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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA(COMM) 327/2025**

RADHEY SHYAM GUPTA .....Appellant

Through: Mr. Sanjay Gupta, Mr. Ateev Mathur &Mr. Ritwik Singh, Advs.

versus

PUNJAB AND SIND BANK ....Respondent

Through: Ms. Seema Gupta, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

O R D E R

% 20.01.2026

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Appellant – Radhey Shyam Gupta under Section 13 of the Commercial Courts Act, 2015, *inter alia*, assailing the judgment dated 22nd March, 2025 (hereinafter, '*impugned judgment'*) passed by the District Judge (Commercial)-07 (Central), Tis Hazari Courts, Delhi in ***CS (COMM.) No. 542/2023*** titled, ***Radhey Shyam Gupta v. Punjab and Sind Bank.***

3. The Appellant was the Plaintiff and the landlord of the property bearing no. 2612-13, Zere Fasil, Naya Bazar, Delhi-110006 (hereinafter, *'Subject Premises'*). *Vide* the impugned judgment, the suit was decreed in favour of the Plaintiff/Appellant.

4. The Appellant has preferred the present appeal challenging the impugned judgment and decree dated 22nd March, 2025 to the extent that it

has not granted the *mesne profits* in terms of what the Appellant had demanded.

5. *Vide* the impugned judgement, the decree of possession has already been granted and the present appeal is restricted to the *mesne profits*.

6. Notice was issued in this appeal on 27th May, 2025 and Ms. Seema Gupta, ld. Counsel has entered appearance for the Respondent bank. Ld. Counsels have made their submissions on the aspect of *mesne profits.*

7. In order to prove its claim for *mesne profits*, the Appellant *i.e.,* landlord has also relied upon the following two lease deeds:

  i. Lease deed dated 28th February, 2020 entered into between the Appellant *i.e.,* landlord and Oriental Bank of Commerce for the premises bearing no. 4136, 1st floor, Naya Bazar, Delhi where the area is 1932.72 sq. ft. and the rate being Rs. 165/- per sq. ft. per month.

  ii. Lease deed dated 31st January, 2023 between one Mrs. Ambika Singhal and Kotak Mahindra Bank for the premises Shop No. 4079, Ground Floor, Naya Bazar, Delhi. In this lease deed, the average annual rent for a period of 9 years is stipulated as Rs. 55,10,860/- which according to ld. Counsel for the Appellant works out to Rs. 369/- per sq. ft. for the ground floor and 50% of the same would be Rs. 185/- for the basement.

8. In terms of the lease deed of the Oriental Bank of Commerce which is now taken over by Punjab National Bank is concerned, the agreed rate is Rs.165/- per sq. ft.

9. It is the submission of Mr. Gupta, ld. Counsel for the Appellant that, though, the claim of the landlord is for the previous period from 10th April, 2021, the landlord is willing to restrict the claim of *mesne profits* from the

date of termination *i.e.,* 1st October, 2022. Reliance is also placed upon the cross-examination of the witness of the Respondent bank who admits that the Kotak Mahindra Bank is only four minutes walk from the subject premises.

10. On behalf of the Respondent Bank, Ms. Seema Gupta, ld. Counsel submits that the cross-examination of the witnesses would, in fact, show that the two premises are not comparable premises to decide *mesne profits*. The subject premises is located in a *gali* whereas the other two lease deeds relate to premises on the main road.

11. Ld. Counsel for the Respondent bank further submits that the witnesses relied upon by the Appellant themselves agree that these premises are not comparable with each other. Ld. Counsel places vehement reliance on the findings of the Trial Court which came to the conclusion that the reasonable *mesne profits* would be double of the amount of the last paid rent.

12. On the question of any evidence led by the Respondent bank to prove the prevalent market rate, the stand of Ms. Gupta, ld. Counsel for the Respondent Bank is that the *onus* was on the Appellant to prove the same and hence, the Respondent bank did not deem it appropriate to lead any evidence.

13. The Court has heard the matter and has also perused the record. One of the important and suprising features is that, though a decree for possession has already been passed in this matter, the Respondent bank continues to occupy the subject premises and is presently paying the amount in terms of the impugned judgment. Thus, the question would not only be related to the past period but also as to how much use and occupation charges would be liable to be paid for the period going forward till the Respondent bank hands over vacant and peaceful possession of the subject premises to the Appellant.

14. The two lease deeds which have been placed on record though not for

identically located premises, however, are relevant for determining the *mesne profits*. The points of distinction may be that those premises are located on the main road and the subject premises may be located in the side road, however, they both relate to Naya Bazar, Delhi. Moreover, the same are also premises leased out by banks.

15. The average rent, if taken between Rs. 165/- per square feet and Rs. 185/- per square feet, Rs. 365/- per square feet would show that the market rate is much higher than presently what has been paid by the Respondent bank.

