(2009) 08 DEL CK 0451

Delhi High Court

Case No: CM No''s. 7600 of 2005 and 15953 of 2008 in RC.S.A. No. 30 of 1998

Niader Mal Amar Nath and Others		APPELLANT
	Vs	
Rukmani Devi Jaipuria Charitable Trust and Others		RESPONDENT

Date of Decision: Aug. 7, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 5, 11, 144
- Constitution of India, 1950 - Article 136
- Delhi Rent Control Act, 1958 - Section 14(1), 14(2), 2

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: V.B. Andley and Mukesh Kumar, for the Appellant; Sanjeev Sachdeva and Preet Pal Singh, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

Smt. Rukmani Devi filed an eviction petition on 09.02.1973 against the appellants u/s 14(1)(a), (b) and (j) of the Delhi Rent Control Act, 1958 (hereinafter to be referred to as, the said Act) in respect of the tenanted premises bearing No. 321/322/372, Katra Gauri Shankar, Chandni Chowk, Delhi. The present premises were stated to be let out to appellant No. 1 and the tenant was stated to be in arrears of rent. It was further alleged that appellant No. 1 had sublet/assigned or otherwise parted with the premises to appellant No. 2 without the written consent of the landlord. An allegation was also made about the appellants causing substantial damage to the property.

2. The Additional Rent Controller (hereinafter to be referred to as, the ARC) after recording evidence decided the dispute in terms of the order dated 23.09.1996 after a protracted litigation. The appellants were found to be in arrears of rent, but were

given the benefit of Section 14(2) of the said Act in view of there being the first default. Insofar as the allegation of sub-letting is concerned, it was found that the landlady had been able to establish her case. The position was same in respect of the allegation of substantial damage to the premises, but the ARC found that the nature of damages were such that repairs would not be the appropriate remedy and, thus, appellant No. 1 was directed to pay a sum of Rs. 25,000/- as compensation to the respondent.

3. The appellants aggrieved by the said order filed an appeal before the Rent Control Tribunal (hereinafter to be referred to as, the Tribunal). The cross-objections were also filed by the successors to the landlady, who had since expired and who are trustees of the respondent in the present petition. The respondent is a charitable trust. The appeals were disposed of by the common order dated 02.04.1998. No dispute was really raised in respect of the ground u/s 14(1)(a) of the said Act. The controversies were limited to Section 14(1)(b) of the said Act in respect of which the appeals of the appellants were dismissed and the cross-objections of the respondent in respect of Section 14(1)(j) of the said Act were allowed and a direction was passed in respect of the damages granted by the ARC that instead of the same the substantial damage should be removed and the property be put back in the original position.

4. The appellant thereafter filed a second appeal which was dismissed by this Court on 6.9.2006. An application filed by the respondents/landlord seeking directions against the appellants/tenants to pay damages for use and occupation from 23.9.1996, the date of the eviction order, was also considered along with the appeal being, CM No. 7600/2005. The respondents relied upon the observations of the Apex Court in Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd. to advance the proposition that where the tenancy stands terminated with the passing of decree of eviction, 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 earned rent if the tenant would have vacated the premises. It was held that the landlord was not bound by the contractual rate of rent effective for the period preceding the date of the decree. This view has been affirmed in Anderson Wright v. Amar Nath Roy and Ors.

5. The respondents prayed in this application that the prevalent rate would be around Rs. 1.50 lakh per month and that appellant No. 1 had illegally sub-let the premises to third-parties getting monthly rental of about Rs. 1,00,000.00 from two parties and more than Rs. 45,000.00 per month from their own business. The respondent also sought to derive support from the written statement filed by the appellants before the Competent Authority (Slum Area) alleging that the value of the suit property was more than Rs. 1.50 crore and thus yielding a return of 12 per cent per annum would result in a monthly rental of Rs. 1.50 lakh. However, in terms of the order dated 6.9.2006 it was found that the material placed on record was not

sufficient to determine the exact rate of damages to be paid though a conclusion was reached that in a matter of this nature damages ought to be determined and paid to the landlord especially taking into consideration the fact that the eviction proceedings before the trial court itself had gone on for almost 23 years and 10 years had been spent in the appellate court. It was, thus, observed that the appellants having taken benefits of the interim orders in appeal were liable to pay damages to the respondents but the amount to be paid would be determined after an inquiry was made by the Registrar General of this Court after calling for evidence from both the parties.

