

(2012) 05 DEL CK 0588

Delhi High Court

Case No: Regular First Appeal No. 374 of 2004

M/s Marudhar Services Ltd. and
Another

APPELLANT

Vs

Ved Parkash and Another

RESPONDENT

Date of Decision: May 4, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, Order 6 Rule 14A, 96

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Gurbaksh Singh, for the Appellant; Mala Goel, for the Respondent

Judgement

Valmiki J Mehta, J.

The respondent No. 1/plaintiff No. 1 has died during the pendency of the appeal and an oral request of learned counsel for the parties is accepted, whereby respondent No. 2/plaintiff No. 2 being the wife of respondent No. 1/plaintiff No. 1 is substituted as a legal heir of respondent No. 1/plaintiff No. 1. The name of respondent No. 1 is, accordingly, deleted from the array of parties. For the sake of convenience the original plaintiffs are referred to as the respondents/plaintiffs. The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 16.4.2004 decreeing the suit of the respondents/plaintiffs for arrears of rent and mesne profits. The respondents/plaintiffs have also filed cross-objections in this appeal, inasmuch as, the respondents/plaintiffs claim that the arrears of rent ought to have been granted at Rs. 10,000/- per month and not Rs. 6,000/- per month, and there should be enhancement in the rate of the mesne profits granted.

2. The facts of the case are that the appellant No. 1/defendant No. 1 became a tenant in the first floor portion of the property being C-52, Soami Nagar, New Delhi - 110 017 under the respondents/plaintiffs in the year 1993. The premises were let out for the residence of appellant No. 2/defendant No. 2. There were two

documents creating the relationship of landlord and tenant between the parties. One was an unregistered lease deed dated 26.8.1993 for a period of two years at rent of Rs. 6,000/- per month, and another was an agreement of the same date for hire charges of the fittings and fixtures @ Rs. 4,000/- per month. Effectively, therefore, a sum of Rs. 10,000/- was payable as rent of the premises. I may note that now as per innumerable judgments of this Court, hire charges are taken as part and parcel of the rent, inasmuch as, they are charges for use of the rented premises.

3. The tenancy being a monthly tenancy, was terminated by the plaintiffs/respondents/landlords by a legal notice dated 2.3.1998, and receipt of which is not disputed by the appellants/defendants. The said notice was in fact replied to by the appellants/defendants vide reply dated 23.4.1998. In the notice, the respondents/plaintiffs claimed arrears of rent @ Rs. 10,000/- from 1.9.1995 to 31.3.1998 and mesne profits from 1.4.1998 till the date when physical possession of the tenanted premises is handed over. During the pendency of the suit, which was filed for possession, arrears of rent and mesne profits, the respondents/landlords filed an application under Order 12 Rule 6 CPC with respect to the relief of possession, and which application on being allowed, and the order being upheld by this Court, the appellants/defendants handed over possession in January, 2001. The respondents/plaintiffs, however, claimed that the possession was handed over in March, 2001.

4. By the impugned judgment the trial Court has decided the issue of whether arrears of rent were payable from 1.9.1995 to 31.3.1998, and if yes at what rate. The impugned judgment also grants a decree for mesne profits @ Rs. 12,000/- per month from 1.4.1998 till March, 2001, which is the month which the trial Court found when the appellants/defendants handed over physical possession of the suit premises. The counsel for the respondents/plaintiffs state that possession was taken by the respondents/plaintiffs in execution proceedings with the assistance of the Court bailiff.

5. The issues before this Court, and which I am called upon to decide in accordance with the arguments which have been so urged on behalf of the respective parties are as under:-

(i) Whether the respondents/plaintiffs/landlords ought to be allowed arrears of rent at Rs. 10,000/- per month and not Rs. 6,000/- per month, as granted by the trial Court from 1.9.1995 to 31.3.1998 i.e. not at Rs. 6,000/- per month as granted by the trial Court?

(ii) Whether the payment of Rs. 1,20,000/-, made by the appellants/defendants by means of two pay orders dated 2.9.1997 and 18.11.1997, should be taken for payment of dues from September, 1997 only as per the case of the appellants/defendants or from 1.9.1995 as per the case of the respondents/plaintiffs?

(iii) Whether the respondents/plaintiffs are entitled to enhancements in mesne profits from Rs. 12,000/- per month as granted by the trial Court for the period from 1.4.1998 till January/March, 2001?

