RCT No. 16/2017
Janpath Guest House & Ors. Vs.
Late Sh. Banwari Lal (Through LRs)

05.01.2022

ORDER

1. Vide this order, I shall dispose of the application of the respondents moved under Section 151 CPC for issuance of directions to the appellant to pay the user/occupation charges of the tenanted premises as per market rate till the appellants are in unauthorised use and occupation.

2. It has been stated that the tenanted premises is located at 2nd floor of property bearing no. 82, Janpath, New Delhi. The Ground Floor of the said property is leased out to Bank of Rajasthan (Now ICICI Bank) w.e.f. 01.06.2008 and the current rate of rent is Rs.10,96,560 per month. It has been further stated that the petitioners/tenants are occupying the tenanted premises despite the eviction order and therefore, the applicant/respondents are entitled to receive the rent as prevalent in the market in view of the judgment of the Hon'ble Supreme Court in Atma Ram Properties vs. Federal Motors Pvt. Ltd. (2005) 1 SCC 705. It has further been stated that the tenanted premises can fetch a rent of around Rs.4 lakhs per month being residential in nature in terms of the Perpetual Lease deed. The applicant shall suffer irreparable loss and injury if

the same is not allowed. The appellant may be directed to pay the user and occupation charges as per market rate being Rs. 4 lakhs per month in equal proportions for unauthorised use and occupation of the tenanted premises.

3. The non-applicant/appellant has filed the reply to the said application wherein it has been stated that the matter in question is pending in appeal and therefore, respondents are not entitled to any enhance rate of rent till the final disposal of the present appeal. It has been submitted that the appellants are not able to use the tenanted premises, practically for any purpose as per the directions/order dated 22.09.2015 of the Ld. Rent Controller in M.No. 02/15 titled as Banwari Lal vs. Janpath Guest House Ors. It has been further stated that the applicants are trying to take advantage of their own wrong by praying for the rent of the tenanted premises as commercial premises. It has been submitted that the applicants filed the lease deed dated 01.10.2008 of Showroom on the Ground Floor of the property no. 82, Janpath, New Delhi, i.e. for commercial purpose, whereas, the tenanted premises is situated at Second Floor of the property no. 82, Janpath, New Delhi. The tenanted premises, as per the submissions of the applicants, cannot be used for commercial purpose i.e. for running a guest house or for any other commercial activity. The predecessor-in-interest of the applicants/R-1 have never applied for change of

use of the tenanted premises despite having knowledge of the office order no. 254 dated 30.03.1971 and office order no.50A dated 24.11.1975 issued by the L&DO. It has further been stated that the predecessor-in-interest of the applicants i.e. Sh. Banwari Lal Gupta was having the active knowledge of the aforesaid orders as he himself had given the NOC on 13.09.1978 to the appellants for running a guest house. It has been further submitted that the last paid rent was the agreed rent between the parties for the purpose of running the Guest House and therefore, the same can be treated as the prevailing market rent. The applicants have failed to place on record any lease agreement of similar situated property used for residential purpose in the said locality and therefore, the applicants are not entitled for any rent at any enhanced rate. It has been further stated that the judgment of Atma Ram (Supra) is not applicable to the facts of the present case as the said case was based on sub-letting of commercial property.

4. Both the parties have also filed their written submissions.

5. It has been stated in the written submission filed by the respondent that the eviction order has already been passed against the appellant with respect to the tenanted premises being entire 2nd floor and mezzanine floor of property bearing no. 82, Janpath, New Delhi-110001. In the appeal, the appellant has also filed an

application for stay of eviction. The stay has been granted and at present, the Janpath Guest House is occupying the tenanted premises and has not vacated and handed over the same to the landlord/respondent and are enjoying the stay order. It has further been submitted that appellants are required to pay mesne profits for unauthorised use and occupation of the tenanted premises at the market rate of rent at which the landlord would have been able to let out the tenanted premises had the tenant vacated the premises. Ld. Counsel for the respondent has relied upon the lease deed of the ground floor of the same property being 82, Janpath, New Delhi, which is fetching a rental of Rs.10,96,560/- per month and therefore, it is stated that the tenanted premises being on the second floor would minimum fetch a rent of Rs.4 lakhs per month. Sh. Sanjiv Bahl and Sh. Udit Gupta, Ld. Counsel for the respondent have emphasised that mesne profits at the rate of Rs.4 lakhs per month may be awarded from the date of order of eviction.

