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

+ RSA 67/2026, CM APPL. 23220-23223/2026

ORIENTAL INSURANCE CO. LTD.

Estate Department, Block - 4, Plot-A,

NBCC Office Complex,

Kidwai Nagar East, New Delhi.

.....Appellant

Through: Mr. Mohit Arora, Advocate on Record

versus

1. **DEVANSH REAL ESTATE PVT. LTD.**

G-190, Preet Vihar, Delhi.

2. **M/S SHIKHA PROPERTIES PVT. LTD.**

65, Regal Building, Connaught Place,

New Delhi.

.....Respondents

Through: Mr. Jai Sahai Endlaw and

Ms. Shambhavi Kala, Advs. for R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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10.04.2026

CM APPL. 23221/2026 (Seeking Exemption)

1. Allowed, subject to just exceptions.

2. The Application stands disposed of.

CM APPL. 23223/2026 (Seeking condonation of Delay in Re-filing)

3. This is an Application filed by the Appellant seeking condonation of delay of 13 days in re-filing the Appeal.

4. For the reasons stated in the application, the delay of 13 days in re-filing the appeal is condoned.

5. The Application stands disposed of.



RSA 67/2026:

6. The present Regular Second Appeal under Section 100 read with Section 151 of the Civil Procedure Code, 1908 (*hereinafter referred to as 'CPC'*) has been filed against the Judgment dated 03.12.2025 passed by the learned District Judge, Delhi, whereby the Judgment and Decree dated 03.09.2019 passed by the learned Civil Judge in CS SCJ No. 10770/2016, directing the Appellant to pay **mesne profits/damages @ Rs.100/- per sq. ft. per month**, has been upheld.

7. The Respondent No.1/Plaintiff, M/s Devansh Real Estate Private Limited had instituted a Suit bearing CS SCJ No. 10770/2016 for possession and recovery of *mesne profits/damages* at the rate of Rs.150/- per square foot per month, against the Appellant/Defendant No.2, Oriental Insurance Company Limited (**sub-tenant**) and Respondent No.2/Defendant No.1, M/s Shikha Properties Pvt. Ltd. (**tenant**), in respect of the second floor of Mittal Building bearing municipal no. 12/4, Asaf Ali Road, New Delhi (*hereinafter referred to as the "Suit Property"*).

8. **The brief facts** are that the Suit Property was originally owned by Deep Chand Mittal & Ors., who had let it out to Defendant No.1/Respondent No.2, M/s Shikha Properties Pvt. Ltd., **tenant**, vide an unregistered Lease Deed dated 07.06.1983, at a monthly rent of Rs.4,500/- excluding electricity charges. The lease was terminable by 15 days' notice. During the pendency of the Suit, the Suit Property was transferred in favour of Plaintiff/Respondent No.1, M/s Devansh Real Estate Pvt. Ltd. (**owner**), which was accordingly substituted as the Plaintiff.

9. The tenancy of Defendant No.1/Respondent No.2 was terminated vide



Legal Notice dated 04.04.2008, whereby the said Defendants were asked to deliver the vacant and peaceful possession of the Suit Property. The said notice was also served upon the Defendant No.2/Appellant, who was in occupation as a **sub-tenant**.

10. Both Defendants responded to the said Notice, incorporating false and frivolous pleas. Upon termination of tenancy of Defendant No.1, both the Defendants became illegal and unauthorised occupants in the Suit Property and were liable for eviction as well as payment of *mesne* profits. Despite termination, possession was not handed over and both Defendants continued in unauthorised occupation.

11. Hence, the Plaintiff instituted the ***Suit seeking possession and recovery of mesne profits/damages.***

12. **Defendant No.1 M/s Shikha Properties Pvt. Ltd.**, filed its Written Statement, wherein it admitted the execution of Lease Deed dated 07.06.1983, in respect of the Suit Property, but denied that it was an unauthorised occupant. The liability to pay *mesne* profits was also denied.

13. *Defendant No.2/Appellant, Oriental Insurance Company Ltd. (sub-tenant)*, in its **Written Statement**, denied the Plaintiff's claim for recovery of possession of the Suit Property, *inter alia*, on the ground of absence of privity of contract. Defendant No.2/Appellant asserted that it was a sub-tenant of Defendant No.1/Respondent No.2 and, therefore, only the latter had the authority to terminate the tenancy. It was further contended that any arrangement between the Plaintiff/**owner** and Defendant No.1, **tenant** had no bearing on its right to continue in occupation of the Suit Property.

