

**In The Court of Shivali Sharma
Additional District Judge-03 (West)
Tis Hazari Courts, Delhi**

Suit No. 399/2018

In the matter of :-

**Padam Singh
s/o late Shri Kundan Lal
r/o WZ-405 B, Gali no.1,
Janak Park,
Hari Nagar,
New Delhi-110064.**

.....Plaintiff

Versus

**Vishwanath Gupta
s/o Shri Bhuwaneshwar Prasad Gupta
r/o A-7, Second Floor, Hari Nagar,
Clock Tower,
New Delhi -110 064.**

.....Defendant

Date of institution	:	04.04.2018
Date of Decision	:	05.10.2020

JUDGMENT

**Suit for possession, recovery of rent & dues and
for mandatory injunction**

1. This is a suit for recovery of possession, recovery of rent and for mandatory injunction filed by plaintiff Padam Singh against the defendant Vishwanath Gupta.

Plaintiffs case:

2. The case of the plaintiff as per plaint is that he is the absolute owner of House bearing no. WZ-405B, Gali no.1, Janak Park, Hari Nagar, New Delhi -110 064 and had let out one shop on rent measuring 7.5 ft x 18 ft. without roof rights, situated at ground floor of property bearing no. WZ-405B, Gali no.1, Janak Park, Hari Nagar, New Delhi -110 064 (*hereinafter referred as the “tenanted premises”*) vide rent agreement dated 19.05.2017 duly registered vide registration no. 7667, Book no. 1, Volume no. 2160, from page 116 to 120, for a period of three years w.e.f. 01.06.2017 at the monthly rent of Rs. 25,000/- per month.

3. The defendant started default in making the payment of rent for the month of October, November, December-2017 and January and February-2018 amounting to Rs. 1,25,000/-, as he paid only an amount of Rs.75,000/-(Rs. 20,000/- + Rs. 15,000/- in the form of cash and Rs. 15,000/- by way of cheque bearing no. 000013 and Rs. 25,000/- by way of cheque bearing no. 000016 both drawn on Kotak Mahindra Bank). Cheque bearing no. 000012 drawn on Kotak Mahindra Bank, Patel Nagar, for an amount of Rs. 10,000/- was bounced on presentation. As per Clause 17 of the rent agreement, it was agreed between the parties that if the defendant makes default in making the payment of rent for continuous period of two months, then the plaintiff would have the right to lock the rented premises without notice. The defendant committed breach of contract as he did not pay the rent for the month of January and February-2018 as well as rent for the month of March-2018 as the same was due on 07.03.2018. As per Clause 19 of the agreement, the

defendant also committed breach of contract by not paying the rent for continuous period of more than two months and plaintiff has right to terminate the tenancy from the same day without giving any notice.

4. As per Clause 8 of the rent agreement also, the plaintiff was free to terminate the tenancy by giving one month notice to the defendant. The plaintiff sent legal notice to the defendant calling upon him to vacate and handover the peaceful possession of the tenanted premises, but defendant did not send any reply and did not vacate the rented premises. The defendant has become unauthorized occupant in the suit property and thus, the plaintiff is entitled to usage and occupation charges of Rs.50,000/- per month w.e.f. 23.02.2018 (i.e. Rs.25,000/- for the rent of the premises and Rs. 25,000/- for unauthorized use and occupation charges). Hence, the present suit has been filed seeking the following reliefs:-

- (i) Decree of possession of the tenanted premises.
- (ii) Decree of arrears of rent of Rs. 50,000/- for the month of January and February-2018.
- (iii) Decree of use and occupation charges from April-2018 onwards till the date of vacation of the suit property
- (iv) Decree of recovery of TDS amount of Rs. 60,000/- for the period 2014-2015.
- (v) Decree of mandatory injunction directing the defendant to clear all the outstanding bills of electricity till vacation of the suit property i.e. shop bearing no. WZ-405B, Gali no.1, Janak Park, Hari Nagar, New Delhi -110 064.

(vi) Cost of the suit.

Defendant's case:

5. In response to the summons of the suit, defendant filed his written statement inter alia denying the allegations/averments made in the plaint. The suit was preliminarily objected to on the ground that suit of the plaintiff is an abuse of process of law and is liable to be dismissed u/o 7 rule 11 CPC. It was also alleged that the suit was barred by Delhi Land Reforms Act, 1954, as the land belongs to Gram Sabha and the plaintiff is trying to encroach upon the land of Gram Sabha. On merits, it is stated that plaintiff is not the owner of the suit property as the property belongs to Gram Sabha.

6. Replication was filed by the plaintiff to the written statement, wherein he reiterated and reaffirmed the averments made in the plaint and denied the averments made in the written statement except the admissions made.