6. So far as the first issue, as to what should be the rate of rent for the period from 1.9.1995 to 31.9.1998, I find that the trial Court has arrived at obviously inconsistent findings in the impugned judgment. This I say so because, though, on the one hand the trial Court has found that the total amount which was payable was Rs. 10,000/- per month i.e. Rs. 6,000/- per month as rent and Rs. 4,000/- towards the alleged fixtures and fittings, yet, the rent has been held payable only on Rs. 6,000/- per month. The trial Court, in fact, in para 10 of the impugned judgment holds that really the fittings and fixtures are no special fixtures and, therefore, were part of rent, yet, surprisingly the figure of rent has been fixed only at Rs. 6,000/- per month and not Rs. 10,000/- per month. Following are the observations of the trial Court which show that the trial Court ought to have in fact awarded the rent at Rs. 10,000/- per month and not at Rs. 6,000/- per month.

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Besides, the premises in question were let out w.e.f. 1st September 1993 on rent at the rate of Rs. 6000/- per month besides hire charges of Rs. 4000/- per month for fittings and fixtures as mentioned in hire charges agreement PW1/2. The fittings and fixtures are electric chimney in Kitchen, gysers, tubes, fancy fittings, almirahs, showcase, dining room, cupboard and various kinds of electrical and sanitary fittings. The said fittings and fixtures are normally provided by the landlord at the time of letting out the premises to a tenant. The fittings and fixtures do not include any special kind of fixtures. Therefore, the market rent for the suit property at the time of letting out in September 1993 till August 1995 was atleast Rs. 10,000/- per month....

7. Accordingly, I hold that once the appellants/defendants had otherwise been paying Rs. 10,000/- per month for the suit premises, though in two parts of Rs. 6,000/- per month called as rent and Rs. 4,000/- per month as fittings and fixtures, the fact of the matter is that the rent which was payable for the suit premises was Rs. 10,000/- per month. I, accordingly, hold that the respondents/ plaintiffs would be entitled to charges of Rs. 4,000/- per month from 1.9.1995 till 31.3.1998 in addition to the sum of Rs. 6,000/- per month which has been granted by the trial Court for this period from 1.9.1995 to 31.3.1998. I also deem it fit to grant interest at 12% per month from the end of the month from which such amount of Rs. 4,000/- per month would become payable, in terms of the judgment of the Supreme Court in the case of Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298.

8. I am not able to agree with the arguments as urged on behalf of the appellants/defendants that the payment of Rs. 1,20,000/-, which was made by means of two pay orders of Rs. 60,000/- each, should be taken towards the payment

of rent from September, 1997 onwards only, inasmuch as, the appellants/defendants failed to prove before the trial Court that they had paid any amount towards rent from 1.9.1995 to 31.3.1998. The trial Court has given the correct finding that it is not possible to believe that huge amount in cash of Rs. 1,45,000/- was paid by the appellants/defendants without taking any receipt from the landlords. Following is the finding of the trial Court, and which I, therefore, uphold.

7.... PW Ved Parkash in his cross-examination admitted to have received a sum of Rs. 60,000/- by pay order bearing No. 123913 dated 02.09.1997 drawn on State Bank of Saurashtra. He also admitted to have received another pay order for a sum of amount of Rs. 60,000/- bearing No. 026649 drawn on HDFC Bank. However, PW Ved Parkash stated that the said payment of Rs. 1,20,000/- vide aforesaid two pay orders was towards the period ending 31.08.1995. Perusal of the plaint shows that the receipt of that amount of Rs. 1,20,000/- vide aforesaid two pay orders was not disclosed by the plaintiffs in their plaint. The defendants in their written statement claimed to have made the said payment of Rs. 1,20,000/- vide aforesaid pay orders in lieu of the amount of the dishonoured cheque of Rs. 1,45,000/-. However, the plaintiff did not dispute this fact and in the replication the plaintiffs did not plead that the said payment of Rs. 1,20,000/- vide aforesaid two pay orders of Rs. 60,000/- each was towards rent for the period upto 31.08.1995 nor was disclosed in the plaint as already stated above. Therefore, the plea of the plaintiffs for the first time in his cross-examination added voluntarily is certainly an after thought and cannot be believed. It is not believable that the plaintiffs would have remained silent from 01.09.1995 till March, 1998 and not served even a notice of demand for such a long time. All these facts goes to show that the said payment of Rs. 1,20,000/- by aforesaid two pay orders is for the period from 01.09.1995 onwards. If that payment is adjusted at the rate of Rs. 6000/- per month it covers rent for the period upto April 1997. The defendants claimed to have paid dues for the rest of the period upto 31.03.1998 by cheque/drafts/cash. Hence onus stands shifted to the defendants to prove that they have paid dues for the period May 1997 to 31.03.1998 at the rate of Rs. 6000/- per month i.e Rs. 66,000/-. It is found that no other cheque or draft or pay order showing any payment or that period is proved on record by the defendants. There is no cogent evidence by the defendants to prove to have paid that amount of Rs. 66,000/- in cash. Dates of payments of that amount are not pleaded not proved. In the absence of cogent evidence the defendants are deemed to have failed to prove the said payment of Rs. 66,000/- towards period from May 1997 to 31.03.1998. Therefore, for the said period from May 1997 to 31.03.1998 the plaintiffs are entitled to recover arrears of rent at the rate of Rs. 6000/- per month i.e., Rs. 66,000/-.

