(2022) 10 DEL CK 0098

In the Delhi High Court

Case No : Civil Suit (OS) No. 2676 Of 2014

Balwant Singh Dhamrait & Others — APPELLANT

Vs

State Bank Of India & Another — RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 2(12), Order 12 Rule 6
Evidence Act, 1872 — Section 57, 114

Citation : (2022) 10 DEL CK 0098

Hon'ble Judges : Amit Bansal, J

Bench : Single Bench

Advocate : Akshay Makhija, Suryajyoti Singh Paul, Adarsh Chamoli, S.L. Gupta

Judgement

Amit Bansal, J

1. The present suit has been filed seeking eviction of the defendant bank from the premises bearing No. A-5, situated at Ring Road, South Extension Part I, New Delhi- 110049, comprising of basement, ground floor and first floor, excluding garage on the ground floor and two rooms on the top of garage, admeasuring 5567.4 square feet (suit property) and recovery of mesne profits/ damages.

2. In brief, the case set up by the plaintiffs in the plaint is set out hereinafter:

i) The suit property was given on lease to the defendant bank for a term of 10 years from 13th November, 2003 to 12th November, 2013. For the first five years of the lease, the monthly rental was Rs. 3,21,000/-. After the expiry of five years, as provided in the Lease Deed, the monthly rent was increased by 25% to Rs.4,01,250. The defendant bank paid an amount of Rs. 19,26,000/- as six months' advance rent at the inception of the lease, which was to be adjusted in the last six months of the lease.

ii) The lease was renewable for a further period of five years on terms and conditions to be mutually agreed between the parties, provided due notice was given to the plaintiffs by the defendant bank.

iii) The plaintiffs issued a letter dated 20th June, 2012 to the defendants stating that the plaintiffs are in the need of the suit property and the defendant bank should vacate the suit property on the expiry of the lease. However, no reply was received by the plaintiffs to the said notice. Another letter dated 07th January, 2013 to the same effect was issued to the defendants.

iv) Reply dated 18th February, 2013 was received from the defendants stating that the bank intended to continue the lease after expiry of the said lease with the consent of the plaintiffs. In the said reply, the bank also requested the plaintiffs to submit their offer in this regard and after the receipt of the offer, a meeting would be arranged with the controller of the defendant bank for getting the plaintiff's concurrence. On 11th April, 2013, an offer for extending the lease for a further period 5 years was given by the plaintiffs to the defendant no.2 and the same was handed over to Mr. Digvijay Rawat, Regional Manager and Mr. Sriram Singh, Chief Manager at LHO.

v) The defendant bank published an advertisement dated 18th September, 2013 inviting bids for taking a premises on lease in South Extension for shifting of their Branch/office from the suit property. By way of response to the said advertisement and bank's letter dated 20th September, 2013, the plaintiffs sent their bid dated. 23rd September, 2013, offering the suit property for fresh lease at a monthly rent of Rs. 22,00,000/-.

vi) During the subsistence of the lease or after its expiry, no mutual agreement was ever reached between the parties for renewal of the Lease Deed. The term of the Lease Deed expired on 12th November, 2013 and thereupon, the defendant bank was obliged to deliver up the possession of the suit property.

vii) The defendant bank issued a letter dated 12th November, 2013 stating that the bank was already looking for a suitable space for shifting their branch/office and till then the bank would run their branch/office from the suit property and the terms would remain unchanged till then.

viii) The defendant bank deposited a total sum of Rs. 34,50,750/- from 13th November, 2013 to 31st July, 2014 @ Rs. 4,01,250/- per month, in the bank account of the plaintiffs.

3. Accordingly, the present suit was filed by the plaintiffs seeking the following reliefs:

"(a) Eviction of the defendants from the suit property, i.e. plaintiffs' premises known as A-5 bearing Municipal No. A-5, comprising of the Basement Floor, Ground Floor and first floor (excluding garage and two rooms on the top of the garage of which the possession was kept with the plaintiffs) containing a total area of 5567.4 square feet, bounded on east by plot No. 4, on west by plot No. 6, on north by service lane and on south by Ring Road, situated at Ring Road, South Extension Part I, New Delhi;

