV hereinafter. **However, after the first tenure of the lease, if the LESSEE fails to exercise the option of renewal then the lease will stand terminated by the efflux of time.** However in case of exercise of the option of renewal by the LESSEE of the Lease Deed as aforesaid, **LESSEE can terminate the renewed Lease at any time by giving (3) Three months notice in writing or rent in lieu thereof.** It is clearly understood that the LESSORS would not have this right to terminate the lease during the term of renewed Lease Deed, except for the rights of the LESSORS to terminate the Lease as provided in Clause IV hereinafter.*

IV. TERMINATION

The Lease shall be determinable/ terminable under any and/ or all of any following circumstances namely:

*i) **By efflux of time on 31-03-2007, if the Lessee fails to exercise the option of renewal as stated above or on 31-03-2010 or 31-03-2013 on the expiry of the renewed term(s), if any, as the case may be.***

ii) In the event rent for the premises remains in arrears for any three



months, it shall be deemed a breach of the terms of this lease entitling a resulting in forfeiture:

(To avoid any dispute, it is made clear that payment/tender of rent by Bankers' Cheque (Pay Order) to be Bank of Tokyo Mitsuibishi, Parliament Street, New Delhi, for credit to the account of the LESSORS, shall be deemed sufficient payment within the meaning of this clause.)

iii) *In the event of breach either party any of the terms and conditions and covenants hereof, the other party will have the option of termination, which shall be exercised by giving a notice in writing of 15 days terminating the Lease;*

iv) *By termination of lease by the LESSEE after the initial period and after due notice as contemplated in Clause 1 (f) herein; and / or*

v) *If the demised premises or any part thereof is severely damaged or destroyed due to any act of God, etc. and these damages are not restored by the LESSORS within the reasonable time or if the demised premises are acquired compulsorily by an authority."*

[Emphasis Supplied]

20. Clause VI of the lease deed was the clause that describes the manner in which a notice was to be given by the parties. It states that any notice required to be given under the lease deed shall be deemed to have been properly given if sent by Registered post acknowledgment due, to the party at the address set out in the lease. It further states that such notice shall be deemed to have been received on the expiry of 5 days from the day on which it was delivered to the postal office. This clause is reproduced below:

"CLAUSE VI

VI. Any notice required to be given hereunder shall be deemed to have been properly given if sent by Registered post acknowledgment due to the Lessor at their above mentioned address and to the LESSEE at Jetair House, 13 Community Centre, Yusuf Sarai, New Delhi and shall be deemed to have been received by the addressee on the expiry of 5 (five) days from the day on which it was delivered to the post office of the Sender, unless there is a postal strike. Notices to the LESSORS will be given at the address given above."

[Emphasis Supplied]

20.1 The address of NKS as set out in the lease deed was the following:

"Mrs. Guddo, W/o Late Sh. Pushpati Nath, R/o 5535, Phase – IV, DLF City, Gurgaon, M/S Naveen Khanna & Sons (HUF), through its Karta Mr.



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Naveen Khanna S/o Late Sh. Pushpati Nath R/o 5535, Phase – IV, DLF City, Gurgaon and Mrs. Jai Rani, W/o Late Sh. Seth Singh R/o 1028, Phase IV, DLF City, Gurgaon”

21. The issue in the present Appeal is limited. The learned Trial Court has awarded a sum of Rs.145 per sq. ft. as damages for the period of 18 months from 01.04.2007 to 15.06.2008. It is the case of JAPL that the award of *mesne* profits/damages for use and occupation is incorrect. Since the option of renewal was exercised by JAPL, and the payment to be made for the extended period would be a 20% increase over the previous rental of Rs.64 per sq. ft., totaling to Rs.77 per sq. ft. per month. However, it is averred by JAPL that the learned Trial Court has wrongly awarded almost double the amount.

