



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 89/2023, CM APPL 53088/2023**

SH. GOPAL

..... Petitioner

Through: Mr Amit Rao, Advocate

versus

SMT. OM WATI

..... Respondent

Through: Mr. O.P Aggarwal and Mr. Ashish
Aggarwal, Advocates

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

%

03.01.2024

[Physical Hearing/Hybrid Hearing]

CM APPL. 53088/2023*[Application seeking payment of use and occupation charges]*

1. This is an Application filed by the Respondent/landlord on 03.10.2023 seeking directions to the Petitioner/tenant to pay arrears of rental, and use and occupation charges for the premises i.e., one Shop on Ground Floor in premises No. B372, Ashok Nagar, Main Mandoli Road, Shahdara, Delhi [hereinafter referred to as the “demised premises”].
2. Notice in this Application was issued by the Court on 12.10.2023. Both parties filed lease deeds in support of their respective contentions *qua* user charges along with short notes. Subsequently, the judgment in present Application was reserved on 18.12.2023.
3. The Supreme Court in a recent Judgment titled *Martin and Harris*



Private Limited and Another v. Rajendra Mehta and Others¹, has upheld the law laid down in ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.***² that once an Eviction Order has been passed, the tenant is required to pay the use and occupation charges at market rate of like premises till the final disposal of the Petition. It has been held however that, the direction to pay mesne profits or compensation will depend on the facts and circumstances of each case including on location of the property whether it is in a village, city, or metropolitan area as well as its nature whether it is a commercial or residential area and the standard rate of rent serving as guiding factors in the facts of each case.

4. Learned Counsel for the Respondent/landlord, has placed on record a registered lease deed of a similarly situated premises. The relevant details are below:

(i) Lease deed dated 09.03.2023

Nature	Ground Floor Shop
Use	Commercial
Area	50 Sq. yds or 450 sq. ft.
Rent	40,000 per month
Description/Details	Situated at Village Saboli, in the Abadi Of Mandoli Road, Nathu Colony East, Shahdara , Delhi-110093.

4.1 Learned Counsel for the Respondent/landlord has contended that the demised premises is on the main Mandoli Road at Ashok Nagar in a prime

¹ (2022) 8 SCC 527

² (2005) 1 SCC 705



commercial area and admeasures 64 sq. yds. The tenant uses the demised premises as a shop and relying on the above lease deed, it is contended that the market rent for the subject premises should be around Rs. 40,000/- per month.

5. Learned Counsel for the Petitioner/tenant, on the other hand, contends that the reliance placed on the aforesaid lease deed is misplaced as the demised premises admeasures about 7 sq. yards whereas the leased premises admeasures 50 sq. yards.

5.1 The Petitioner/tenant further seeks to rely upon a lease deed of a similar premises and photograph of the demised premises. The details are below:

Lease Deed dated 15.05.2023:

Nature	Ground Floor Shop
Use	Commercial
Area	52.5 sq. yds or 468 sq. ft.
Rent	11,000 per month
Description/Details	Situated in the abadi of B-Block, Mandoli Road, Ashok Nagar, in the area of Village Saboli, illaqa Shahdara, Delhi-110093;

5.2 Relying on the foregoing lease deed, the Petitioner/tenant contends that the shop admeasuring 52.5 sq yds has a monthly rental of Rs. 11,000/-. As the area of the leased premises is seven times more than the demised premises, the rental should not be more than Rs. 2,500/- per month.

6. The record shows that the Application filed by the



Respondent/landlord does not contain the measurement of the demised premises. The Eviction Petition defines the premises as admeasuring "8' x 8'" or 8 X 8 sq. ft. However, the Impugned Order holds that the premises admeasures 8 X 8 sq. yds.

6.1 The site plan at pdf page 397 of the Trial Court record available in the case file, also does not clearly set forth whether the measurement of the premises is 8 x 8 sq. ft. or 8 x 8 sq. yds.

7. In view of the foregoing, prior to affixation of user charges, a clarification of the size of the demised premises needs to be given by the parties.

8. List before Roster Bench on 11.01.2024.

TARA VITASTA GANJU, J

JANUARY 03, 2024

g.joshi

Click here to check corrigendum, if any