(b) Recovery of Rs. 2,01,76,498 comprising of mesne profits/ damages@ Rs. 24,00,000/- per month from 13.11.2013 till filing of the suit (14.08.2014) amounting to Rs.2,17,60,000/- alongwith interest thereon @ 15% per annum (calculated from the first day after expiry of the month to which the same pertain) amounting to Rs. 11,03,712/- plus service tax on the amount of mesne profits of Rs. 2,17,60,000/- @ 12.36% as applicable amounting to Rs. 26,89,536/- Total Rs. 2,55,53,248/- after adjusting the amount of Rs.53,76,750/- received from the defendants as per details in para 27;

(c) Recovery of further damages/mesne profits @ Rs. 26,96,640/- per month including service tax @ 12.36%, with interest thereon 15% per annum on monthly dues for the period after the date of filing the suit till payment;

(d) Award the cost of the suit;

(e) Any other order or relief which this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiff and against the defendants."

4. Summons in the suit were issued on 5th September, 2014.

5. The defendants contested the present suit by filing a written statement, in which it has been pleaded that:

i) The plaintiffs have no right to terminate the tenancy of the defendant bank. As per Clause II(j) of the Lease Deed, the defendant bank is entitled to the renewal of the lease for further period of 5 years after the expiry of the period of 10 years.

ii) The defendant bank is in the possession of the suit property as a tenant and has been regular and punctual in paying rent to the plaintiffs in respect of the suit property.

iii) In the suit, the relief is claimed on the basis of the area of the suit property admeasuring 5567.4 sq.ft., whereas as per the Lease Deed, the same is 4729 sq.ft.

iv) The defendant bank informed the plaintiffs during their visit to the bank that the bank is interested in invoking the aforesaid clause in the Lease Deed for the extension of lease for another period of 5 years. The defendant bank had continuously tried to mutually settle the terms for the extension of the lease for 5 years. The defendant bank had offered to enhance the rental in respect of the suit property by 25%, as was done on the expiry of the initial period of 5 years.

v) The suit property was an old construction and lacked the basic amenities such as power back-up, parking and lift. There was no similarity between the premises bearing No A-12, Ring Road, South Extension Part-1, New Delhi (hereinafter referred to as 'A-12') and the suit property, as both the properties are situated in different locations and have different amenities.

vi) The plaintiffs were liable to refund the security amount of Rs. 19,26,000/- to the defendant bank at the time of the defendant bank vacating the suit property.

6. In its replication, the plaintiffs have re-affirmed its assertions made in the plaint.

7. As noted in the order dated 23rd August, 2016, the defendant bank handed over vacant and peaceful possession of the suit property on 30th June, 2016. As a result, the relief claimed by the plaintiffs in prayer 'a' in the suit stands satisfied. The issues that remain to be adjudicated in the present suit relates to the claim of mesne profits/ damages and interest.

8. Consequently, this court framed the following issues on 2nd March, 2017:

"(i) Whether the lease was renewed beyond 12.11.2013? If so, for what period, and on what rate of rent? OPD

(ii) Whether the plaintiffs are entitled to mesne profits @ Rs. 24,00,000/- per month from 13.11.2013 to 14.08.2014 (date of filing of suit) plus service tax? OPP

iii) Whether the plaintiffs are entitled to mesne profits/damages @ Rs 26,96,640/- per month for the period after filing of the suit till handing over of possession of the premises on 30.06.20l6? OPP

(iv) Whether the plaintiffs are entitled to interest? If so, on what amount, and at what rate? OPP

(v) Relief."

9. Evidence was recorded before the Joint Registrar between 25th May, 2017 to 22nd July, 2019. Mr. Balbir Singh, the Plaintiff no. 2 (PW-1), and Mr. S. Prabhjot Singh (PW-2), the owner of A-12. The defendants examined Ms. Seema Kapahi, who was the Assistant General Manager (AGM) of the defendant Bank in June 2015, (DW-1); Mr. Satishan, the AGM, SBI, NSIC Bhawan, Okhla Industrial Area, New Delhi (DW-2) and Ms. Seema Tewari, AGM, Vasant Kunj, New Delhi (DW-3). Evidence of the plaintiff's witnesses concluded on 15th January, 2018 and evidence of the defendant's witnesses concluded on 22nd July, 2019.

10. Witnesses of both the sides have supported their respective versions, which shall be discussed in detail while dealing with the issues.