21.1 NKS on the other hand contends that the option for renewal was not exercised in terms of the applicable clause of the lease deed and thus, there was no renewal. Since it is the contention of NKS that there was no agreement of lease between the parties after 31.03.2007, the learned Trial Court rightly imposed damages at market rent for the period of this occupation by JAPL. The grievance of NKS however is with the fact that the *mesne* profits/damages were wrongly calculated by the learned Trial Court. NKS contends that they had produced on record the lease deeds evidencing a monthly rental in the range of about Rs.150-200 per sq. ft. and thus, the award of Rs.145 per sq. ft. per month as *mesne* profits by the learned Trial Court was incorrect. In addition, NKS has contended that since this is a commercial transaction, interest at commercial rates should have been awarded by the learned Trial Court.

22. A perusal of the Clause I (e) of the lease deed shows that the option for renewal was to be exercised by payment of an enhanced rental of 20%



over the last rent paid for the period from 01.04.2010 to 31.03.2013 and an appropriate amount enhanced in the advance security deposit as well. It further provides that the notice of intention to renew was to be given 3 months prior to the expiry of the term of the lease. Once such notice is given, the fresh lease deed would be prepared and will be registered at the time of such renewal.

23. Undisputedly, no fresh lease deed was executed between the parties for the extended period evidencing a fresh agreement to pay rental at 20% enhanced rate. Thus, the contention of JAPL that there was an agreement to pay the enhanced amount is without any merit. Clause I (e) in the lease deed clearly stipulates the enhanced amount at enhancement of 20% and a fresh registered lease be executed between the parties for the fresh term of 3 years which was not done.

23.1 However, JAPL made payment in the sum of Rs.77/- per sq. ft. per month totalling to Rs. 3,38,800/- (77 X 4400/-) per month during the extended period as they continued to remain in occupation of the subject premises till 15.06.2008. The security deposit amount was in the sum of Rs.15,84,000 was also refunded to JAPL on 15.06.2008.

24. Since, no fresh lease deed was registered between the parties, a notice was sent by NKS to JAPL on 19.03.2007 by a registered A.D., setting out that the lease deed would stand determined by an efflux of time on 31.03.2007 and requesting that the vacant, physical possession of the subject premises be handed over to NKS. NKS further set out in the notice, that the failure to vacate the subject premises would entitle NKS to *mesne profits* and damages at market rent for use and occupation of the subject premises beyond the agreed term of the lease deed.



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25. Although, this legal notice was replied to by JAPL by a communication dated 26.03.2007 stating that they had exercised the option of renewal in time and that the lease deed is not determined, it cannot be disputed that there was no fresh lease deed executed between the parties for any period beyond 31.03.2007. Since the occupation by JAPL beyond 31.03.2007 was without consent of the lessor, NKS, the occupation was unauthorised and JAPL was liable to pay damages at market rent for the continued occupation in terms of the lease deed.

26. It is the case of JAPL that they exercised the option of renewal by three modes. One by UPC on 28.12.2006 [DW 1/1, DW 1/2, DW 1/3, DW 1/4], thereafter on 02.01.2007 by hand delivered to Lok Nath and Company and on 12.03.2007 [DW 1/6] /15.03.2007 [DW 1/7] by registered post. It is apposite to set out in detail these notices sent by JAPL. Three separate communications were stated to have been sent by UPC by JAPL dated 28.12.2006 by UPC mode. The communication of 02.01.2007 stated to be sent by hand, was stated to be delivered through Mr. Mehra, the Manager, Estate Office, Himalya House. Only the communication of 12.03.2007 [DW 1/6] was sent by registered post/acknowledgment due.

26.1 However, a perusal of this document reflects that even this communication appears to have only been sent to one of the addresses as set out in the recital clause of the lease deed and not all the three addresses. It is based on these notices that JAPL has contended that the renewal option was exercised by them within time.

27. This Court is unable to agree. Clause VI of the lease deed is clear and unequivocal. It provides for the mode and manner of communication between the parties and states that if notice is required to be given under



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the lease, it shall be deemed to have been given if sent by registered post, acknowledgment due to the lessor, NKS at the address as set out in the lease deed. It further states that the notice shall be deemed to have been received on the expiry of 5 days from the day on which it stands delivered to the post office.