14. It was further asserted that Defendant No.2/Appellant came in possession of the Suit Property by virtue of an Agreement with Defendant



No.1 and was not liable to pay *mesne* profits.

15. An Application under **Order XII Rule 6 CPC** was filed by the Plaintiff, and the Suit for Possession was decreed *vide* Judgement dated 17.02.2012. **Pursuant thereto, possession was handed over by the Appellant (sub-tenant) on 15.02.2013.** Thereafter, the Suit survived only *qua* remaining relief of Mesne profits and damages.

16. The issues were framed on 20.09.2012, as under:

“(i) Whether there exists no privity of contract between the Plaintiff and defendant no.2? OPD2.

(ii) Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD2.

(iii) Whether the plaintiff is entitled for a decree of mesne profit and damages, if so, for what period and at what rate? OPP.

(iv) Whether the plaintiff is entitled for a decree of recovery of interest @ 18% per annum on the arrears of rent? OPP.

(v) Relief.”

17. The Plaintiff, in support of its case, examined **PW-1**, Sh. O.P. Gupta as who tendered his evidence by way of affidavit and deposed about the case of the Plaintiff.

18. **PW-2**, Sh. Dhiraj Kumar Thakur, Deputy Manager, IndusInd Bank, Barakhamba Road Branch, Delhi, produced the original Sale Deed dated 22.09.2010 **Ex. PW-1/3**, executed by Deep Chand Mittal & Ors. in favour of M/s Devansh Real Estate Pvt. Ltd.

19. **PW-3** Sh. Daulat Ram Kashyap, UDC, Office of Sub-Registrar-III, Asaf Ali Road, New Delhi produced the original lease deeds dated



16.07.2008, 21.11.2008, 17.11.2008, 22.07.2008 and 10.02.2009, certified copies of which were exhibited as **Ex. PW-1/16** to **Ex. PW-1/20** respectively.

20. Appellant/Defendant No.2 in its defence examined **Sh. Veer Vikram Mohalla, as D2W1**, who tendered his affidavit in evidence in support of the defence taken in the Written Statement.

21. The **learned Civil Judge, vide Judgment and Decree dated 03.09.2019**, held that the Plaintiff was entitled to recover damages/*mesne* profits at the rate of Rs.100/- per square foot per month for the period commencing from 22.09.2008 to 15.02.2013, from Defendant No.2.

22. Aggrieved by the Judgment and Decree dated 03.09.2019, as also the subsequent Order dated 21.08.2023 dismissing its Application seeking recall/review thereof, the Appellant/Defendant No.2, ***sub-tenant*** preferred a composite **First Appeal under Section 96 CPC before the learned District Judge.**

23. The Appellant, ***sub-tenant***, confined its challenge in the First Appeal, only to the period for which *mesne* profits had been awarded, i.e., from 22.09.2008 to 15.02.2013, and specifically disputed its liability for the overlapping period from 22.09.2008 to 31.10.2011.

24. It relied upon the Consent Decree dated 31.10.2011 passed in Civil Suit No.100/2011 titled *Shikha Properties Pvt. Ltd. vs. Oriental Insurance Co. Ltd.*, whereby Oriental Insurance Company Ltd., Appellant herein, agreed to make payment of rent from 19.10.2008 to 31.10.2011 to M/s Shikha Properties Pvt. Ltd., Respondent No.2 (tenant) and contended that since it had already paid rent to Respondent No.2 for the said period, it could not be made liable to pay *mesne* profits again, for the same property



and same period.

25. The **learned District Judge** held that the challenge to the Order dated 21.08.2023 was not maintainable, in view of Order XLVII Rule 7 CPC.

26. On merits, the learned District Judge considered rival contentions of the parties and held that the Consent Decree dated 31.10.2011, being between the Appellant, **sub-tenant** and Respondent No.2, **tenant**, was not binding on Respondent No.1, **owner**, who was not a party thereto, and therefore, could not affect the independent right of Respondent No.1 to recover *mesne* profits.

27. The **learned District Judge further observed** that the said decree, being a judgment in *personam*, was binding only inter se the parties thereto and could not affect the rights of Respondent No.1. **Accordingly, the learned District Judge found no error in the Judgment dated 03.09.2019 and dismissed the Appeal.**

28. Aggrieved, the **present Regular Second Appeal** has been filed on behalf of the Appellant i.e. Oriental Insurance Company Ltd, **sub-tenant**.