6. The Registrar General thereafter proceeded to hold an inquiry in this behalf giving opportunities to both the parties to lead evidence. The appellants filed SLP (Civil) No. 16115/2006 before the Supreme Court aggrieved by the order passed on 6.9.2006. One of the questions of law raised in the SLP was as under:

(iii). Whether the High Court on an application filed by the respondent in the Appeal filed by the Petitioners, after dismissing the Appeal, can direct the parties to lead evidence with respect to an ancillary matter regarding the damages which was not the subject matter of the main proceedings?

7. The SLP was dismissed on 9.10.2006 in the following terms:

We are not inclined to entertain this Petition under Article 136 of the Constitution of India. The SLP is accordingly dismissed. Learned counsel for the petitioner has made a prayer that the petitioner may be granted some time to vacate the premises. Liberty is granted to the petitioner to approach the High Court for this purpose.

8. The aforesaid makes it clear that the appellants did seek to challenge the order dated 6.9.2006 including in respect of the direction made for holding an inquiry for quantification of damages but the same did not find favour with the Supreme Court while dismissing the SLP on 9.10.2006. The only liberty granted was for the appellants to approach the High Court for grant of some time to vacate the premises.

9. The appellants, despite this fact, once again sought to rake up this issue by praying for recall of the order dated 6.9.2006 on the ground that the inquiry proceedings before the Registrar General could not proceed by filing CM No. 15953/2008. Learned Counsel for the appellants faced with this position could not really canvass anything in support of the proposition that the aspect of the direction passed on 6.9.2006 dealing with the issue of determination of damages needed to be re-looked and thus it does not form part of the synopsis submitted by learned Counsel for the appellants. In this behalf, learned Counsel for the respondents has referred to the observations of the Supreme Court in Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, in para 26 to advance the proposition that at least between the parties in question in the present proceedings this question is no more open and that this Court is fully entitled to determine the damages. The

observations read as under:

26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

10. The Registrar General submitted a report dated 2.4.2009 and it is the findings of this report which are sought to be challenged by the appellants. The consequence of the same is that CM No. 15953/2008 has to be dismissed and it is only the report furnished in pursuance to the directions contained in the order dated 6.9.2006 on CM No. 7600/2005, which would have to be examined.

11. The respondent led evidence first and examined six witnesses while the appellants examined two witnesses. The respondents in order to substantiate the prevalent rent have produced four lease deeds which have been exhibited as Exhibits R-1 to R-4. Exhibit R-1 is in respect of premises No. 1822-23, Chandni Chowk, Near Gurudwara Shish Ganj on the ground floor in respect of 200 sq. ft. carpet area let out to the ICICI Bank Limited on a monthly rent of Rs. 29,000.00 w.e.f. from 10.2.2005 for a period of nine years with provision for increase of rent every three years. The rent in February 2005, thus, came to Rs. 145.00 per sq.ft. per month. Exhibit R-2 is a lease sale deed in respect of premises located in Ward No. 6, Chandni Chowk, Delhi leased out to M/s. Karnataka Bank for a period of ten years. The report shows that the rate of rent works out to Rs. 140.00 per sq. ft. per month. The rate of rent of Rs. 190.00 per sq.ft. per month effective from December 2004 is in respect of shop No. 451, Chandni Chowk measuring 275 sq.ft. leased out to M/s. Baluja Shoe Company (Exhibit R-3). The last lease deed is Exhibit R-4 in respect of a shop in Katra

Chugmal Rathi, Nai Sarak having an area of 86 sq.ft. @ Rs. 116.00 per sq. ft. per month. The respondent has also proved an offer letter by a real estate agent of Rs. 150.00 per sq.ft. per month for the demised premises. We may notice at this stage that the appellants finally delivered possession of the suit premises to the respondent on 18.11.2006 and thus the question of determination of damages is only up to that date.