28. Undisputably, the notices which were given, were given either by hand or by UPC and were not in accordance with Clause VI of the lease deed. These were also not sent to the correct addresses. It is contended by JAPL that UPC and notices sent by hand are also recognised modes of service and that since the option was exercised by these recognised modes, it was deemed that the option for renewal had been exercised by JAPL in time. This contention is also without merit. The parties have by an instrument in writing, unequivocally agreed to a mode of communication which is registered A.D., thus for JAPL to contend that the communication by any modes is also appropriate, is not in accordance with the terms of the registered lease deed. In any event, admittedly no fresh lease deed was executed and registered by the parties as is the requirement set out in the lease deed.

29. The review of the evidence as recorded by the learned Trial Court shows that the receipt of the letter dated 28.12.2006 as well as 02.01.2007 were categorically denied by NKS. PW1 [Naveen Khanna] denied receiving these communications while PW3 [H.S. Kohli] who was the broker in the negotiation confirmed that the parties had not approached him for a fresh renewal. DW1, Mr. Anil Alagh, who is stated to have sent these communications by UPC was unable to recall from which post office the notices by UPC were sent. No dispatch or register could be proved in



respect of Ex.DW1/1 to DW1/3 to the notices sent on 28.12.2006.

30. The learned Trial Court relied on the lease deed dated 26.03.2007 of the 11th floor of the same building as the subject premises [Ex.PW1/11] and the report of DW2 dated 10.11.2008 [Ex. DW2/1] to award *mesne* profits/damages. The record reflects that the learned Trial Court while deciding the entitlement to *mesne* profit/damages and amounts has held that there is no evidence to show that there is a hike in rent from Rs.77 per sq. ft per month [contractual rate on first renewal] to Rs.250 per sq. ft per month. The Trial Court thus awarded *mesne* profits/damages @ Rs.145 per sq. ft. per month, subject to adjustment of use and occupation charges already paid by defendant during pendency of this case, for the period w.e.f 01.04.2007 till 15.06.2008. It is apposite to set out relevant extract of the Impugned Judgement in this behalf which is below:

*"61. In the light of above discussion, **I do not find any plausible evidence on record to conclude that there was such unusual hike in rent to increase the same from Rs.77 per sq ft per month (contractual rate on first renewal) to Rs.250 per sq ft per month as alleged by plaintiffs. However, keeping into account plaintiff's document EX.PW1/11 and the testimony and report of defendant witness DW2, I am inclined to award mesne profits/damages @ Rs.145 per sq ft per month. As already noted above arrears @ Rs.77 per sq. ft per month for the period from 01.04.2007 till date of vacation of suit property stand already paid.** In view thereof, defendant is liable to pay remaining amount @ 68 per sq ft per month towards damages/*mesne* profits for said period w.e.f 01.04.2007 till 15.06.2008. As a result, plaintiffs are awarded *mesne* profit @145 sq ft per month subject to adjustment of use and occupation charges already paid by defendant during pendency of this case, for the period w.e.f 01.04.2007 till 15.06.2008."*

[Emphasis Supplied]

31. In order to better appreciate the contentions of the parties, the exemplars which were filed by the parties being lease deeds of premises have been examined. It is apposite to set out the two lease deeds dated 25.04.2007 [DW3/1] and 06.05.2009 [DW 3/2] as placed on record by



JAPL. Details of these two lease deeds are set out below:

(i) **Lease deed dated 25.04.2007**

Exhibit	Ex. DW3/1
Description/Details	Upper ground floor, Himalaya House, 23 KG Marg, New Delhi.
Area	5264 sq. ft.
Rate of rent	Rs.87/- per sq. ft.

(ii) **Lease deed dated 06.05.2009**

Exhibit	Ex. DW3/2
Description/Details	H-38, situated on the 3 rd Floor of Himalaya House, 23, Kasturba Gandhi Marg, New Delhi.
Area	968 sq. ft.
Rate of rent	Rs.120/- per sq. ft.