11. Final arguments in the suit were heard on 12th September, 2022, 28th September, 2022 and 6th October, 2022.

12. I have considered the rival submissions and also gone through the record of the suit.

13. My issue wise findings are as under:

Issue No.1: Whether the lease was renewed beyond 12.11.2013? If so, for what period, and on what rate of rent? OPD

14. Admittedly, the lease (Ex PW-1/1) was for a period of ten years from 13th November, 2003 to 12th November, 2013. On plaintiffs' application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) for judgment on admissions, this Court vide order dated 11th December, 2015 held that the lease had not been extended after efflux of ten years, as the parties never agreed to the terms of the renewal. This finding was not challenged by the defendants and has therefore, attained finality. Mr. Balbir Singh (PW-1), the plaintiff no.2 herein, has also deposed that the lease expired on 12th November, 2013 and was never renewed. No evidence has been led on behalf of the defendants regarding renewal of the Lease Deed.

15. There was a proposal for the renewal of the Lease Deed by the plaintiffs. However, the same did not fructify into any contract and therefore, there was no renewal of the Lease Deed after 12th November, 2013.

16. The aforesaid issue is decided in favour of the plaintiffs and against the defendants.

Issue No.2: Whether the plaintiffs are entitled to mesne profits @ Rs. 24,00,000/- per month from 13.11.2013 to 14.08.2014 (date of filing of suit) plus service tax? OPP

Issue no.3: Whether the plaintiffs are entitled to mesne profits/damages @ Rs 26,96,640/- per month for the period after filing of the suit till handing over of possession of the premises on 30.06.20l6? OPP

17. On behalf of the plaintiffs, Mr. Prabhjot Singh (PW-2), being the owner of A-12 deposed as a witness. He produced the original Lease Deed dated 28th April, 2009 (Ex PW-2/1), in terms of which, the said premises with an area of approximately 4000 sq ft in the same vicinity was leased out in April, 2009 for three years at a rent of Rs. 14,00,000/- per month, with provision of 15% increase every three years in case of renewal.

18. On the other hand, it has been deposed on behalf of the DW-2 that the suit property was at a distance from South Extension Part-I Market, which is a high-end market and was close to Kotla Mubarakpur Market, which is an unplanned and crowded market for hardware and sanitary wares, with parking issues. There is a difference in the location of A-12 and the suit property, as A-12 is located very close to the South Extension Part-I Market. Further, it has come out in the evidence of DW-2 that A-12 was very well maintained, whereas the suit property was constructed in the year 1972, more than 50 years ago and had a severe water seepage problem in its basement and even the two washrooms in the suit property were in a bad condition. PW-2 has also deposed in his evidence that the facility of power back-up was provided to the tenants in occupation of A-12.

19. It is a settled position of law that while determining mesne profits, the court has to undertake a comparative assessment of the nature, location, age, condition etc., of the suit property along with other properties located in its

neighbourhood. The other factors to be considered would be the period of the lease and the requirement of the lessee. Reference in this regard is made to the judgment of this Court in Om Prakash Chopra and Ors. v. State Bank of India, (2019) 257 DLT 50.

20. There cannot be any two views that the rental of a property being used for commercial purposes would be higher if it is located close to a high-end market and the rental value would be much lower if the property is located in a crowded area with parking issues. In the present case, there is a material difference between the location of the suit property and A-12. A-12 is located next to one of the high-end markets of Delhi, South Extension Part-I Market, which has major showrooms, whereas the suit property is located in the vicinity of an unplanned and crowded market, Kotla Mubarakpur. PW2 has also deposed in his evidence that the facility of power back-up was available in A-12. Therefore, in my view, no reliance can be placed on the rentals being fetched in respect of A-12, to determine the rental value of the suit property.

21. PW-1 deposed in his evidence that in response to his application under Right to Information Act, 2005, the defendant bank had sent reply dated 19th May, 2015 (Ex PW-1/3) stating that the defendants were shifting to a new premises bearing No. N-3, South Extension Part-1(Ring Road), New Delhi (hereinafter referred to as 'N-3'), in June, 2015 having a total area of 2423 sq. ft. in the same vicinity and its monthly rental was Rs. 10,54,545/-. PW-1 and PW-2 deposed that in the same locality, the prevalent rate of rent of similar properties for an equivalent area is between Rs. 24,00,000/- to Rs. 28,00,000/-.