29. **The grounds of challenge** are that the learned District Judge failed to consider the *plea of absence of privity of contract* raised by the Appellant and erroneously confined the scope of the Appeal only to the period for which *mesne* profits had been awarded, which is unsustainable in law.

30. It has not been appreciated that while a Decree for *mesne* profits may be in *personam*, the law does not sanction *double monetary liability* for the same occupation, property, and time period. The doctrine of *unjust enrichment*, which mandates that no party can be allowed to enrich itself at the cost of another without authority of law, has not been considered.

31. Furthermore, *mesne* profits are compensatory in nature and not penal.



Once compensation for occupation has been decided by the learned District Judge under a decree, the second recovery for the same period is legally unsustainable.

32. It has not been considered that the Appellant has already paid rent for the period from 19.10.2008 to 31.10.2011, to Respondent No.2, **tenant** in terms of the Compromise Decree dated 31.10.2011 and, under the impugned Judgement, has again been asked to pay the *mesne* profits for the period from 22.09.2008 to 15.02.2013, including the overlapping period. The Appellant, therefore, cannot be made liable twice for the same period.

33. Substantial questions of law raised are as follows:

“A. Whether the Ld. DJ has erred in law by failing to appreciate that the imposition of overlapping monetary liability for the very same immovable property and the identical period of occupation is impermissible and untenable in law?

B. Whether the Ld. District Judge has erred in law in undermining the doctrine of finality of judicial determinations by permitting a monetary liability, already heard, finally adjudicated, and duly satisfied under one decree, to be indirectly reopened and re-imposed through another decree for the very same period?

C. Whether the Ld. District Judge has erred by dismissing the appeal filed by the Appellant without appreciating the doctrine of privity of contract?

D. Whether the findings recorded by the Ld. District Judge are vitiated by perversity in law on account of non-consideration of material and admitted facts, namely the existence and finality of the consent decree dated 31.10.2011?

E. Whether the Ld. DJ has erred in law in fastening liability



for mesne profits upon the appellant for a period during which the appellant had already adjudicated its monetary liability for use and occupation of the very same immovable property under a lawful and subsisting judicial decree?

F. Whether the Ld. DJ has failed to appreciate that the appellant has already been directed to pay the lease rent/mesne profit vide order dated 31.10.2011 passed in CS No. 100/2011 and the appellant cannot be directed to pay the lease rent twice to different parties?”

34. **Learned counsel for the Respondent No.1, owner**, appeared on advance Notice, and submitted that the impugned Judgement is strictly in terms of the Lease Agreement, wherein it was clearly stipulated that while the tenant may sublet the premises, but upon termination of the tenancy of the tenant, the sub-tenancy would automatically stand terminated.

35. It is further submitted that once the tenancy stood terminated and the possession remained with the Appellant, **sub-tenant**, the liability to pay the user occupation charges/mesne profits vested solely upon the sub-tenant. Therefore, no error has been committed in fastening the liability to pay mesne profits exclusively upon the Appellant.

36. Insofar as the plea of *unjust enrichment* is concerned, learned counsel clarified that the Suit for Recovery of Possession and *mesne* profits was instituted on 01.08.2008, against both Respondent No.2, **tenant** and Appellant **sub-tenant**. During the pendency of the said suit, a separate Suit for recovery of rent bearing **CS No.100/2011 was filed by Respondent No.2, tenant** against the Appellant **sub-tenant**, wherein a compromise was arrived at between the said parties, culminating in a Consent Decree dated 31.10.2011, in terms of which the Appellant agreed to pay rent for the period from 19.10.2008 to 31.10.2011.



37. It is submitted that the said proceedings and the compromise were *inter se* Respondent No.2 **tenant** and the Appellant **sub-tenant**, and were entered into during the pendency of the present Suit, without impleading Respondent No.1 **owner, as a party**. Hence, **Respondent No.1** cannot be held responsible for any settlement between the tenant and sub-tenant.

38. Any right of the Appellant, **sub-tenant** to recover the rent already paid lies against Respondent No.2 , **tenant**, and the landlord cannot be deprived of its rightful claim, on this ground.

Submissions heard and record perused.