16. The subject premises has been enjoyed by the Respondent bank since the year 1973 as a tenant. Moreover, there is a partition which has been affected between the owners of the subject premises and the present landlord *i.e.,* the Appellant owns 50% admittedly.

17. The findings of the Trial Court in respect of the subject premises and the differentiation therein is set out in the impugned judgment *i.e.,* paragraph 51 onwards which is extracted below:

> *"51. Applying the aforesaid proposition of law to the facts of the case, as already discussed, the plaintiff has claimed mesne profits @ Rs.5,62,500/- p.m. w.e.f. 01.10.2022 till the actual physical possession of the suit premises is received. It would be apposite to very briefly refer to the communication between the parties for arriving at just & fair determination of mesne profits. It may be seen that during negotiations the plaintiff has inigtially asked for enhanced rent @ Rs.225/- per square foot vide letter dated 04.10.2021 Ex.PW1/4. The plaintiff also agreed to carry out necessary changes and renovation as per the requirement of the defendant and mentioned the same in letter dated 16.03.2022 Ex.PW1/7 whereafter which on the request of the defendant, the plaintiff has revised this offer @Rs190/- per square foot for the ground floor and Rs. 95/- per*

square foot thereby to Rs.3,56,250/- vide letter dated 07.04.2022 Ex.PW1/8. This was was reiterated by the plaintiff after the defendant bank's architect made a visit to the suit premises and the plaintiff agreed to carry out necessary renovation as suggested. Things, however, changed thereafter when the defendant bank gave its reply dated 21.06.2022 Ex.PWl/9 stating that the premises are not suitable for defendant branch, primarily basing its response on the internal communication of the bank with Zonal Office Ex.PWl/5 which directed the bank to surrender a part of the premises and negotiate the rent. It was only after this letter dated 21.06.2022, the things started taking a different turn and the defendant started with an intention to vacate the suit premises on the ground of exorbitant rent while negotiating parallely with the co-owner of the other portion of the property. The bank also started looking for alternative premises and has also probably obtained the valuation report which according to plaintiff's counsel was best evidence withheld by the defendant. Now these facts are required to be kept in mind while considering the evidence of the plaintiff for the quantum of mesne profits.

52. In this regard, for the purpose of proving the market rent of nearby properties taken on lease by other nationalized and private banks, the plaintiff has examined two independent witnesses, one from Punjab National Bank with its branch in property bearing No.4136, First Floor Naya Bazar, with a carpet area of 1972.72 sq. ft. taken on lease vide lease deed registered on 29.02.2020 Ex.PW4/l. This lease deed shows rate of rent of Rs.3,18,900/- @ Rs.165/- per square foot. The second witness is from Kotak Mahindra Bank having a leased area of 1244 square foot in property bearing No.4079, Ground Floor, Naya Bazar, Delhi vide lease deed registered on 03.02.2023 Ex.PW5/l. This lease deed shows an average annual rent of Rs.55,10,860/- (i.e. Rs.4,59,238/per month@ Rs.369/- per square foot).

As per the contention raised by the plaintiff, these two properties are situated in the same area, almost similar location and are much less in terms of the total available area when compared to the area of the suit property in terms of square feet and are being taken at a much higher price by the nearby banks. The plaintiff has tried to create a similarity in terms of location for claiming the mesne profits @ Rs.5,62,500/- per month (i.e.225/- per sq. ft.).

53. Now, if these lease deeds and the evidence of PW4 and PW5 are carefully scrutinized, it is an admitted fact that both these properties are situated on main road while the suit property is situated inside a street. It is also a matter of fact that the suit property is situated in an area called Zere Fasil in Naya Bazar which is admittedly inside a street not visible from the main road. PW 4 during cross-examination has duly admitted that while his branch is on main road, the suit premises where the defendant bank is situated is at a distance of about 500 meters from his branch and is not visible from his bank. The witness has further admitted that both the premises cannot be compared as they are differently located. Similarly, PW5 during cross-examination has also admitted that the branch of the defendant bank (i.e. suit premises) is not visible from his branch situated at main road while admitting that his bank branch and the defendant bank are differently located and cannot be compared on account of such different location. This being the case, the evidence when examined on the yardstick of preponderance of probabilities, the lease deed brought by the plaintiff during the course of evidence of PW4 and PW5 cannot be called of properties which are situationally similar or comparable. It is a settled proposition of law that no comparison can be drawn on incomparable properties which may be governed by a number of factors including their locations which is particularly the case in a congested hub of commercial area like old Delhi where *suit property situated. This is more so, when the suit property situated in a gali at about 500 meters from the main road while the comparable properties brought for comparison by the plaintiff are both situated on main road.*