6. Sh. Sudhir Makkar, Ld. Sr. Advocate along with Sh. Satvinder Singh, Ld. Counsel for the appellants have submitted that respondents are not entitled for any mesne profits/damages. It has been submitted that this court must consider the merits of the appeal while considering the said application. Ld. Counsel has submitted that in fact the circular of L&DO permits commercial use of the tenanted premises. Ld. Counsel has further submitted that initially

the tenanted premises was allowed to be used for commercial purpose. Ld. Counsel further submitted that comparative lease, as filed by the respondent, cannot be taken into consideration as it pertains to the ground floor, whereas the tenanted premises is situated on the 2nd floor and there is no independent entry. It has further been submitted that in fact the tenanted premises is not fit for any use as there is no proper ventilation. Ld. Counsel further submitted that property is not being used in any manner by the appellants. Ld. Counsel for the appellants have also relied upon Bharat Sales Ltd. And Ors. vs. Lakshmi Devi and Ors. AIR 2002 SC 2554 to emphasise the point that no mesne profits can be awarded to the respondent. Ld. Counsel has also submitted that in the case of The State of Maharashtra Anr. vs. M/s Super Max Intl. Pvt. Ltd. Ors. AIR 2010 SC 722, it was specifically directed that in fixing the amount subject to payment of which the execution of the order/decree is stayed, the court should exercise restraint and would not fix any excessive, fanciful or punitive amount.

7. Sh. Satvinder Singh, Ld. Counsel for the appellants during the course of the submission submitted that in the interest of justice and without prejudice to the right of the appellant, the appellant may deposit Rs.20,000/- per month as mesne profits in the court.

8. In the Written Submission filed by the appellants, it has

further been submitted that there is no separate access to the tenanted property as property nos. 82 & 84 are having common staircase, so the same cannot be used for residential purpose also. It has further been submitted that even prior to entering of the present appellants, the tenanted premises was partitioned in small rooms which can only be used for the purpose of guest house, for which they were meant for. Even otherwise also, there is no residential accommodation or occupation in the vicinity of the tenanted premises as all the buildings in surroundings are used for commercial purpose. It has further been submitted that the appellants are regularly depositing the rent of the tenanted premises with the court of Ld. ARC under Section 27 of DRC Act even after passing of the order dated 15.05.2017. In the Written Submission filed by the appellants, it has further been submitted that in fact there was no use of the tenanted premises and the application is liable to be dismissed.

9. I have heard the learned counsel for the both the parties and perused the record carefully.

10. It is pertinent to mention herein that in the impugned order dated 15.05.2017, the Ld. Trial Court has specifically noted that misuse had been reported to be stopped on the date of inspection i.e. 05.01.2017 carried out by L&DO.

11. In Atma Ram(supra), the Hon'ble Supreme Court inter

alia held as under :

> "Under the general law, and in cases where the tenancy is governed only by the provisions of Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of Chander Kali Bai & Ors. (supra) the tenancy premises were situated in the State of Madhya Pradesh and the provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8th March 1973 after serving a notice on the tenant terminating the contractual tenancy w.e.f. 31st December 1972. The suit came to be dismissed by the trial Court but decreed in first appeal decided on 11th August, 1975. One of the submissions made in this Court on behalf of the tenant-appellant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in Section 2(i) of the M.P. Act which included "any person continuing in possession after the termination of his tenancy" but did not include "any person against whom any order or decree for eviction has been made". The court,

persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 1st January 1973 and ending on 10th August 1975 but he remained liable to pay damages or mesne profits from 11th August 1975 until the delivery of the vacant possession of the accommodation. During the course of its decision this Court referred to a decision of Madhya Pradesh High Court in Kikabhai Abdul Hussain Vs. Kamlakar, 1974 MPLJ 485, wherein the High Court had held that if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of "relation back" on the reasoning that on the passing of a decree for possession, the tenant's possession would become unlawful not from the date of the decree but from the date of the termination of the contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in