(Underlining added)

I, therefore, hold that it cannot be held as is being argued by the appellants/defendants, that the appellants/defendants have paid rent up to

September, 1997 and the amount of two pay orders totaling to Rs. 1,20,000/- should be taken towards adjustment of dues only from September 1997 instead of 1.9.1995.

9. Before proceeding to deal with the issue of the rate at which the respondents/plaintiffs are entitled to mesne profits, there are two issues which I must deal with at this stage and which are whether the appellants/defendants are liable to pay mesne profits till March, 2001 and not till January, 2001, and whether the respondents/plaintiffs are liable to give adjustments on the security deposit of Rs. 30,000/- which was taken at the time of commencement of tenancy.

10. So far as the aspect of Rs. 30,000/- received as advance, the counsel for the respondents does not dispute this position and states that adjustment of this amount will be given from the decretal amount. So far as the issue of the date of vacation of premises, I find that unfortunately there are only oral statements in this regard, although this aspect could well have been proved by the documentary evidence, inasmuch as, if the respondents/plaintiffs have taken possession through Court bailiff in execution proceedings, such documentary evidence will show the date when possession was taken. There is otherwise no documentary evidence on record of the admitted handing over of the possession and taking over the suit property.

Inasmuch as, remanding the matter for this small period of two months i.e. for February and March, 2001, is not feasible I direct that, in case, the respondents file in this Court, within a period of eight weeks from today, certified copy of the possession proceedings through the bailiff to show that the possession was taken in March, 2001, then mesne profits will be payable till March, 2001, failing which, the mesne profits will only be payable till January, 2001.

11. Now on the aspect as to whether the respondents are entitled to seek increase of mesne profits from Rs. 12,000/- as awarded by the trial Court for the period from 1.4.1998 till the date when the possession is handed over, which for the present, I am taking as March, 2001. In this regard, I find that except an oral evidence of a property dealer and a lease deed which has not been exhibited, there is no such evidence which can be accepted by me for increasing the rate of mesne profits. However, that is not the end of the matter, inasmuch as, I have in a recent judgment of M/s. M.C. Agarwal HUF vs. M/s. Sahara India & Ors. 2011 (183) DLT 105 held that even if there is no evidence led by the landlords for increase in the rents, the landlords can ordinarily be granted increase @15% per year cumulatively taking judicial notice of the fact that rents rise approximately at high rate in metropolitan cities, more so particularly in the capital. An SLP against this judgment has been dismissed by the Supreme Court being SLP No. 4104/2012 decided on 21.3.2012.

The premises in the case of M.C. Agarwal (Supra) was a commercial premises and, therefore, increase of 15% per year was granted, but considering that the subject

premises are residential premises, I deem it fit that the cumulative increase of rent should be @10% per annum and not @15% per annum.

12. The issue, then, is that what should be the rate of mesne profits taken as on date of termination of tenancy i.e. on 1.4.1998, for grant of enhancement thereon. Admittedly, the rate of rent was Rs. 10,000/- per month from the year of commencement of tenancy, in 1993. In 1998, therefore, the rate of rent would be at least approximately 50% more and, therefore, I take the rate of rent as on 1.4.1998 to be Rs. 15,000/- per month. On this rate of rent of Rs. 15,000/- per month respondents/plaintiffs are granted cumulative increase of 10% per annum cumulative i.e. they will be granted further increase at 10% every year from 1.4.1998 till the time possession is handed over in January/March, 2001. Post the period from 1.4.1998 the increase will have to be cumulative increase every year, inasmuch as, the appellants/defendants have deliberately failed to vacate the suit premises in spite of their tenancy being terminated. I, therefore, hold the mesne profits which would be payable should be of a sum of Rs. 15,000/- per month from 1.4.1988 and after every twelve months period i.e. on 1.4.1999 there will be increase of 10% on this amount of Rs. 15,000/- per month which is fixed as payable as on 1.4.1998 and on 1.4.2000 there will be a 10% increase on Rs. 16,500/- per month.