22. DW-2 in his evidence has deposed that there cannot be any comparison of the suit property with N-3, as that was a centrally air-conditioned building constructed in the year 2014-2015 with all the modern facilities such as power back-up, lift, modern washrooms and covered parking in the basement for around fifteen cars.

23. In light of evidence discussed above, there cannot be any comparison between the rental value of the suit property with N-3. As noted above, N-3 constructed in the year 2014-2015, had all the facilities such as lift, central air-conditioning, power back-up, modern washrooms and covered parking in the basement for fifteen cars, which were not there in the suit property. PW-1 has deposed in its evidence that the suit property was constructed in the year 1972. It cannot be denied that the rental value of any property would depend upon the date of its construction and the facilities/amenities available in the said property. A newly constructed property with a lift, power back-up, modern washrooms and covered parking would have far greater rental value than a property without these amenities. Therefore, no reliance can be placed by the plaintiffs on the rent being paid by the defendant bank in respect of N-3, so as to determine the rental value of the suit property.

24. The plaintiffs have placed reliance on the minutes of the Premises Selection

Committee (PSC) meeting (Ex DW-2/P-2) held on 7th November, 2014 to negotiate the rent of the suit property for the renewal of the lease, to show that the bank itself had offered rent @ Rs. 385/- per sq ft. per month, lump sum rent of Rs. 15,00,000/- for renewal of lease from 14th November, 2013. However, the plaintiffs did not agree to the same and instead quoted monthly rental of Rs.22,00,000/-.

25. It is submitted on behalf of the defendants that the aforesaid PSC was not the decision making authority for the suit property to be taken on lease by the bank. The final decision whether to take a property on lease had to be taken by the Chief General Manager of the defendant bank or a higher Authority. The scope of the PSC was only to negotiate the terms of the lease with the landlord. Therefore, the rate of Rs. 15,00,000/- recommended by the Committee was not binding on the defendants. Further, the reliance placed by the plaintiffs on the minutes of the meeting held on 7th November, 2014 is misplaced, as in the said meeting, the PSC did not agree to the demand of the plaintiffs for a rental of Rs. 22,00,000/- per month and the said meeting was inconclusive.

26. The minutes of the meeting (Ex. DW-2/P-2) relied upon by the plaintiffs have to be seen in their overall context. As per the said minutes, the rent was being negotiated between the parties on the basis of the following understanding:

"A. Initial lease period will be for 10 years with increase in rent after 5 years. However lease deed will be executed and registered for 10 years.

B. Exit Clause-3 months notice from Bank's side only.

C. Stamp duty expenses and registration charges for lease to be shared equally @ 50:50 bases by Bank & Owner.

D. All Taxes except Service Tax will be borne by Owner.

E. Periodical maintenance of building to be done by Owner.

F. Space for Diesel Generator Set will be provided by Owner.

G. Owner will execute the Civil Works pertaining to repair and maintenance in the Building specially the toilets and basement as per the requirements of the Bank."

27. It is clear from the above that the aforesaid offer was subject to plaintiffs carrying out extensive renovation and upgradation of the suit property, and agreeing to execute the lease for a period of 10 years in favour of the defendant bank. The period of the lease as well as the extent of renovation/upgradation of the premises are important factors that play a role in determining the rental value of the property. Further, the lumpsum rent of Rs.15,00,000/- was offered to the plaintiffs on the understanding that the total area to the lease was 5565 sq. ft., and which was to be confirmed by actual measurement and confirmation by the bank's architect. This confirmation of the area was never carried out.

28. It may be pertinent to note here that as per the Lease Deed dated 13th

November, 2003 between the parties, the area of the suit property was 4729 sq. ft. After execution of the lease on 13th November, 2003, the plaintiffs have never sought measurement of the suit property or submitted that the lease rent shall be enhanced as the area leased out is much more than what is recorded in the Lease Deed. Therefore, I am unable to agree with the submission of the plaintiffs that the area of the suit property should be taken to be 5565 sq. ft. at the stage when the said lease was being renewed.

29. Most importantly, the aforesaid minutes were in the context of negotiations going on between the parties. Admittedly, the aforesaid negotiations were inconclusive and did not result in a parties agreeing to the terms of a fresh lease. Therefore, in my view, the defendant bank cannot be bound by the offer made by it in the course of the said negotiations.