Part Decree u/o 12 rule 6 CPC

7. Vide order dated 15.04.2019, suit of the plaintiff was partly decreed for the relief of possession of the suit shop measuring 7.5 ft x 18 ft, situated at ground floor forming part of property bearing no. WZ-405 B, Gali no.1, Janak Park, Hari Nagar, New Delhi 110 064 and the suit was proceeded for arrears of rent, mesne profit and mandatory injunction.

Issues

8. From the pleadings of the parties following issues were framed vide order dated 15.04.2019:

- (i) Whether the plaintiff is entitled for the arrears of rent, if so, at what rate, on what amount and for which period?OPP.*
- (ii) Whether the plaintiff is entitled for mesne profit, if so, at what rate, at what amount and for which period?OPP.*
- (iii) Whether the plaintiff is entitled for the decree of mandatory injunction, as prayed for?OPP.*

9. After the framing of the issues, defendant stopped appearing in the matter and vide order dated 25.07.2019, he was proceeded ex-parte.

PLAINTIFF'S EVIDENCE:-

10. Plaintiff examined himself as **PW1** and stated and reiterated on oath the averments made in his plaint in his affidavit **Ex.PW1/A**. He relied upon the following documents:-

(i)Ex.PW1/1 : Photocopy of registered rent agreement executed between the plaintiff and defendant on 19.05.2017(OSR).

(ii)Ex.PW1/2: Photocopy of registered WILL dated 11.09.1985, by way of which the plaintiff become the owner of the tenanted premises(OSR).

(iii)Ex.PW1/3 : Photocopy of mutation letter

issued by MCD whereby the tenanted premises is mutated in the name of plaintiff(OSR)

(iv)Ex.PW1/4 :Photocopy of adhar card of the plaintiff(OSR)

(v) Ex.PW1/5:Cheque returning memo dated 11.01.2018 whereby cheque bearing no. 000012 for a sum of Rs.10,000/- was returned unpaid.

(vi)Ex.PW1/6: Legal notice dated 19.01.2019.

(vii)Ex.PW1/7:Postal receipt of legal notice.

(viii)Ex.PW1/9:Photocopy of latest electricity bill qua tenanted premises dated 23.06.2019.

(ix)Ex.PW1/10: Tracking report in respect of legal notice.

(x)Ex.PW1/11:Electricity bill for the period 18.10.2019 to 18.11.2019 amounting to Rs. 2070/- and its payment receipt showing payment made by plaintiff.

11. Shri Kiran Pal, Head Messenger, SBI was examined as **PW2**, who proved on record the summoned record i.e. bank account statement of plaintiff for the period 01.05.2017 to 04.02.2020 **Ex.PW2/A**(colly).

12. None of the plaintiff witnesses have been cross-examined on behalf of the defendant and their testimonies have remain unrebutted and uncontroverted.

Defendant's evidence

13. Defendant did not examine any witness in support of his case.

14. Final arguments have been heard and record carefully perused. Written submissions filed by the plaintiff are also perused.

Findings:

15. Now I shall proceed to give my issuewise findings:-

Issue no.1:Whether the plaintiff is entitled for the arrears of rent, if so, at what rate, on what amount and for which period?OPP.

The onus to prove this issue was on the plaintiff. The plaintiff has proved on record the registered rent agreement as Ex.PW1/1. It is an unrebutted and uncontroverted document. As per Clause 2 of the Rent Agreement Ex.PW1/1, the rate of rent was as under:-

S.No.	Period of lease	Monthly rent payable
1.	01.06.2017 to 31.05.2018	Rs. 25,000/-
2.	01.06.2018 to 31.05.2019	Rs. 26,250/-
3.	01.06.2019 to 31.05.2020	Rs.27,563/-

16. As per the case of the plaintiff and deposition of PW1, the tenancy was terminated vide legal notice dated 19.01.2018(Ex.PW1/6) w.e.f. 01.03.2018 (i.e. after one month from the receipt of legal notice) due to various defaults in payment of rent made by the plaintiff. It is also the case of the plaintiff and clearly deposed by PW1 that for the period

from October-2017 till February-2018, although the rent due was Rs. 1,25,000/- (Rs.25,000/- x 5) but the defendant made the payment of only Rs.75,000/-. The details of payment received are clearly deposed by PW1 and he has also proved his bank account statement (Ex.PW2/1) in support of his deposition. The defendant, on the other hand, has miserably failed to contradict the deposition of PW1 in this regard. Defendant has not even disputed these facts in his written statement. There is no pleading of the defendant that he had made any extra payment towards the rent before filing of the suit. After termination of the tenancy, the defendant became an unauthorized occupant in the tenanted premises w.e.f. March-2018. Accordingly, as a tenant he was liable to pay the outstanding rent of Rs. 50,000/- (Rs. 1,25,000/- due - Rs. 75,000/- received) till February,2018.

