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

+ **RC.REV. 104/2018 & CM APPL. 10325/2018**

BINA ROY

.....Petitioner

Through: Mr. Anish Bachchan, Advocate with
Petitioner in person.

versus

HANSA SONI & ORS

.....Respondents

Through: Ms. Deepakshi and Mr. Aseem,
Advocates for R-1 with R-1 and son
of R-1 in person.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

24.12.2024

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1. Learned Counsel for the Petitioners appears today and on the first call he submits that he does not have the file. The matter was thereafter passed over at his request and on the second call, learned Counsel for the Petitioner submits that he is unable to make any submissions and that the arguing Counsel is not available.
2. Learned Counsel for the Respondents draws attention of the Court to the order dated 11.12.2024 to submit that despite interim protection granted to the Petitioner on 30.07.2018, no user and occupation charges are being paid by the Petitioner to the Respondents.
3. The Court had on 11.12.2024 also directed the parties to be physically present. The Petitioner was present in Court on the first call. The son of Respondent No.1 is present in Court alongwith Respondent No.1 today.



4. On the last date of hearing, i.e., 11.12.2024, the Court had directed as follows:

“1. Once again, a request for an adjournment is made on behalf of the learned Counsel appearing for the Petitioner.

2. The record shows that a similar request was made by the Petitioner on 29.04.2024 as well as on 14.08.2024.

*3. The record also shows that the interim protection was granted to the Petitioner by an Order dated 30.07.2018 passed by the Coordinate Bench of this Court. However, no user and occupation charges are being paid in terms of the judgment of the Supreme Court in **Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.** reported as (2005) 1 SCC 705, in which it is held that once an Eviction Order is passed, the tenant is required to pay the use and occupation charges at market rent till the final disposal of the Revision Petition.*

4. Learned Counsel appearing on behalf of the Petitioner also requests for some time to take instructions as to whether her client is able to pay market rent for the last six years.

5. Let the parties be physically present in the Court on the next date of hearing.”

5. The matter was listed on 20.12.2024 when once again an adjournment request was made by the Petitioner and at his request, the matter has been listed today.

6. As stated above, the learned Counsel for the Petitioner once again submits that he has no instructions and that the arguing Counsel is unavailable. Given the fact that ample opportunity has been given to the Petitioner to make his submissions, and the long lapse of time since interim protection was granted to the Petitioner, the Court deems it appropriate to affix user and occupation charges.

7. The Impugned Order has been passed in respect of premises bearing No.2212, Kuncha Alam Chand Kinari Bazar, New Delhi-110006 [hereinafter referred to as “subject premises”]. Undisputedly, the subject



premises are commercial premises on the ground floor in the middle of a market place in Chandni Chowk area in Kinari Bazar, New Delhi.

8. The record shows that the Eviction Petition was filed in the year 2008 by the Petitioner and that despite service on the Petitioner by publication, the leave to defend was not filed on time. The learned Trial Court examined the matter and held that since the Petitioner was served by publication on 08.03.2011 and the leave to defend Application was filed on 04.05.2017, this ground alone entitles the leave to defend Application to be dismissed. However, in addition the learned Trial Court also undertook an examination on the merits of the case and found that no triable issue was raised by the Petitioner/tenant. Subsequently, the Impugned Order was passed allowing the Eviction Petition filed by the Respondents.

9. As stated above, the operation of the Impugned Order was stated by a Coordinate Bench of this Court on 30.07.2018.

10. The Supreme Court in the case of ***Martin & Harris (P) Ltd. v. Rajendra Mehta***; (2022) 8 SCC 527 while relying on the ***Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.***; (2005) 1 SCC 705 has held that the landlord is required to reap the benefit of an eviction decree and if the execution of the decree is delayed, the landlord is entitled to receive market rent. The relevant extract of the ***Martin & Harris case*** is below:

“17. In Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. [Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705] , this Court held that the appellate court does have jurisdiction to put reasonable terms and conditions as would in its opinion be reasonable to compensate the decree-holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent court, 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 in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have 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 later date.

18. Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in Atma Ram [Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705] has been reaffirmed in State of Maharashtra v. Super Max International (P) Ltd. [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] by three-Judge Bench of this Court. Therefore, looking to the fact that the decree of eviction passed by the trial court on 3-3-2016 has been confirmed in appeal; against which second appeal is pending, however, after stay on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just, equitable and reasonable.”

[Emphasis supplied]

11. In view of the foregoing, this Court deems it apposite to affix interim user and occupation charges at the rate of Rs.10,000/- per month for present for the subject premises.

12. Accordingly, without prejudice to the rights and contentions of the parties and with the consent of the parties, the following directions are passed:

- (i) The user and occupation charges for the period commencing from 16.07.2018 to 31.03.2020 shall be paid by the Petitioner/tenant at the rate of Rs. 8,500/- per month;
- (ii) The user and occupation charges for the period commencing from 01.04.2020 to 31.03.2022 shall be paid by the Petitioner/tenant at the rate of Rs. 7,000/- per month;



(iii) The user and occupation charges for the period commencing from 01.04.2022 to 31.12.2024 shall be paid by the Petitioner/tenant at the rate of Rs. 9,500/- per month;

(iv) The user and occupation charges from 01.01.2025 onwards, shall be paid by the Petitioner/tenant at the rate of Rs.10,000/- per month, on or before 7th day of each calendar month;

(v) The user and occupation charges as set out in paragraphs (i), (ii) and (iii) shall be cleared by the Petitioner/tenant in four equal instalments payable on 15.01.2025; 28.02.2025; 31.03.2025 and 30.04.2025.

13. All payments shall be made into the bank account of the Respondents/landlords. The details of the bank account shall be provided by the learned Counsel for the Respondents/landlords to the learned Counsel for the Petitioner/tenant on his email address within three days.

14. It is clarified that the use and occupation charges as affixed hereinabove are subject to the final outcome of the present Petition.

15. In the event that there is any default in the payment of use and occupation charges on behalf of the Petitioner/tenant, interim protection as granted by this Court on 30.07.2018 shall automatically stand dissolved.

16. Written synopsis of the Petitioner are already on record.

17. The Respondents seek and are granted time to file their written synopsis, not exceeding three pages, at least one week before the next date of hearing, along with the compilation of judgments, if any, they wish to rely upon.

17.1 All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.



18. Registry is directed to place on record the digital copy of the Trial Court Record duly paginated and book-marked in accordance with the rules of the High Court.

19. List on 25.04.2025.

TARA VITASTA GANJU, J

DECEMBER 24, 2024/pa

Click here to check corrigendum, if any