30. It is an undisputed position that the demand of monthly rent at the rate of Rs.22,00,000/- was made by the plaintiffs for the first time in its legal notice dated 15th May, 2014. Till then, the plaintiffs did not protest and continued to receive the last paid rent in terms of the lease.

31. The plaintiffs have stated in the plaint that they made an offer to the defendant bank for renewal of the Lease Deed on 11th April, 2013. This fact has been acknowledged by the plaintiffs in the letter dated 23rd September, 2013. However, the plaintiffs have neither filed the letter dated 11th April, 2013, nor have they disclosed the terms of the said offer in these proceedings. In the cross-examination of PW1, upon being asked as to what was the offer that was submitted by the plaintiffs to the defendant bank for the renewal of the lease, he replied that he did not recollect. Clearly, the said response was evasive and it appears that the aforesaid offer made by the plaintiffs to the defendant bank has been deliberately withheld by the plaintiffs from the Court. Therefore, this Court is inclined to draw an adverse inference against the plaintiffs on account of not disclosing the aforesaid offer to the Court.

32. At this stage, it may also be relevant to note that after vacation of the suit property by the defendant bank on 30th June, 2016, the said property remained vacant for a long time. This fact has come out in the evidence of both PW-2 as well as DW-2. PW-2 is his statement recorded on 15th January, 2018 has deposed that he visited the suit property three months back and the same was vacant.

33. At this stage, it is deemed appropriate to refer to the term mesne profits as defined in Section 2 (12) of the Code of Civil Procedure, 1908 (CPC):

“2(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;”

34. The Supreme Court in the judgment of Lucy Kochuvareed v. P. Mariappa Gounder & Ors., (1979) 3 SCC 150, has discussed the principles with regard to awarding mesne profits. The relevant observations are set out below:

“25. Mesne profits being in the nature of damages, no invariable rule governing their award and assessment in every case, can be laid down and "the Court may mould it according to the justice of the case". Even so, one broad basic principle governing the liability for mesne profits is discernible from Section 2(12) of the CPC which defines 'mesne profits' to mean "those profits which the person in wrongful possession of property actually received or might with ordinary diligence have received therefrom together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession". From a plain reading of this definition, it is clear that wrongful possession of the defendant is the very essence of a claim for mesne profits and the very foundation of the defendant's liability therefore. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits.”

35. Similarly, the Division Bench of this Court in Phiraya Lal Alias Piara Lal & Anr. v. Jia Rani & Anr., AIR 1973 Del 186, has observed as under:

“14. The claim in the suit by Jia Rani against the appellants was firstly for possession and secondly for damage's for use and occupation of the site in suit wrongfully by the defendants appellants. When damages are claimed in respect of wrongful occupation of immovable property on the basis of the loss caused by the wrongful possession of the trespasser to the person entitled to the possession of the immovable property, these damages are called "mesne profits". The measure of mesne profits according to the definition in section 2(12) of the Code of Civil Procedure is "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received there from, together with interest on such profits". It is to be noted that though mesne profits are awarded because the rightful claimant is excluded from possession of immovable property by a trespasser, it is not what the original claimant loses by such exclusion but what the person in wrongful possession gets or ought to have got out of the property which is the measure of calculation of the mesne profits. (Rattan Lal v. Girdhari Lal, Air 1972 Delhi 11). This basis of damages for use and occupation of immovable property which are equivalent to mesne profits is different from that of damages for tort or breach of contract unconnected with possession of immovable property. Section 2(12) and Order XX Rule 12 of the Code of Civil Procedure apply only to the claims in respect of mesne profits but not to claims for damages not connected with wrongful occupation of immovable property.”

36. In various judgments with regard to determination of mesne profits/ damages, this Court has held that in residential and commercial areas in prime and centrally located locations, an enhancement of stated rent @ 15% every

year would be justified. Reliance in this regard is placed on the judgments of this court in Sneh Vaish & Anr. v. State Bank of Patiala, 182 (2012) DLT 153; M.C. Agrawal and Ors. v. Sahara India and Ors., 183 (2011) DLT 105 and; Indian Tourism Development Corporation v. Anil Kumar Khanna, MANU/DE/0935/2016