54. As already discussed, a decree for mesne profits as per Order XX Rule 12 of CPC can and should have been made after an inquiry which as per settled law is to be led by plaintiff by various factors including examining the rents/possession charges of adjoining properties. The plaintiff as scuh has not successful in establishing the same on the basis of testimony of the witnesses relied upon by him during evidence. No other succinct evidence has been brought by the plaintiff for determination of such amount as may be just and reasonable. It is a settled proposition of law that in the absence of any clear and cogent evidence, some amount of honest calculation and guess work is always in built in the process of determining the mesne profits and the courts are entitled to do so to arrive at a honest and fair rate of rent payable at mense profits. Reliance placed on ***New India Assurance (supra).*** *In* ***Vinod Khanna*** *Vs.* ***Bakshi Sachdev AIR 1996 Delhi 32*** *the Hon'ble High Court has held that a judicial note may be taken by awarding an amount which is just and reasonable in respect of the suit property. Taking into account that the suit property is situated in the main hub of old/central, Delhi where the rates of commercial properties are on a steady rise and the suit property has been used for commercial purpose for last so many decades and the rent was increased by the parties from time to time at subsequent stages, and also keeping in view that the judgment of the Hon'ble High Court discussed earlier in* ***Anjani Devi*** *(supra) and* ***Indrawati Kapoor*** *(supra), the court is of the considered opinion that mesne profits at the rate double the last paid rent i.e. Rs. 1,25,638/- per month (Rs.62,819/- X 2) shall be just and reasonable in the facts and circumstances of the case. This would also*

> *be in synchrony with the last enhancement and renewal of the lease deed on 30.04.2007 when the rate of rent was increased from Rs.14,547/- to Rs.47,500/- with an increase of 226.5% which is almost double the earlier paid rent by the defendant bank.*"

18. The Trial Court has brought out the differences between the two lease deeds in the above paragraphs. Finally, the Trial Court itself comes to the conclusion in paragraph 54 and 55 as under:

> "*54. As already discussed, a decree for mesne profits as per Order XX Rule 12 of CPC can and should have been made after an inquiry which as per settled law is to be led by plaintiff by various factors including examining the rents/possession charges of adjoining properties. The plaintiff as scuh has not successful in establishing the same on the basis of testimony of the witnesses relied upon by him during evidence. No other succinct evidence has been brought by the plaintiff for determination of such amount as may be just and reasonable. It is a settled proposition of law that in the absence of any clear and cogent evidence, some amount of honest calculation and guess work is always in built in the process of determining the mesne profits and the courts are entitled to do so to arrive at a honest and fair rate of rent payable at mense profits. Reliance placed on* ***New India Assurance (supra).*** *In* ***Vinod Khanna*** *Vs.* ***Bakshi Sachdev AIR 1996 Delhi 32*** *the Hon'ble High Court has held that a judicial note may be taken by awarding an amount which is just and reasonable in respect of the suit property. Taking into account that the suit property is situated in the main hub of old/central, Delhi where the rates of commercial properties are on a steady rise and the suit property has been used for commercial purpose for last so many decades and the rent was increased by the parties from time to time at subsequent stages, and also keeping in view that the judgment of the Hon'ble High Court discussed earlier in*

<u>Anjani Devi</u> *(supra) and* ***<u>Indrawati Kapoor</u>*** *(supra), <u>the court is of the considered opinion that mesne profits at the rate double the last paid rent i.e. Rs. 1,25,638/- per month (Rs.62,819/- X 2) shall be just and reasonable in the facts and circumstances of the case. This would also be in synchrony with the last enhancement and renewal of the lease deed on 30.04.2007 when the rate of rent was increased from Rs.14,547/- to Rs.47,500/- with an increase of 226.5% which is almost double the earlier paid rent by the defendant bank</u>*
<u>55. Thus on the basis of aforesaid discussion and preponderance principle, the plaintiff shall be entitled to the mesne profits @ Rs.1,25,638/- per month w.e.f. 01.10.2022 till the vacant possession of the suit property is received by the plaintiff The issue is, accordingly decided in favour of plaintiff against the defendant."</u>

19. Thus, on the one hand, the Trial Court deems it appropriate that the increase should be 226.5% over the last paid rent but still does not grant the entire 226.5% which would have worked out to Rs. 2,05,000/-.

20. Overall, after considering the are of the subject premises as also the evidence led on record, this Court is of the opinion that the *mesne profits* would be liable to be fixed at Rs. 3,00,000/- per month with effect from 1st January, 2026 and shall be the use and occupation charges till the vacant and peaceful possession is handed over to the Appellant. However, for the period 1st October, 2022 to 31st December, 2025, the monthly use and occupation charges is fixed at Rs. 2,50,000/-.

21. Since the Trial Court had taken a plausible view, this Court is also of the opinion that if the past outstanding amounts *i.e.,* from 1st October, 2022 to 31st December, 2025, in terms of this order are paid by 28th February, 2026, no interest would be liable to be paid by the Respondent bank.

22. However, if the past amount is not paid or cleared by 28th February, 2026, interest @ 6% Simple Interest would be liable to be paid by the Respondent bank.

23. The appeal is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J

MADHU JAIN, J

JANUARY 20, 2026
dj/ck