

**HIGH COURT OF DELHI AT NEW DELHI**

**RFA No. 459 of 2008**

**Judgment reserved on: 09.11.2009**

**Judgment pronounced on: 13.01.2010**

CMC LTD. .... Appellant

Through: Mr. Sharman Sinha, Advocate.

Versus

Balwant Singh Dharmarait & Ors ..... Respondents

Through: Mr.N.N Aggarwal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE S.L. BHAYANA**

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest or not? Yes

**S. L. BHAYANA, J**

The present appeal arises out of the judgment and decree dated 24.07.2008 passed by Ms.Ina Malhotra, learned Addl. District Judge in a suit for possession of premises A-5, Ring Road, Housing Co-operative Society, N.D.S.E part 1, New Delhi 110049, damages and mesne profits for illegal and unauthorized use and occupation of the suit premises.

2. Briefly stated the facts leading to the filing of the present appeal may be summarized as under:

3. The appellant, a public sector undertaking of the Govt. of India, had taken the demised suit premises on lease, comprising of a basement, ground and the first floor, a garage and one room above the garage for a period of three years from 15.04.82 on a monthly rent of Rs.20,000/-. The appellant retained the possession of a room on the second floor. The said lease was extended on renewed terms and enhancement of rent from time to time. On 01.07.96 vide a duly registered lease deed the rent was agreed to be enhanced to Rs.80,000/- pm from 01.07.96 to 30.06.98 and to Rs.90,000/- pm from 01.07.98 to 30.06.99. It was agreed upon that the said lease will not be renewed or extended thereafter. Vide notice dated 01.05.99 the tenancy was terminated and the appellant was directed to hand over the vacant and peaceful possession of the suit property to the respondents, failing which the appellant shall be liable to pay mesne profits. As the appellant did not vacate the suit property the respondents filed Suit No.274/04 before the trial Court for ejectment of the appellant from the suit property.

4. The learned trial Court vide its judgment dated 24.07.08 passed a decree in the sum of Rs.1.75 lakh per month as mesne profit/damages for use and occupation of the suit property from the date of termination of lease till the date of handing over the possession in favor of the respondents. The

trial Court further awarded costs and interest thereon @ 8% per annum.

5. Aggrieved by the impugned order, the appellants have filed the present appeal for setting aside the judgment and decree dated 24.07.09 of the learned trial Court.

6. It may be noted here that during the pendency of the suit before the trial Court, the appellant vacated the suit premises on 31<sup>st</sup> November, 2002.

7. Learned counsel for the appellant has submitted that the impugned order is based on no evidence and the trial Court has also failed to appreciate the evidence adduced by the appellant. Learned trial Court also failed to acknowledge the fact that the appellant has paid the rent till November 2002, also the security deposit of Rs.2, 40,000 was not returned to the appellant and the respondents have failed to pay interest thereon. The trial Court completely ignored the deposition made by DW2, Umesh Chandra Joshi, who filed the affidavit by way of evidence. He has also placed on record certain evidence, which stated that the prevalent rate of rent of similar residential properties (with or without using as commercial) in South Extension Part-I area was about Rs.14 to Rs.15 per sq. ft., during the year 2001 to 2002. The rental rates have increased to about Rs.16 per sq. ft. only in the year 2003. Despite copies of several lease deeds placed on record

of residential premises in the vicinity for the relevant period and evidence led by the appellant, the Trial Court ignored the same. The trial Court has arbitrarily fixed the damages without conducting any inquiry on the issue of mesne profits/damages as required by law. Learned counsel argued that serious infirmity has crept in the impugned order.

8. Learned counsel further argued that the impugned judgment is not sustainable as the mesne profits/ damages awarded to the respondents is not based on evidence but only on conjecture in the name of taking “judicial notice”. It is argued that the judicial notice is to be taken only of increase in rent year to year generally but judicial notice of absolute rental values cannot be taken. In support of his arguments learned counsel has relied upon the judgment of this Court; Electronic Co. Ltd. vs. Motion Pictures Association, **122(2005) DLT 629**.

9. Learned counsel submitted that even the rental in the year 2005 for an independent residential property in South Extension Part-I area was Rs.75,000/- pm. The rental for an apartment of 2500 sq. ft. covered area is Rs.60,000/- pm or Rs.24/- per sq. ft.