37. In Chander Kirti Rani Tamdon v. VXL Lodging N. Boarding Services Pvt. Ltd., 197 (2013) DLT 266, a Co-ordinate Bench of this Court relying upon the earlier judgments has observed that while calculating mesne profits, certain amount of guess work by the Court is inevitable and acceptable. Further, the judicial notice of increase of rents in urban areas can be taken note of by the Courts by applying provisions of Section 57 and 114 of the Indian Evidence Act, 1872. Applying the aforesaid principles, 15% enhancement over the original lease rent was ordered as mesne profits. The relevant observations are set out below:

"21. The essence of the aforesaid decisions of the Supreme Court and this Court is that judicial notice of the increase of rents in urban areas can be taken note of by courts by applying the provisions of Sections 57 and 114 of the Evidence Act, 1872 and while calculating the mesne profits, certain amount of guess work by the court, is inevitable and acceptable.

22. In the present case, considering the fact that the demised premises is situated in one of the prime residential localities in Delhi, i.e., Greater Kailash-I, this Court is of the opinion that it would be just, fit and proper if an increase of 15% per annum over and above the contractual rent be awarded to the plaintiff for the first year commencing w.e.f. 01.10.2011 till 30.09.2012. For the second year of illegal occupation, i.e., w.e.f. 01.10.2012 onwards, the defendant is held liable to pay an increase of 15% per annum, over and above the original contractual rent plus an additional 15% rent that has been found to be payable for the first year. Same would remain the standard of calculating mesne profits for the subsequent period, till the demised premises is vacated by the defendant and possession handed over to the plaintiff."

38. In the present case, the Lease Deed expired on 12th November, 2013 and the physical possession was handed over by the defendant bank to the plaintiffs on 30th June, 2016. Therefore, the mesne profits have to be determined for the period of 31 months 17 days from 13th November, 2013 to 30th June, 2016.

39. As observed above, none of the lease deeds or other evidence placed on record by the plaintiffs can be the basis for determining mesne profits in respect of the suit property. Resultantly, the mesne profits have to be determined on the basis of the last paid rent by the defendant bank to the plaintiffs. As per the Lease Deed dated 13th November, 2003 between the parties, the lease was to be renewed after a period of 5 years with 25% enhancement of the last paid rent.

40. Applying the same principle of enhancement of rent at the rate of 25% after a period of 5 years, the plaintiffs would be entitled to mesne profits at the rate of 25% over the last paid rent for the period of 13th November, 2013 to 12th November, 2014. Further, following the principles laid down by this Court in the

aforenoted judgments, the plaintiffs would be further entitled to enhancement in mesne profits by 15% every year on the aforesaid amount.

41. The plaintiffs shall be entitled to recover mesne profits/damages from the defendant bank in the following manner:

Period

Amount

From 13th November, 2013 to 12th November, 2014

Rs.4,01,250/- + 1,00,312/- (25% of Rs.4,01,250/-) = Rs.5,01,562/- per month

From 13th November, 2014 to 12th November, 2015

Rs.5,01,562/-+ Rs. 75,234/- (15% of Rs.5,01,562/-) = Rs.5,76,796/- per month

From 13th November, 2015 to 30th June, 2016

Rs.5,76,796/-+ Rs. 86,519/- (15% of Rs.5,76,796/-) = Rs.6,63,315/- per month

42. It is an admitted position that the defendants have already paid mesne profits for the period from 13th November, 2013 to 30th June, 2016 on the basis of the last paid rent of Rs. 4,01,250/-. Therefore, the defendants are liable to pay the differential amount in the manner detailed above. The interest free security deposit of Rs.19,26,000/- given by the defendants shall be adjusted against the outstanding amount of mesne profits as calculated above.

43. A decree is accordingly passed in favour of the plaintiffs and against the defendants in terms of the above calculation of mesne profits/damages. Payments already made by the defendants are liable to deducted. The defendants shall also be liable to pay service tax on the differential amount as per the applicable rates. For the unpaid differential amount, the plaintiffs shall also be entitled to simple interest @ 10% w.e.f 1st of the succeeding months for which the payment fell due (e.g. for November, 2013, interest will be paid with effect from 1st December, 2013 on unpaid amount). The interest will be payable till the realization of the amount. The plaintiffs shall also be entitled to costs of the suit.

44. Suit is decreed in terms of the above.

45. Let decree sheet be drawn up.

46. All pending applications stand disposed of.