12. The appellants have led really a different nature of evidence altogether. It appears that the appellants sought to prove rates of rent prevalent for properties earlier let out and protected by the Rent Act, as PW-1 stated that he had rented a shop in Naya Katra, Chandni Chowk since 1976. The shop was, in fact, taken on rent by his late father in the year 1934 and the rate of rent for 256 sq.ft. on the first floor and 64 sq.ft. on the second floor for the period 1.4.1995 to 31.3.1996 was Rs. 103.15 per month. This would increase every ten years but after amendment to the Rent Act came into force in 1988, the landlord became entitled to an increase of rent of 10 per cent after every three years. The witness on being cross-examined in the witness box stated that he was not aware of the prevailing market rent in Naya Katra.

13. Learned counsels for the parties have sought to challenge the respective evidence led by them by contending that the evidence was irrelevant for the purposes of determining the market rates at the relevant period of time. It is contended on behalf of the appellants that the lease deeds Exhibits R-1 to R-4 are for the period end 2004 and early 2005 and that too in Chandni Chowk. No evidence was led in respect of shops in Naya Katra which is a cloth market while the premises forming subject matter of Exhibits R-1 to R-4 are located near the main roads and in better locations. Learned Counsel for the appellants also sought to refer to some judgements to advance the proposition that if the landlord has not led any cogent evidence to substantiate the rate of rent for the concerned period and for the relevant area then it is a case of no evidence. A reference in this regard was made to the Division Bench judgment of this court in National Radio and Electronic Co. Ltd. Vs. Motion Pictures Association, . Learned Counsel for the appellant has also referred to the judgment in P.S. Bedi Vs. The Project and Equipment Corporation of India Ltd., , where it has been held that damages can be awarded at market rate for use and occupation provided the same is not penal or unconscionable. In my considered view, it is suffice to say that it is a well established principle of law which does not need any elucidation that it is only the relevant evidence of similar premises for the relevant period of time which would form the basis of determination of damages and if no cogent evidence is led then it is akin to a case of no evidence. Thus, the only question to be examined is whether any relevant material has been brought on record by either of the parties from which a conclusion can be drawn about the rate of rent.

14. It must be appreciated that the area where the tenanted premises is located and adjacent areas are really subject matters of old tenancies. It is not easy to find contemporaneous evidence of letting in exactly the same location. This also appears to be a reason that even the appellants have not led any direct evidence of the same area for the relevant period of time. The respondents have led evidence of nearby areas for the year 2004-2005. It is not possible to conclude that such evidence is no evidence in the eyes of law though modulation of the rates is to be done keeping in mind the location of the premises. In fact, this is exactly what has been done in the report of the Registrar General sought to be impugned by the appellants. The Registrar General has noted that the demised premises is located in the wholesale cloth market, i.e. Naya Katra, which is at a short distance from the main Chandni Chowk area and Katra Rathi, Nai Sarak. Thus, the evidence led is not of totally irrelevant areas but of adjacent areas. Some marking down would have to be done since the demised premises is in the wholesale cloth market area and thus the Registrar General concluded that at least 50 per cent of the rate would be a reasonable rate. The rate taken by the Registrar General is, thus, Rs. 70.00 per sq.ft. The area of the demised premises being 800 sq.ft. the rate of rent has been calculated at Rs. 56,000.00 per month. Learned Counsel for the respondents, in fact, stated that the premises occupied by the appellants was larger but having litigated for all these years he was not interested in any manner disputing the report of the Registrar General and offered that even from that rate some amount may be deducted for monthly rent in respect of period prior to the date of tenancy as specified in Exhibits R-1 to R-4. Learned Counsel for the respondents, thus, submitted that as for future 10 per cent increase takes place and for the past period 10 per cent depreciation in the rate of rent has to be applied.