39. At the outset, it is pertinent to note that the present Regular Second Appeal has been filed under Section 100 CPC, which lies only on the *existence of a substantial question of law*. The scope of interference in a Second Appeal is extremely limited, and concurrent findings of fact recorded by the Courts below, are not liable to be interfered with unless it is demonstrated that such findings are perverse, based on no evidence, or suffer from a substantial error of law.

40. In the present case, it is an admitted position that the Appellant has not disputed the entitlement of Respondent No.1 to claim *mesne* profits, nor has it challenged the rate at which *mesne* profits have been awarded.

41. *The challenge is confined only to the period of liability, particularly the overlapping period from 22.09.2008 to 31.10.2011, which forms a part of the overall period from 22.09.2008 to 15.02.2013.*

42. The primary contention of the Appellant is that in view of the Consent Decree dated 31.10.2011 passed in Civil Suit No.100/2011 between the Appellant and Respondent No.2, it has already discharged its liability towards rent for the said period and, therefore, cannot be made liable to pay



mesne profits again for the same property and period. It is thus, argued that fastening of liability for the same period, amounts to *duplication of monetary liability, which is impermissible in law.*

43. The aforesaid contention, does not merit acceptance. In this context, it would be pertinent to refer to the terms of the Lease Deed. It stipulated as under:

"that the lessee is permitted to sublet the portion or part thereof only once during the period of his tenancy to any reputed firm, company or individual after due information and supply of duly signed copy of the sublease deed to the lessor. in case the breach, the tenancy shall stand terminated. In case the tenancy expires, or is terminated on any ground, such as breach etc. the subtenancy automatically shall expire and the sub lessee will be liable to be ejected along with the lessee".

44. As per the terms, while the tenant may sublet the premises, but upon termination of the tenancy of the tenant, the sub-tenancy would automatically stand terminated. Therefore, the Appellant had been inducted as sub-tenant, in terms of the lease Deed.

45. However, the lease deed further stipulated that once the tenancy stood terminated and the possession remained with the Appellant, **sub-tenant, the liability to pay the user occupation charges/mesne profits vested solely upon the sub-tenant.**

46. **There is no dispute that the tenancy got terminated vide Notice dated 04.04.2008,** to which both the Defendant No.1 and Defendant No.2 responded. Thereafter, the present Suit was filed against both, the tenant and sub-tenant. It is during the pendency of this Suit that tenant filed a separate recovery suit against sub-tenant, without making the Plaintiff as a party. The



Consent Decree dated 31.10.2011 was admittedly passed in proceedings *inter se* the Appellant and Respondent No.2.

47. Despite being aware of the present Suit and the liability of the sub-tenant to pay the occupation charges to the owner, as per the express terms of the lease Deed, if it chose to settle the matter with the tenant and paid rent for a certain period to the tenant, it would not absolve the Appellant from its liability against the owner, in terms of the Lease deed.

48. Furthermore, the liability to pay *mesne* profits arises out of unauthorised occupation of the Suit Property. Once the tenancy stood terminated and the Appellant continued in possession as a sub-tenant, its liability to compensate the true owner for use and occupation thereof, cannot be avoided or diluted on the basis of any arrangement or decree *inter se* the tenant and sub-tenant.

49. Respondent No.1, being the owner of the Suit Property, was not a party to the said proceedings. It is a settled principle of law that a decree binds only the parties to the *lis* and cannot operate to the prejudice of a third party, who was neither a party nor represented in the said proceedings. The said decree, being a judgment in *personam*, cannot override or defeat the independent right of Respondent No.1 to recover *mesne* profits for the unauthorised occupation of its property.

50. Any payment made by the Appellant, ***sub-tenant*** to Respondent No.2 ***tenant*** would not absolve it of its liability towards Respondent No.1 ***owner***, and the Appellant; it may seek appropriate remedies against Respondent No.2, but cannot deny its liability towards the owner to recover the occupation charges for the entire period.

51. ***Both the learned Civil Judge and the learned District Judge have,***



upon appreciation of the evidence and material on record, returned concurrent findings holding the Appellant liable to pay *mesne* profits to Respondent No.1 for the period from 22.09.2008 to 15.02.2013.

52. No perversity, illegality, or substantial question of law has been shown to arise from the impugned judgments, warranting interference by this Court under Section 100 CPC.

53. The present Appeal is accordingly dismissed, as being without merit. Pending applications, if any, also stand disposed of.

NEENA BANSAL KRISHNA, J.

APRIL 10, 2026/R