13. The issue now is the rate of interest to be awarded on the arrears of rent payable as also on the mesne profits payable, and the date from which it becomes payable. In the aforesaid judgment of M.C. Agarwal (Supra) I have held that interest will be payable @12% per annum from end of the month from which the mesne profits would become payable, inasmuch as, ordinarily if such amount would have been received by the landlords at the end of the tenancy, they would have been able to earn interest on such amounts till the date the same are actually paid. The trial Court in this case has granted interest @ 15% per annum from the date the payment became due without mentioning the date from which the payment becomes due. I, therefore, clarify that the date at which the rent and mesne profits would become due would be the end of the month of occupation of the suit premises. The rate of interest, however, granted by the trial Court of 15% per annum is, in my opinion, excessive, and I reduce the same to 12% per annum simple in accordance with the ratio of the judgment in the case of M.C. Agarwal (Supra).

14. In view of the aforesaid discussion, the appeal and the cross-objections are disposed of by making the following directions:-

(a) The respondents/plaintiffs/landlords, and now who are represented by respondent No. 2/plaintiff No. 2, will also be entitled to an amount of Rs. 4,000/- per month from 1.9.1995 till 31.3.1998 alongwith interest @12% per annum simple from end of the month from which said amount became payable. It is clarified that the respondents/plaintiffs/landlords will be entitled to an amount of Rs. 10,000/- per month and not Rs. 6000/- per months from 1.9.1995 till 31.3.1998, after adjusting

from that amount a sum of Rs. 1,20,000/- which has been paid in September, 1997. Interest @ 12% per annum every month from the end of the month will be paid from 1.9.1995 till payment in September, 1997 and adjustment will be granted of payments which have been made by the appellants/defendants of Rs. 1,20,000/- by first adjusting this amount towards arrears of interest and only thereafter towards the arrears of rent payable.

(b) The respondents/plaintiffs/landlords will be entitled to mesne profits @ Rs. 15,000/- per month from 1.4.1998 till 31.3.1999 alongwith interest at 12% per annum simple from the end of the month from which the mesne profits are payable. From 1.4.1999 mesne profits will be 10% more, i.e Rs. 16,500/- per month and from 1.4.2000, the mesne profits will become 10% more than Rs. 16,500/- per month. On all the arrears of mesne profits, interest will be payable, as stated above, at 12% per annum simple from the end of the month of months of occupation of the suit premises.

(c) Mesne profits will be payable till March, 2001, subject of course, to the respondents/defendants filing in this Court documents of the execution proceedings showing that the possession of the premises was taken in March, 2001, failing which the mesne profits will be payable only till end of January, 2001.

(d) The appellants/plaintiffs will be entitled to adjustment as on March, 2001 or January, 2001, as the case may be, for the deposit of Rs. 30,000/- lying with the respondents/plaintiffs/landlords, inasmuch as, the deposit is payable at the date of handing over of the possession of the tenanted premises.

15. In accordance with the ratio of the Supreme Court in the case of [Rameshwari Devi and Others Vs. Nirmala Devi and Others](#), and by virtue of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi,) Chapter VI Part I Rule 15, which entitles me to impose actual costs, the appeal and the cross-objections are disposed of by allowing costs of Rs. 50,000/- to the respondents/landlords who have been unnecessarily forced by the appellants to enter into litigation for recovery of their legitimate dues.

16. At the conclusion of arguments, learned counsel for the respondents/landlords has brought to the notice of this Court that the residential address of appellant No. 2, and who is all in all so far as the appellant No. 1-Company is concerned has not been filed. It is stated that it would be difficult to execute the decree unless the actual residential address of the appellant No. 2 is known, inasmuch as, the appellant No. 1/company is stated to have almost no assets which can be appropriated for recovery of the decretal amount. I may note that under Order 6 Rule 14A CPC it is necessary for parties to file their latest and current addresses, inasmuch as, the object of law is that a decree if passed can be executed against the judgment debtor at the address which is found in the judicial record. Accordingly, both the appellants are directed to file in this Court within a period of two weeks

from today their current addresses alongwith proof thereof of unimpeachable record such as a passport, ration card, or something equivalent. In case, the appellants fail to file such addresses, the rate of interest which has been awarded above shall be 15% per annum simple and not 12% per annum simple, however, if the addresses are filed, the rate of interest will continue to remain 12% per annum simple.

17. The security given by the respondents for withdrawing of the amount deposited by the appellants in this Court will stand discharged forthwith and the Registry is directed to return the same to respondent No. 2 within a period of two weeks from today. The present appeal is disposed of with the aforesaid observations. Decree sheet be prepared. Trial Court record be sent back.