15. An important aspect to be noticed is that the own assessment of the appellants while opposing the grant of permission to sue by the Competent Authority (Slum Area) was that the premises could not be purchased for less than Rs. 1.50 crore. This formed a part of the admission of the appellants in the written statement in October 2004. In the deposition of the Partner of appellant No. 1 firm recorded in the year 2006 in those proceedings it has been stated that the premises would be worth Rs. 1.50 crore to Rs. 2.00 crore on that date. The learned Registrar General has taken cue from the valuation of the land to work out the rate of rent. This is on the principle adopted by the Hon''ble Supreme Court in The Collector of Kamrup Vs. Raj Chandra Sarma and Others, while dealing with compensation under the Land Acquisition Act, 1894 where the capitalized income from the land for 25 years was taken into account for determining the value of the land. In another judgement in State of West Bengal Vs. Shyamapada and Others, times annual income was taken into account to determine the value of the property and if this yardstick is applied to the demised premises, the Registrar General found that the return would be Rs. 7.50 lakh per annum which is equivalent to Rs. 62,500.00 per month, which is little more than the figure arrived at by basing the return on Exhibits R-1 to R-4 depreciated by

half.

16. I find that the very basis of calculations by the appellants is fallacious as the premise is that it is a protected tenancy which is entitled to increase @ 10 per cent every three years. If the appellants had vacated the premises nothing prevented the respondents from letting out the premises at the market value. The purpose of determination of compensation is that once the eviction decree has been passed against the appellants and the appellants enjoyed stay in appeal, then the landlord must be suitably compensated at market value, i.e. what he would have earned if the premises were vacated. There is nothing penal, unconscionable or unreasonable in such determination even if it is manifold times the original rent. This is so since if the lapse of the period of time is taken into account, 23 years were spent in the initial litigation and ten years in appeal.

17. The second line of attack of the learned Counsel for the appellants is that the lease deeds Exhibits R-1 to R-4 deal with the renovated premises before they were let out and valuable rights of further sub-letting were also given apart from the fact that they were located on main roads. In the demised premises no repairs had been carried out since 1967 and thus the premises were not comparable. The letter of the property dealer is alleged not to have been proved in accordance with law and thus no reliance can be placed on the same as per the appellants. The written synopsis states that the landlord had sold the property and that the appellant had filed an additional affidavit on 17.11.2008. The appellants have filed a copy of the sale deed dated 29.8.2007 annexed to the synopsis. If such a sale deed was sought to be produced, then it should have been produced in accordance with law. The appellants have sought to build a case on the same by alleging that the property was sold for Rs. 45.00 lakh vide sale deed in the year 2007. The rental of the premises @ Rs. 15,000.00 per month in 2007 has been calculated on that basis.

18. Learned Counsel for the respondents has emphasized that the liability of the appellants to pay damages for use and occupation for the period that the respondents were deprived of the benefit of the eviction order is based on the principle of restitution, which has been recognized by the Hon''ble Supreme Court. The aspect of restitution has been explained by the Supreme Court in South Eastern Coalfields Ltd. Vs. State of M.P. and Others, as under:

26. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order see Zafar Khan v. Board of Revenue, U.P. In law, the term "restitution" is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black''s Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M.

Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done:

Often, the result under either meaning of the term would be the same.... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

27. Section 144 CPC is not the fountain source of restitution, it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In Jai Berham v. Kedar Nath Marwari. Their Lordships of the Privy Council said: (AIR p. 271)

It is the duty of the court u/s 144 of the CPC to ''place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed''. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved.

Cairns, L.C. said in Rodger v. Comptoir D''Escompte de Paris: (ER p.125)

One of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression, ''the act of the court'' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case.

This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it A. Arunagiri Nadar v. S.P. Rathinasami. In the exercise of such inherent power the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel
encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has

been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.

19. Learned Counsel for the respondents submitted that it is the aforesaid principle, which is the basis for grant of damages in Atma Ram Properties (P) Ltd. case (supra) where it was observed as under:

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

19. To sum up, our conclusions are:

(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.

