

2005 PLRonline 0004

SUPREME COURT OF INDIA

Ashok Bhan J. A.K Mathur, J.

Indian Oil Corpn. Ltd. v. Saroj Baweja And Another

Civil Appeal No. 7381 of 2001

16.02.2005

Tenancy and Rent Act

Mesne Profits - Are to be considered on the basis of evidence led before the Court - Respondent-plaintiffs in their plaint had stated that the market rent of the suit premises was approximately Rs 40,000 per month - They deposed to the same effect in their testimony in court - The appellant did not cross-examine or produce any evidence to counter the statement made by the respondents - Since the appellant failed to produce any evidence or even to cross-examine the plaintiff-respondents regarding the market rent existing on the date of terminating the tenancy, we have no other option but to uphold the order passed by the first appellate court fixing the mesne profits at Rs 35,000 per month, which has been duly affirmed by the High Court. [Para 9]

Order

1. This appeal, by grant of special leave, is directed against the judgment and decree of the High Court of Delhi in RSA No. 89 of 1998 wherein and whereby the High Court has affirmed the judgment and decree passed by the first appellate court fixing the mesne profits at Rs 35,000 per month along with interest @ 18% per annum of the suit premises.

Brief facts

2. The appellant tenant (hereinafter referred to as "the appellant") on 19-6-1984 took on lease an area comprising 640 sq ft in a flat in Ashoka Estate, Barakhamba Road, New Delhi, for a period of three years for running its office. The rent was mutually agreed at Rs 11,520 per month @ Rs 18 per sq ft. The lease deed was duly registered (Exhibit PW 1.A). On expiration of the lease, another lease was executed on 8-7-1987 for a further term of three years on terms mutually agreed to. The rent was enhanced by 15% and was fixed at Rs 13,428 per month. The other terms and conditions remained the same. Upon expiration of the second lease, another lease was executed for a further term of three years on 14-11-1990 on terms mutually agreed to. The rent was enhanced by 15% and fixed at Rs 15,232 per month. The other terms and conditions remained the same.

3. On 19-6-1993, the respondent landlords (hereinafter referred to as "the respondents") refused to extend the lease as the parties failed to arrive at a consensus regarding the rent.

Accordingly, on 27-5-1994, the respondents issued a notice under Section 106 of the Transfer of Property Act terminating the tenancy w.e.f 20-6-1994.

4. On 5-7-1994, the respondents filed Civil Suit No. 317 of 1994 in the Court of Additional District Judge, Delhi against the appellant for eviction, possession and mandatory injunction. This suit was decreed on 6-6-1998. The appellant accepted the judgment and decree passed in the said suit and vacated the suit premises on 31-8-1998, as directed in the decree.

5. The respondents filed another Suit No. 531 of 1994 in the Court of Commercial Civil Judge, Delhi against the appellant for recovery of mesne profits. In this suit, the respondents claimed Rs 40,000 per month as the mesne profits for use and occupation of the suit premises. The trial court on 7-8-1996 fixed the mesne profits at Rs 17,516.80 per month. Interest was awarded @ 10% per annum. It was not disputed between the parties that as on the date of vacating the premises i.e 31-8-1998 the appellant had paid mesne profits @ Rs 17,516.80 till the date of vacating the suit premises.

6. Aggrieved against the order passed by the trial court fixing the mesne profits at Rs 17,516.80, the respondents filed an appeal before the first appellate court. The first appellate court modified the judgment and decree passed by the trial court and fixed the mesne profits at Rs 35,000 per month instead of Rs 17,516.80 per month. Rate of interest was also increased to 18% per annum. The first appellate court recorded the following reasons for fixing the mesne profits at Rs 35,000 per month for use and occupation of the premises beyond the period of termination of the tenancy:

"In the original plaint before the trial court in the heading there is a claim of Rs 80,000 for damages/mesne profits. In para 10 of the plaint it is stated that damages had been claimed @ Rs 40,000 p.m w.e.f 1-6-1994 for the period of two months and also at the same rate for each subsequent month till decision of the suit with 24% p.a as interest. In the prayer clause also the damages have been claimed @ Rs 40,000 p.m w.e.f 1-6-1994 till date of passing of the decree with 24% interest. As held above the damages for use and occupation after the date of termination of tenancy w.e.f 20-6-1994 till the date of decree are hereby awarded @ Rs 35,000 p.m on payment of court fees. After the court fees is paid the decree shall be released."

7. Aggrieved against the order passed by the first appellate court, the appellant filed Regular Second Appeal No. 89 of 1998 which has been dismissed by the High Court by the impugned judgment with the observation that no substantial question of law arose in the second appeal.

8. Heard the counsel for the parties.

9. It would be seen from the order passed by the first appellate court that the respondent-plaintiffs in their plaint had stated that the market rent of the suit premises was approximately Rs 40,000 per month. They deposed to the same effect in their testimony in court. The appellant did not cross-examine or produce any evidence to counter the statement made by the respondents. Since the appellant failed to produce any evidence or

even to cross-examine the plaintiff-respondents regarding the market rent existing on the date of terminating the tenancy, we have no other option but to uphold the order passed by the first appellate court fixing the mesne profits at Rs 35,000 per month, which has been duly affirmed by the High Court. We agree with the view taken by the High Court that a substantial question of law, under the circumstances, did not arise in the second appeal which could have conferred jurisdiction on the High Court to interfere in the second appeal.

10. In our considered view, the rate of interest awarded @ 18% is on the excessive side. In the last few years, the bank rates have fallen drastically. Keeping in view the fall in the rate of interest all over, we deem it appropriate to fix the rate of interest @ 10%, as had been fixed by the trial court, instead of 18% as awarded by the first appellate court and affirmed by the High Court.

11. Under the order of this Court the appellant deposited the arrears of mesne profits to the tune of Rs 8 lakhs on 16-1-2004 which has been withdrawn by the respondents.

12. Accordingly, we dismiss the appeal with the modification that the rate of interest would be @ 10% from the date it became due till it was deposited in this Court i.e on 16-1-2004. The appellant is directed to deposit/pay the amount of interest within a period of 60 days from today. There shall be no order as to costs.