31.1 On the other hand, NKS relied on the following three lease deeds dated 26.03.2007 [Ex. PW1/11], 07.06.2007 [Ex. PW1/12] and 15.06.2007 [Ex. PW1/13] to evidence rental between Rs.150 per sq. ft. per month and Rs.200 per sq. ft. per month. The details of these 3 lease deeds are extracted below:

(i) **Lease deed dated 26.03.2007**

Exhibit	Ex. PW1/11
Period	01.04.2007 to 31.03.2010
Description/Details	Flat B-1/112, 11 th Floor, Himalaya House, 23 Kasturba Gandhi Marg, New Delhi.
Area	1022 sq. ft.
Rate of rent	Rs.150/- per sq. ft.

(ii) **Lease deed dated 07.06.2007**

Exhibit	Ex. PW1/12
Period	01.06.2007 to 30.05.2010



Description/Details	Flat No. 703, 7 th Floor, Ashoka Estate, 24, Barakhamba Road, New Delhi
Area	640 sq. ft.
Rate of rent	Rs.200/- per sq. ft.

(iii) **Lease deed dated 15.06.2007**

Exhibit	Ex. PW1/13
Period	16.05.2007 to 15.05.2010
Description/Details	Flat No. 13-D, 13 th Floor, Hansalaya Building, Barakhamba Road, New Delhi.
Area	1168 sq. ft.
Rate of rent	Rs.180/- per sq. ft.

32. In addition, NKS has relied upon the fact that the rate of Rs.250 per sq. ft. as market rent for the extended period was set out by NKS in its plaint and the same has not been denied by JAPL in its Written Statement filed before the learned Trial Court. Thus, it is contended that the prevalent market rent should have been the admitted amount Rs.250 per sq. ft. per month.

33. *Mesne* profits is defined under Section 2(12) of the CPC in the following terms:

"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—...

(12) “mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;”

33.1 The provisions of Order XX Rule 12, CPC provide that where a suit for recovery of possession of property and for rent/*mesne* profits is passed, the inquiry shall be directed as to the rent/*mesne* profits from the institution of the suit until the delivery of possession by the Court. Rule 12 (ba) and (c) of Order XX, CPC provides that an inquiry as to the *mesne* profits is to



be conducted for a decree in that behalf to be passed and that the decree will be passed in accordance with the result of such inquiry conducted.

Order XX Rule 12, CPC is set out below:

"ORDER XX - Judgment and decree

12. Decree for possession and mesne profits.—(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent.

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever, event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

[Emphasis Supplied]

34. The Supreme Court in case of ***Bijay Kumar Manish Kumar (HUF) v. Ashwin Bhanulal Desai***⁷, has held that a tenant who remains in possession after their lease ends, whether such end is by expiry of time, termination, or forfeiture is liable to pay mesne profits, as their right to occupy the property ceases. The relevant extract of the judgment is set out below:

"20. It would also be useful to refer to the concept of tenant at sufferance. As defined in the very same treatise, such a tenant is a person who enters

⁷ (2024) 8 SCC 668



upon a land by lawful title, but continues in possession after the title has ended without statutory authority and without obtaining consent of the person then entitled.

21. Wharton's Law Lexicon, 17th Edn. discusses "tenancy at sufferance" in the following terms:

"Sufferance, Tenancy at, This is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only it arises when a person after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides. Thus if A is a tenant for yes, and his terms expires, or is a tenant at will, and his lessor dies, and he continues in possession without the disagreement of the person who is entitled to the same, in the one and the other of these cases he is said to have the possession by sufferance — that is, merely by permission or indulgence, without any right : the law esteeming it just and reasonable, and for the interest of the tenant, and also of the person entitled to the possession, to deem the occupation to be continued by the permission of the person who has the right, till it is proved that the tenant withholds the possession wrongfully, which the law will not presume. As the party came to the possession by right, the law will esteem that right to continue either in point of estate or by the permission of the owner of the land till it is proved that the possession is held in opposition to the will of that person."