20. On consideration of the submissions of the parties it is obvious that the premise on which damages were held liable to be paid in Atma Ram Properties (P) Ltd. case (supra) and Anderson Wright case (supra) is the principle of restitution which has been elucidated in South Eastern Coalfields Ltd. case (supra). The relevant portions of the judgements have been extracted aforesaid and need no repetition. The basic objective is that where the parties enjoy a benefit of a stay order in appeal, the appellate court would have jurisdiction to impose such terms as would reasonably compensate the decree holder for the loss occasioned by the delay in execution of decree by the grant of stay order. Thus, in premises governed by the provisions of the Rent Act, the tenancy does not terminate merely by termination under general law but terminates while passing a decree of eviction. The tenant is liable to pay mesne profits/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 earned rent if the tenant would have vacated the premises.

21. It has already been noticed above that the appellants have led no material evidence as the evidence produced is on the premise that the premises is protected by the Rent Act, which cannot be the basis for determination of the amount especially in view of the observations in para 19 (2) of the judgement in Atma Ram Properties (P) Ltd. case (supra). The appellants have produced lease deeds but of adjacent areas. The complete area is commercial including the area in question though the demised premises fall in a cloth market. There are some differences on account of location of the premises relied upon by the respondents which have been emphasized by learned Counsel for the appellants. I, however, find that the best evidence which could have formed the basis of such determination in the absence of any direct evidence of the area concerned would have been the sale transaction entered into by the respondents themselves. The appellant did file the additional affidavit bringing to notice the sale of the property but the sale deed was not produced. The respondents also did not disclose this fact at an earlier stage nor was the sale deed produced. The sale deed came to be filed only along with the synopsis and thus it was deemed appropriate on examination of the matter to put this sale deed to the respondents who have admitted the same. It is not necessary to go into the circumstances in which the sale took place but suffice to say that the property in open market was able to fetch a sum of Rs. 45.00 lakh in the position it was unencumbered by the tenancy as it had been vacated by then and, thus, would be reflective of a true market value of the property. The principles applied by the learned Registrar General following the judgements of the Supreme Court in Collector of Kamrup case (supra) & State of West Bengal case (supra) thus become material. If a more conservative approach is taken of 25 times the annual income to determine the value of the property then the income at the time of sale of the

property in August 2007 would amount to Rs. 15,000.00 per month as pointed out in the synopsis of learned Counsel for the appellants. I am inclined to accept this submission and the amount stated by the appellants in view of the sale transaction having been carried out by the respondents themselves. There really can be no quibble over this amount being payable by the appellants.

22. The matter does not end at this since the premises were vacated on 18.11.2006, which is not far off from the date of the sale deed of 29.8.2007. The present application was filed in May, 2005. The respondents during the pendency of the appeal before the first appellate tribunal or before this Court never moved any application thereby claiming any amount towards damages. It appears that the judgment in Atma Ram Properties Ltd.''s case (supra) seems to have given a thought to the respondents to move for such damages. There is also an aspect of the delay in disposal of the appeal. Thus, the two aspects, which will have to be considered, would be (i) the period for which the damages are to be granted; and (ii) the rate at which the damages are to be granted. I am of the view that the ends of justice would be served if the period is restricted from the filing of application till vacation, which is the period of 18 months. The rate of Rs. 15,000/- per month is in close proximity with the time and can, thus, be applied to this period of 18 months. Thus, the total amount of damages would come to Rs. 2,70,000.00.

23. The amount being in the nature of restitution is quantified at Rs. 2,70,000.00. I am conscious of the fact that at this stage the amount looks large as compared to the rental being paid but then the appellants have had the benefit of occupying the property for about ten years in terms of the stay orders. If the amounts would have been calculated as per the report of the Registrar General, they would have been far more exceeding Rs. 50.00 lakh. The amount being granted is on the basis of the calculation advanced by learned Counsel for the appellants and prospectively to the application applying the principle of calculation as laid down in the report of the Registrar General based on judgments of the Supreme Court.

24. The result of the aforesaid is that CM No. 7600/2005 is allowed granting a sum of Rs. 2,70,000.00 to the respondents payable by the appellants as the amount of mesne profits/damages for use and occupation of the damages to be paid within one month failing which it will carry interest of 12% per annum. Needless to say, the amount already paid by the appellant will be deducted therefrom. CM No. 15953/2008 is dismissed.

25. The respondent shall also be entitled to costs of Rs. 10,000/-.