17. In his written arguments and oral submissions the plaintiff has fairly conceded that after the filing of the suit, the defendant has deposited Rs. 25,000/- on 17.05.2018 and Rs. 25,000/- on 16.06.2018, thus, clearing the outstanding rent for the months of January and February-2018. Thus, as on date, no amount is outstanding towards the rent till February,2018.

18. This issue is accordingly, decided holding that although the plaintiff was entitled to arrears of rent amounting to Rs. 50,000/- till February,2018 but as the said amount has been paid by defendant during the course of the trial,now nothing is due towards arrears of rent.

Issue no.2: Whether the plaintiff is entitled for mesne profit, if so, at

what rate, at what amount and for which period?OPP.

19. The onus to prove this issue was on the plaintiff. Before discussing the evidence brought on record on this issue, I deem it appropriate to pen down the admitted facts of the present case.

(i) Plaintiff is the landlord and defendant is the tenant in respect of tenanted premises i.e. shop ad-measuring 7.5" x 18" without roof rights situated at ground floor of property bearing no. WZ-405-B, Gali no.1 , Janak Park, Hari Nagar, New Delhi-64(as pleaded by the plaintiff and deposed by PW1).

(ii) The parties had entered into a registered rent agreement dated 19.05.2017 (Ex.PW1/1) (as pleaded by the plaintiff and deposed by PW1).

(iii) As per rent agreement Ex.PW1/1, the lease was for the period of 3 years w.e.f. 01.06.2017 till 31.05.2020 at a monthly rent of Rs.25,000/- with 5 % increase after expiry of every year of the tenancy period.(Clause 1 and 2 of the rent agreement Ex.PW1/1).

(iv) In case of default of non payment of rent for two consecutive months, the rent agreement was liable to be automatically terminated and lessee was under obligation to vacate the premises. (Clause 17 of the rent agreement

Ex.PW1/1).

(v) The rent had remained unpaid since January-2018. (as pleaded by the plaintiff and not disputed/denied by the defendant in his written statement.

20. As per the case of the plaintiff the lease agreement had automatically terminated due to default of payment of rent by the defendant by virtue of clause 17 of the rent agreement Ex.PW1/1. Still a legal notice dated 19.01.2018 (Ex.PW1/6) was issued by the plaintiff terminating the tenancy of the defendant w.e.f. one month after the receipt of the notice i.e. 1st March-2018. Vide the said notice, the defendant was called upon to handover the vacant possession of the tenanted premises to the plaintiff within 30 days of receipt of notice. However, the defendant failed to do the same. The deposition of PW1 on these aspects has remained unrebutted and uncontroverted. Accordingly, the plaintiff has been able to prove on record that defendant has remained in unauthorized possession of the suit property w.e.f. 01.03.2018, thereby, entitling the plaintiff to damages/mesne profits for the period for which he continued to be in possession after 01.03.2018.

21. During the course of arguments it is submitted on behalf of the plaintiff that the possession of the tenanted premises has been handed over to the plaintiff on 13.11.2019 pursuant to order of this court dated 15.04.2019 passed u/o 12 rule 6 CPC whereby a decree of possession was passed in favour of the plaintiff partly decreeing the suit of the plaintiff. Thus, the plaintiff is entitled to mesne profit w.e.f.

01.03.2018 till 13.11.2019. This fact is again not disputed or controverted by the defendant.==

22. As regards the quantum of mesne profits, the plaintiff has claimed the same @Rs.50,000/- per month being double the amount of rent on the basis of his legal notice Ex.PW1/6. In **“M. C. Aggarwal (HUF) Vs. M/s Sahara India & Ors”** RFA No. 457/11 & 458/11, decided on **02.09.2011 by Hon'ble Delhi High Court**, it has been held that *“a clause in lease deed that if tenant stays in the premises after the expiry of the lease period or termination of the tenancy, then the penalty/damages at double the market rate are payable would be exfacei violative of provision of 74 of Contract Act 1872 being a clause interrorem”*. In this judgment, the Hon'ble High Court has also relied on judgment of **“Fateh Chand Vs. Bal Kishan Dass”**, AIR 1963, Supreme Court 1405, in which it has been held by the Apex Court that *where on account of breach of contract damages can be proved then there cannot be any validity of the clause which gives liquidated damages*.