30. It is to be noted that the Court in Sudera Realty [Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd., (2023) 16 SCC 704 : 2022 SCC OnLine SC 1161] observed that mesne profits become payable on continuation of possession after "expiry" of lease. In our considered view, the effect of the words "determination", "expiry", "forfeiture" and "termination" would, subject to the facts applicable, be similar i.e. when any of these three words are applied to a lease, henceforth, the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves. Illustratively, Burton's Legal Thesaurus, 3rd Edn. suggests the following words as being similar to "expire" — cease, come to an end; "determine" is similar to — come to a conclusion, bring to an end; "forfeiture" is similar to — deprivation/destruction of a right, divestiture of property; and "terminate" is similar to — bring to an end, cease, conclude. Therefore, in any of these situations, mesne profits would be payable."

[Emphasis Supplied]

34.1 In case of *Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd.*⁸, the

⁸ (2023) 16 SCC 704



Supreme Court held that a tenant who once entered the property in question lawfully, and continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires. The relevant extract of the judgment is set out below:

"81. A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits."

[Emphasis Supplied]

34.2 A similar view has been taken in the case of *Achal Misra v. Rama Shanker Singh & Ors.*⁹, the Supreme Court has held that tenants shall be liable to pay a rent equivalent to mesne profits, from the date they are found not to be entitled to retain possession of the premises in question. The relevant extract of the judgment is set out below:

"23. From the material available on record it does not appear that any rate of rent was appointed at which rent would be payable by the respondents to the landlord. The respondents also do not seem to have taken any steps for fixation of rent of the premises in their occupation. They have been happy to have got the premises in a prime locality, occupying and enjoying the same for no payment. We make it clear that the respondents shall be liable to pay the rent equivalent to mesne profits with effect from the date with which they are found to have ceased to be entitled to retain possession of the premises as tenant and for such period the landlord's entitlement cannot be held pegged to the standard rent. Reference may be had to the law laid down by this Court in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. [Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705]."

[Emphasis Supplied]

35. As discussed above, the renewal was exercised in terms of the lease

⁹ (2005) 5 SCC 531



deed. A combined reading of Clauses I (e), I (f), I (g) and Clause VI of the lease deed provides that:

- (i) The option of renewal is to be exercised at least 3 months prior to the date of expiry of the lease deed by the lessee;
- (ii) Upon exercise of such option, a fresh lease deed would be executed between the parties and duly registered on the same terms and conditions at an enhancement of 20% over the last rent paid;
- (iii) The option is to be exercised by the lessee by sending a notice by registered AD post to the lessor at the addresses as set out in the lease deed;
- (iv) If the option is not exercised 3 months priorly, the lease deed would stand determined by efflux of time.

35.1 Since the option was not exercised in terms of the lease deed, JAPL was in unauthorised occupation/a tenant at sufferance and in terms of settled law and until it continued in possession of the subject premises, i.e., from 01.04.2007 to 15.06.2008 and was liable to pay *mesne* profits to NKS.

36. The provisions of Order XX Rule 12 read with Section 2(12), CPC provide that an inquiry is to be undertaken by a Court for the award of *mesne* profits. The Supreme Court in the case of ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.***¹⁰ has clarified that a tenant is required to pay *mesne* profits or compensation for use and occupation of the premises at the rate equivalent at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. Although the judgment was in the context of the Delhi Rent Control Act,

¹⁰ (2005) 1 SCC 705



1958, the principles would be applicable to other tenancies as well. The relevant extract of the judgment is set out below:

“19. To sum up, our conclusions are:

xxx

xxx

xxx

(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 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.”

[Emphasis Supplied]

36.1 The Supreme Court in the case of ***Martin & Harris (P) Ltd. & Anr. v. Rajendra Mehta & Ors.***¹¹, while relying on the ***Atma Ram Properties case*** has held that:

“18. **Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in Atma Ram [Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705] has been reaffirmed in State of Maharashtra v. Super Max International (P) Ltd. [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] by three-Judge Bench of this Court.** Therefore, looking to the fact that the decree of eviction passed by the trial court on 3-3-2016 has been confirmed in appeal; against which second appeal is pending, however, after stay on being asked the direction to pay mesne profits or compensation issued by

¹¹ (2022) 8 SCC 527



the High Court is in consonance to the law laid down by this Court, which is just, equitable and reasonable.