10. Learned counsel for the appellant also points out that the rent from Rs.14-15 per sq. ft. has been increased to Rs.16 per sq. ft., where the property being residential property and

being misused as commercial property the rent cannot be more than Rs.15 per sq. ft. Learned counsel contended that the future mesne profit awarded @ 1.75 lac pm by the learned trial Court is exorbitant and on the higher side.

11. Learned Counsel for the respondents, on the other hand, has argued that the documents adduced by the appellant in support of his case are fabricated.

12. Heard learned counsel for the parties and perused the documents relied upon and lower Court record.

13. The appellant was paying Rs.90,000/- pm @ Rs.15 per sq. ft. when the lease deed expired on June 30, 1999. It is not in dispute that the appellant paid full monthly rental upto 30.11.02, when the possession was handed over.

14. In the instant case, the respondents have failed to adduce the evidence regarding the market rate of rent between the years 1999 to 2002. In the absence of any definite material showing market rate of rent of the suit property this Court has no option but to determine the mesne profits by way of reasonable estimation.

15. In the judgment National Radio & Electronic case (supra) the question of judicial notice has been discussed, which clearly states that rent may vary due to number of factors. Nobody can deny the fact that there has been a rise in rent in Delhi and particularly in the area in which the suit property has been located.

16. The respondent/plaintiff has produced two lease deeds for the evidence before the Trial Court of the properties pertaining to NDSE-II in respect of the commercial properties. The Trial Court has rightly rejected the lease deeds produced by the respondent/plaintiff with regard to commercial properties in the area NDSE-II because the rents in NDSE-I, which are residential properties are much lower than the rents in NDSE-II and there can be no parity with the properties located in NDSE-II, which are commercial properties. The Trial Court has also rightly rejected the plea of the respondent/plaintiff that the property in question has been leased out to State Bank of India @ 3.21 lac per month and therefore they should be awarded the same amount from the appellants.

17. The Trial Court has held that the suit property has been totally renovated, re-built and modernization of the suit property was carried out as per the requirements of the State Bank of India, whereas no renovation was carried out and the construction of the suit premises was old and outdated while it was in possession of the appellants. So the Trial Court has rightly rejected the plea of the respondent/plaintiff on the ground that the property in hand of the appellant/defendant was old and outdated and that no parity can be drawn with the rent since large scale renovation has been carried out in the suit property when leased out to State Bank of India.

Moreover, the premises in question was let out to the State Bank of India after more than one year of the vacation of the suit premises by the appellant after renovation. But the Trial Court awarded damages @ Rs.1.75 lac per month to the appellant/defendant "taking judicial notice" of the rents having gone high in Delhi.

18. The Trial Court has failed to take into consideration the evidence produced by the appellant/defendant on this point. The Trial Court has also not taken into consideration the evidence of DW2, Sh. Umesh Kumar Joshi, Manager Administration of appellant company and even the evidence led by DW1, A.M. Rao,. Head Administration of appellant company has also not been discussed at all in the impugned judgment. It is further submitted on behalf of the appellant that despite several lease deeds placed on record of similar residential premises located in the same area/locality for the relevant period and evidence led, the Trial Court has ignored all material and fixed the rent arbitrarily on the basis of conjecture and surmises.

19. The appellant had taken the premises in question on rent in the year 1982 at a rent of Rs.20,000/- per month and when they left the premises in November 2002, they were paying Rs.90,000/- per month as rent to the respondent. They remained as tenant for a period of 17 years and three months and the average increase in rent comes to Rs. 4058/- p.m. But

the Trial Court has ignored this fact while awarding the enhanced rent in favor of the plaintiff/respondent.

20. I have gone through the lease deeds produced by both the parties and in my opinion, it would be fair and just if the rate of mesne profits is increased @ 30% from Rs.90,000/- to Rs.1,20,000/- per month because the prevailing rent in NDSE-I at the relevant time increased between 10 % to 30%. It is also made clear that the security amount of Rs.2,40,000/- deposited by the appellant with the respondent shall also be adjusted at the time of payment of mesne profits by the appellants.

21. With these observations, the appeal filed by the appellant is partly allowed. The impugned judgment/decreed dated 24.7.2008 passed by learned ADJ, Delhi is set aside. The costs and interest @ 8% awarded by the Trial Court also stands set aside. The decree @ Rs.1.20 lac per month as mesne profits/ damages is passed in favor of the respondent from the date when lease deed expired i.e w.e.f. 1.7.1999 till 30.11.2002 when the possession was handed over.

22. The parties shall bear their own costs.

**(S.L.BHAYANA)**  
**JUDGE**

**13.01.2010**  
nida/KA