Kikabhai Abdul Hussain's case but distinguished it by observing that the law laid down in Kikabhai Abdul Hussain's case was not applicable to the case before it in view of the definition of 'tenant' as contained in the M.P. Act and the provisions which came up for consideration of the High Court in Kikabhai Abdul Hussain's case were different.”

12. The Hon'ble Supreme Court summed up as under :

“(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 in so far 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."

13. Thus, the Hon'ble Supreme Court in Atma Ram's case (supra) has categorically held that in an eviction proceedings after an eviction order is passed, the tenant would be liable to pay mesne profits or compensation for use and occupation of the premises at the same rate which the landlord would have been able to let out the premises and earn rent if the tenant wouldl have vacated the premises.

14. In the present case, an eviction petition was filed on 10.05.1994 under Section 14(1)(a)(j)&(k) of DRC Act and the eviction order was passed on 28.01.2010 and the inquiry under Section 14(11) of the DRC Act culminated into the final order dated 15.05.2017 whereby the appellants were directed to pay damages for unauthorised construction and misuse charges within a period of three months. Upon appeal being filed, the interim stay was granted by the Ld. Predecessor of this court vide order dated 31.08.2018. Thus, it is a matter of record that appellants have already suffered the eviction order, however, it is also a matter of record, as found out from the impugned order that the misuse has already been stopped w.e.f. 05.01.2017.

15. The premises in dispute was let out in the year 1976 at the rate of Rs.400/- per month. It is also a matter of record that the last paid rent was Rs.550/- per month.

16. It has also been held by the Hon'ble Supreme Court that in Atma Ram (supra) as well as in Bharat Sales (Supra) that the court while fixing the amount for damages and mesne profits, has to consider that the tenant is liable to pay the mesne profits or compensation for use and occupation of the tenanted premises at the same rate of rent at which the landlord would have been able to let out the tenanted premises had the tenant vacated the premises. In State of Maharashtra Vs Super Max Interntional Pvt. Ltd. & Ors., AIR 2010 SC 722, it was inter alia directed that the trial court while fixing this amount should exercise the restraint and would not fix any excessive, fanciful or punitive amount.

17. It is also pertinent to mention herein that the judgment cited by the Ld. Counsel for the appellant i.e. Bharat Sales (supra) is not applicable to the facts and circumstances of the present case, as in that case, the tenants after passing of the eviction order were ready and willing to hand over the vacant possession to the landlord or the paramount lessor as this court may direct. However, in the present case, the appellants have not expressed any such willingness. Thus, the aforesaid judgment is respectively distinguished in the facts and circumstances of the case. The

premises in dispute was let out in the year 1976 at the rent of Rs.400/- per month. Apparently, the lease deed filed by the respondents cannot be taken into consideration for determining the mesne profits or damages simply on the ground that the leased out property is a commercial property on the ground floor let out to the bank whereas, the premises in dispute is situated on the 2nd floor having no separate access. The appellants have also filed a lease deed wherein the premises in the vicinity situated on the ground floor has been let out at Rs.1,40,000/- per month for commercial use. Taking into account the lease deed being filed by the appellants, the premises in dispute being on the 2nd floor and is a residential in nature, I consider that in the entire facts and circumstances, the mesne profits @Rs.30,000/- per month from the date of eviction would meet the ends of justice. Hence, the appellants are directed to deposit the mesne profits @Rs.30,000/- per month from the date of eviction order within two months in the court.

18. Application is disposed of accordingly.

19. Case to now come up for arguments on **31.01.2022**, the date already given.

(Dinesh Kumar Sharma)
Principal District & Sessions Judge/RCT
New Delhi/05.01.2022