19. The basis of determination of the amount of mesne profits, in our view, depends on the facts and circumstances of each case considering the place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential area and the rate of rent precedent on which premises can be let out are the guiding factor in the facts of individual case.”

[Emphasis Supplied]

37. JAPL has emphasised the fact that it is not liable to *mesne* profits but the enhanced rent @ Rs. 77 per sq. ft. per month for the extended period. However, on the quantum of *mesne* profits other than stating that the awarding of *mesne* profits was high, has not been able to show anything substantial for reduction in the *mesne* profits awarded to NKS by the learned Trial Court. NKS on the other hand has averred that the report of the valuer [Ex. DW2/1] cannot be relied upon since it bears the signature/stamp of the Counsel for JAPL and not the maker of the report. However, NKS cannot dispute the fact that its exemplar being the lease deed dated 26.03.2007 [PW1/11] gave a rental of Rs.150 per sq. ft. for a premises on the 11th floor of the same building on the subject premises.

38. No doubt, there is difference in the rental of the three lease deeds produced by NKS and the two lease deeds produced by JAPL, and the difference is substantial. It cannot also be disputed that the lease deeds produced by NKS are for smaller premises in the range of 640-1100 sq. ft. in area whereas the subject premises is over 4000 sq. ft. Normally, the rate of rental (per sq. ft) in proportion to the area for smaller spaces is higher than those for larger premises. In any event and as stated above, Ex.DW2/1 [valuation report placed on record by JAPL] which has been relied upon by the learned Trial Court references a valuation between Rs.140-150 per sq. ft.



38.1 The valuation report is dated 10.11.2008. The subject premises has been valued by a Government approved valuer and a detailed examination of the subject premises has been done. The valuer has also undertaken the valuation based on the judgments of the Supreme Court in ***Dewan Daulat Rai Kapoor & Ors. v. New Delhi Municipal Committee & Ors.***¹², ***Guntur Municipal Council v. Guntur Town Rate Payers' Association etc.***¹³ and ***Balbir Singh & Ors. v. Municipal Corporation Delhi & Ors.***¹⁴. The valuation report also contains Form 0-1 as well as a site plan and states that the valuer has inspected the property with a view to assess fair market rent.

39. The learned Trial Court examined the lease deeds filed by the parties as well as the valuation report produced by JAPL [DW2/1] wherein it was stated that the market rent of the property during the relevant period is Rs.150 per sq. ft. and gave a finding of *mesne* profits at the rate of Rs.145 per sq. ft. per month by the Impugned Judgment in the following terms:

"58. As already noted above, defendant had relied upon two documents, one is the valuation report Ex.DW2/1 filed by DW2 wherein the prevalent market rent in respect of suit property in April 2007 has been given as Rs.145-150 per sq. ft. per month. Although, the plaintiffs have raised serious doubt on the genuineness of said report which is evident from the lengthy cross-examination of witness conducted by the counsel for plaintiffs but, I may note here that even one of the plaintiff's own document i.e. lease deed Ex.PW1/11 which is also in respect of one property on 11th floor of same building Himalya House, also mentions almost same rent (Rs.150 per sq ft per month) in respect of commercial space admeasuring 1175 sq. ft.

59. We cannot lose sight of the fact that the defendant had over stayed only for about an year after the termination of the lease period and considering the fact that as per lease deed, the lease for the second term was renewable @Rs.77 per sq ft. per month w.e.f. 01.4.2007, it is for the plaintiffs to prove on record that there was unusual increase of rental in the area of the suit property during the relevant period so as to claim the damages at alleged rate of Rs.250 per sq ft per month. Although, two more

¹² (1980) 1 SCC 685

¹³ (1970) 2 SCC 803

¹⁴ (1985) 1 SCC 167



lease deeds in respect of different buildings in Connaught place have been placed on record by plaintiffs wherein the properties under lease were shown to have been leased out at much higher rent but, in the light of the fact that there are two lease deeds available on record, one from the plaintiff's side i.e. EX.PW1/11 and one from the defendant's side EX.PW3/1 in respect of the properties in the same very building of Himalya House, there is no reason for this court to take into account other two lease deeds filed by plaintiffs in respect of properties in some other buildings of Connaught Place.