23. What is the rent which the premises can fetch during the period of the illegal occupation by the erstwhile tenant is a fact which can be easily proved in a suit for possession and mesne profit against the tenants by leading evidence with respect to rent of similar premises within the locality. The court, on considering such evidence with respect to rent of similar premises thereafter awards mesne profit to the landlord. It is only in cases where damages cannot be proved in a court then in such cases liquidated damages as fixed by the contract would become payable.

In cases where a landlord sues tenant for the mesne profit the same can surely be calculated being the rent which is modality applicable by virtue of language of Section 2 (12) CPC.

24. In “**Fateh Chand's**” case (Supra) the Apex Court also held that the party complaining the breach of contract may only receive the reasonable compensation not exceeding the amount stipulated in the contract.

25. From the judgment of “**M.C. Aggarwal**” (Supra) of Hon'ble High Court, the legal proposition of law is clear that the clause of liquidated damages in the lease agreements or any other similar kind of agreements between landlords and tenants or licensor and licensee, is in violation of Section 74 of Indian Contract Act since the mesne profit can be proved by landlords by leading the evidence of similarly situated properties of the localities. In view of the ratio of the judgment of “**M. C. Aggarwal**” (Supra), the mesne profits cannot be awarded to the plaintiff as prayed since the plaintiff was required to lead evidence in order to prove the damages/mesne profits. The plaintiff has not led any evidence to prove the prevailing market rent in the vicinity where the suit property is situated. During the course of arguments ld. Counsel for the plaintiff has also submitted that mesne profit may be awarded to the plaintiff as per the agreed rate of rent. Hence, the plaintiff is held entitled for the mesne profit on the same rate of rent as agreed between the parties and reflected in rent agreement Ex.PW1/1 i.e. @ Rs. 25,000/- w.e.f. 01.03.2018 till 31.05.2018; @ Rs.26,250/- w.e.f. 01.06.2018 till 31.05.2019 and @ 27,563/- w.e.f. 01.06.2019 till 13.11.2019. This issue

is accordingly decided in favour of the plaintiff and against the defendant.

Issue no. 3: Whether the plaintiff is entitled for the decree of mandatory injunction, as prayed for?OPP.

26. The onus to prove this issue was on the plaintiff. Plaintiff has sought a decree of mandatory injunction directing the defendant to clear all the outstanding of electricity dues till vacation of the tenanted premises. As per clause 4 of the rent agreement Ex.PW1/1, the defendant/tenant was liable to pay the electricity bills till the time he was in possession of the tenanted premises. It is the case of the plaintiff that the defendant had failed to clear the outstanding bills. Initially a decree of mandatory injunction was sought directing the defendant to clear the outstanding bills however, during the course of trial after receiving the possession of the suit property, the plaintiff has already deposited the outstanding bill of Rs. 2070/- with the electricity department. Accordingly, now the reimbursement of the said amount is sought. In order to support his contentions the plaintiff has placed on record the original bill dated 21.11.2019 showing an outstanding amount of Rs. 2073.77 and the payment receipt dated 03.12.2019 showing the payment of Rs. 2070/-. This bill and payment receipt is Ex. PW1/11(colly). The defendant has not disputed these documents nor cross examined PW1 on this aspect. Since the bills pertains to the period prior to 13.11.201 (i.e. the date when the possession was reverted back to the plaintiff), the defendant was liable to clear the said dues. Since the plaintiff has already deposited the said amount with the electricity company, he is

entitled to reimbursement of the same from the defendant.

27. This issue is accordingly decided in favour of the plaintiff and against the defendant holding that plaintiff is entitled to the recovery of Rs. 2070/- from the defendant towards the electricity bill paid by the plaintiff in respect of the period when the defendant was in occupation of the tenanted premises.

Relief:

28. In view of my issue wise findings given above, the suit of the plaintiff is decreed and following reliefs are granted in favour of the plaintiff and against the defendant:-

(i) Mesne profit on the same rate of rent as agreed between the parties and reflected in rent agreement Ex.PW1/1 i.e. @ Rs. 25,000/- w.e.f. 01.03.2018 till 31.05.2018; @ Rs.26,250/- w.e.f. 01.06.2018 till 31.05.2019 and @ 27,563/- w.e.f. 01.06.2019 till 13.11.2019.

(ii) Recovery of Rs. 2070/- from the defendant towards the electricity bill paid by the plaintiff in respect of the period when the defendant was in occupation of the tenanted premises.

(iii) The cost of the suit.

28. Decree sheet be prepared accordingly after filing of requisite court fees.

29. File be consigned to record room.

**Announced
through Cisco Webex on: 05.10.2020**

**(SHIVALI SHARMA)
ADJ-03/WEST/THC/DELHI
05.10.2020**