60. Further, defendant himself has relied upon the valuation report filed by DW2, who proved the same on record as Ex.DW2/1. As per said valuation report, the suit property at the relevant time i.e. in the year 2007 was capable of fetching a market rent @Rs.145-150 per sq ft per month. Further as per plaintiff's case, vide deed Ex.PW1/11, the commercial space admeasuring 1175 sq ft at 11th floor of same building was let out @Rs.145 per sq ft per month w.e.f. 01.04.2007.

61. In the light of above discussion, I do not find any plausible evidence on record to conclude that there was such unusual hike in rent to increase the same from Rs.77 per sq ft per month (contractual rate on first renewal) to Rs.250 per sq ft per month as alleged by plaintiffs. However, keeping into account plaintiff's document EX.PW1/11 and the testimony and report of defendant witness DW2, I am inclined to award mesne profits/damages @ Rs.145 per sq ft per month. As already noted above arrears @ Rs.77 per sq. ft per month for the period from 01.04.2007 till date of vacation of suit property stand already paid. In view thereof, defendant is liable to pay remaining amount @ 68 per sq ft per month towards damages/mesne profits for said period w.e.f 01.04.2007 till 15.06.2008. As a result, plaintiffs are awarded mesne profit @145 sq ft per month subject to adjustment of use and occupation charges already paid by defendant during pendency of this case, for the period w.e.f 01.04.2007 till 15.06.2008."

[Emphasis Supplied]

40. Accordingly, in view of the discussions above, this Court finds no ground to interfere with the finding of the learned Trial Court in awarding mesne profits @ Rs.145 per sq. ft. per month for the extended period.

41. Lastly, aggrieved with the interest awarded by the Impugned Judgment, it is contended that the lease was a commercial transaction, it is contended that the relationship between NKS and JAPL was entirely commercial. The subject premises are situated in Connaught Place in New Delhi and is an area of prime real estate. NKS has averred that interest at



the rate of 18% p.a. *pendente lite* and for future interest should have been awarded by the learned Trial Court in terms of Section 80 of the NI Act.

41.1 It has further been contended by NKS that the rate of interest prevalent in the market for interest rates issued by the Reserve Bank of India for commercial banks for the years 2006-07 to 2008-09 varied between 12.25% to 16.75% per annum. Thus, it is contended that the award of 9% *pendente lite* and 6% future interest cannot be sustained. JAPL on the other hand, has contended that the finding of the rate of interest is correct and in accordance with law.

42. The learned Trial Court found that the rate of interest @18% sought for by NKS was excessive and thus, awarded 9% *pendente lite* and 6% future interest on the decretal amount.

43. Concededly, the suit was filed for commercial premises in Connaught Place and it is not disputed that the relationship between the parties is purely commercial. However, and as stated above, the suit was tried as an ordinary civil suit.

44. NKS has relied upon Section 80 of the NI Act to contend that where no rate of interest is specified in the instrument, the rate of interest shall be calculated @18% per annum. NKS has also relied upon the judgment of a Coordinate Bench in the ***Orient Abrasives case*** to submit that the interest should be awarded @18% per annum.

44.1 Section 80 of the NI Act provides that where no rate of interest is specified in an instrument, rate of interest shall be calculated at 18% per annum in the following terms:

“80. Interest when no rate specified.— When no rate of interest is specified



in the instrument, interest on the amount due thereon shall, [notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of [eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs."

44.2 A Coordinate Bench of this Court has in ***Orient Abrasives case*** has granted interest @18% per annum in the following manner:

"8. During the course of the arguments learned Counsel for the plaintiff contended that the plaintiff was also entitled to interest at the rate of 18% per annum from the date of the filing of the suit till the passing of the decree under Section 80 of the Negotiable Instruments Act, 1881 as amended. I find merit in the contention of the plaintiff."

[Emphasis Supplied]

45. The award of interest is governed by Section 34 of the CPC which provides for award of interest in a civil suit. It states that where a decree is for the payment of money, the Court may direct *pendente lite* interest at a reasonable rate and future interest not exceeding 6% p.a. The proviso to Section 34 however states that where the transaction is a commercial transaction, the rate at which future interest is awarded may exceed 6% but shall not exceed the contractual rate of interest or the rate at which money is lent by nationalised banks in relation to commercial transactions. The proviso to Section 34 however states that this award would only be for future interest. Thus, in terms of this provision, *pendente lite* interest is to be awarded at a reasonable rate and future interest in commercial cases can be awarded at the rate on which moneys are lent by nationalised banks. Section 34 of the CPC is set out below:

"34. Interest.- (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per



annum, as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.- In this sub section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

Explanation II.- For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability."

[Emphasis supplied]

46. Given that the transaction between the parties was commercial in nature and in terms of proviso to Section 34, future interest should have been awarded at the rate money is lent by nationalised banks in relation to commercial transactions, which as per the table of structure of interest rates as available from the website of the Reserve Bank of India for the period of 2020-21 when the decree was passed, was between 6.65% and 7.15%.

47. The Supreme Court in ***Rampur Fertiliser Limited v. Vigyan Chemicals Industries***¹⁵ has held that the quantum and rate of interest should be awarded in terms of the provisions of Section 34, CPC which states that the interest awarded is to be awarded at a reasonable rate and on the principle amount. Relying on the judgment in the ***Clariant International Ltd. and Another v. Securities and Exchange Board of India***¹⁶. It was held that in the absence of any agreement or statutory provision, the interest payable can only be at market rate taking into

¹⁵ (2009) 12 SCC 324

¹⁶ (2004) 8 SCC 524



account the inflation and for ascertaining the rate of interest, Courts of law can take judicial notice of both inflation as also the bank rate of interest for commercial purposes. The relevant extract of the ***Rampur Fertiliser Limited*** case is below:

“17. **The quantum and rate of interest** which the appellant in the present case is entitled to **would be in accordance with the provisions of Section 34 of the Code and not** in accordance with the provisions of the Act. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount.

18. In *Clariant International Ltd. v. SEBI* [(2004) 8 SCC 524] it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory.

19. It was further held in *Clariant International case* [(2004) 8 SCC 524] **that in the absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and** such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. It was also held that in ascertaining the rate of interest the courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in *Kaushnuma Begum v. New India Assurance Co. Ltd.* [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] , *H.S. Ahammed Hussain v. Irfan Ahammed* [(2002) 6 SCC 52 : 2002 SCC (Cri) 1263] and *United India Insurance Co. Ltd. v. PatriciaJean Mahajan* [(2002) 6 SCC 281 : 2002 SCC (Cri) 1294] and it was observed that: (*Clariant International case* [(2004) 8 SCC 524] , SCC p. 541, para 36)

“36. ... Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.”

20. In *Assam Small Scale Industries Development Corpn. Ltd.* [(2005) 13 SCC 19] also in terms of Section 34 of the Code, in relation to the transactions made prior to coming into force of the Act, simple interest at the rate of 9% per annum was granted taking the same to be bank rate at the relevant time.

21. **Therefore, in view of the foregoing legal proposition, we hold that the High Court was not justified in granting interest at the rate of 18% per**



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annum with monthly rests. *Considering the facts and circumstances of the present case we direct that pendente lite and future interest at the rate of 9% shall be paid.”*

[Emphasis supplied]

48. As stated above, the learned Trial Court has awarded *pendente lite* interest @9% p.a. and future interest @6% p.a. The award of *pendente lite* interest is reasonable and in terms of the law does not require any interference. However, and in view of the fact that it is a commercial transaction, this Court deems it apposite to increase the award of future interest from 6% to 7% p.a. in the facts of the present case. Accordingly, while the award of *pendente lite* interest remains the same, the award of future interest is enhanced to 7%.

49. In view of the foregoing discussions, RFA 286/2021 is dismissed while RFA 311/2021 is partly allowed.

50. NKS is at liberty to take appropriate steps for release of the amounts which stand deposited with this Court in terms of the Impugned Judgment as modified by this Court.

51. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 01, 2025/pa/r