(2012) 09 DEL CK 0490

In the Delhi High Court

Case No : CS (OS) 1911 of 2000

Bhupinder Singh APPELLANT

Vs

State Bank Of India (SBI) RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0490

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ajay Verma and Mr. Amit Mehra, for the Appellant; S.L. Relan, for the Respondent

Judgement

Valmiki J Mehta, J.—By this judgment, four suits filed by the plaintiffs/landlords for recovery of mesne profits against the same defendant with respect to different floors of the same premises would stand disposed of. The particulars of the suit premises leased out, the period of unauthorized occupation and the rate of rent which was paid on the date of termination of the tenancies are as under:-

Suit No.

Owner/Landlord

Property No.

Property Details

Tenant Since

Date of Notice of Termination

Unauthorised Occupant w.e.f.

Rent Prior to Termination

1911/00

Bhupender Singh

1822/1Chandni

Main Demised Premises=1820

1970(earlier with the

12.8.97

5.9.97 till 2.9.99

Rs. 27.50 /sq. ft.

Chowk, Delhi-06

sq. ft. Main hall on the ground floor, small strong room, adjoining room, bath and W.C., and part of the mezzanine

Additional Demised Premises= 315.84 sq. ft. Extended portion of the mezzanine floor, in the main hall on the ground floor of the said Property, admeasuring about 315.84 sq. ft.

State Bank of Patiala since the 1950s)

29.6.91

12.8.97

5.9.97 till 2.9.99 23mths28 days)

Rs. 13.75 sq. ft.

2552/00

Pushpa Singh w/o Bhupendra Singh

1822(C) Chandn iChowk, Delhi-06

2 Halls on the First and Second Floor (Western Side) along with part of the Balconies on the 2 floors and the Bathroom on the First Floor= 427 sq. ft.

15.9.83

7.10.97

15.11.97 till 2.9.99 (21mths18 days)

Rs. 13.22/sq. ft.

2553/2000

Virendra Singh s/o Bhupendra Singh

1822/2(A) Chandni Chowk, Delhi-06

2 Halls on the First and Second Floor (Eastern Side) along with part of the

Balconies on the 2 floors and the Bathroom on the First Floor= 427 sq. ft.

15.9.83

7.10.97

15.11.97 till 2.9.99 (21mths18 days)

Rs. 13.22/sq. ft.

2554/2000

Rajendra Singh s/o Bhupendra Singh

1822(B) Chandni Chowk, Delhi-06

2 Halls on the First and Second Floor (Middle Side) along with part of the Balconies on the 2 floors and the Bathroom on the First Floor= 427 sq. ft.

15.9.83

7.10.97

15.11.97 till 2.9.99 (21mths18 days)

Rs. 13.22/ sq. ft.

Originally, the suits were dismissed by the judgments of the learned Single Judge of this Court dated 5.5.2011, however, the judgments were set aside by the Division Bench vide its judgment dated 12.12.2011, and it was held that plaintiffs are entitled to mesne profits.

2. SLPs were also filed by the bank against the judgments of the Division Bench dated 12.12.2011 but the same have been dismissed on 7.5.2012.

3. In support of its claim of mesne profits, the plaintiffs have led evidence with respect to prevalent rents in the Chandni Chowk area where the demised premises are also situated. The details of these lease deeds alongwith their exhibit marks and other particulars are as under:-

Bank

Date

Exhibit

Lease w.e.f.

Area (Sq. Ft.)

Rent(Rs.)/Rate Rs. / Sq. Ft.

Oriental Bank Fatehpuri Ch. Chowk *15% increase every three year

15.2.93

PW1/20

15.03.93(01.04.92-31.03.95) --01.4.95-31.03.98

2600(1300 G floor 1300Mezannine) 2600(1300 G floor 1300Mezannine)

1,35,000 P.M- Rs. 52 1,55,250- Rs. 59

Federal Bank KatraBaryan Off. Ch. Chowk

3.10.97

PW1/21

03.10.97

GF - Rs. 70/sqft.

SBI Mortgage-Cum agreement to lease

18.2.99

PW1/18

18.02.99

Tamil Nadu Mercantile Bank Fatehpuri Ch. Chowk

21.1.00

PW1/22

21.01.00

40051st Floor (P.80)

2,00,000- Rs. 50

Punjab National Bank S.C. Sen Road Fountain/Ch. Chowk

Nov. 1999

PW1/23

547 Basement +1371 GF

97,900 - Rs. 51

SBI Esplanade-KatraMashro Off Ch. Chowk

28.1.00

PW1/19

09 August 1999

13411st Fl 13622nd Fl

- Rs. 55 - Rs. 50

Oriental Bank of Commerce

24.5.00

PW1/24

24.05.2000 (01.04.98-31.03.2001)

2600 (GF 1300 + 1300Mezz)

1,78,537 Rs. 69

Jammu & Kashmir Fatehpuri Ch. Chowk

27.4.00

PW1/25

27.04.2000

3000 Sq. ft. (G. Floor)

2,25,000 - Rs. 75

4. The defendant bank, on the other hand, has led evidence with respect to leases in the area in question as under:-

Bank

Lease

Exhibit

Area (Sq. Ft.)

Rent (Rs.) Rate Rs. Per. Sq. Ft.

Vijaya Bank

9.9.2002 (w.e.f. 18.11.01)

DW3/1

1340 GF

1888 Mez

3228 or 3230

1,12,980/- (34.98)

Syndicate Bank

27.9.2001 30.1.92

DW 4/1

4635FF & SF

5570 FF + SF

69,525+25% increase (15)

36,553.12

5 (i) Before I begin any discussion on the amount of mesne profits which should be held payable to the plaintiffs, two aspects may be noted by me. First is that there is invariably some amount of honest guesswork which is involved whenever mesne profits are calculated. Of course, the discretion exercised is a judicial discretion conditioned by the evidence which is led by the parties in the case.

(ii) The second aspect is that counsel for the defendant argued that the plaintiffs have not stepped into the witness box and only their attorneys, have deposed who are either the husband or the father of the plaintiffs, and therefore, the evidence led in the suits except CS (OS) 1911/2000 cannot be read.

This argument of the defendant bank is rejected because for proving of mesne profits, any person who is conversant with the facts with respect to the mesne profits can depose and it is not even necessary that such person should be an attorney of the plaintiff. Also the evidence which has been relied upon is specific documentary evidence and therefore, the argument of the defendant that the evidence of the plaintiffs in suits no. CS(OS) 2552/2000 to 2554/2000 should be rejected is a misconceived argument and is rejected.

6 (i). Now on to the issue of determination of mesne profits. On this issue firstly, I must deal with one point which is raised on behalf of the defendant bank that the suit premises are not situated on the main Chandni Chowk Road whereas the lease deeds which have been relied upon by the plaintiffs are of those premises which are situated on the main Chandni Chowk Road, and therefore, the rents which are specified in the lease deeds proved on behalf of the landlords cannot be looked into.

(ii) In my opinion, this argument raised by the defendant is essentially misconceived, though, I would take the same into account while deciding the amount/rate of mesne profits. This I say so, because the demised premises are admittedly connected to the main Chandni Chowk Road by a passage of just 30 ft. and that too within the same building which is situated on the main Chandni Chowk Road. The 30 ft. passage opens into a chowk where the demised premises which were let out to the bank are situated and which is a part of the premises on the main Chandni Chowk Road. Therefore, there may be a slight modulation as compared to a bank of which frontage is on the main road, but that''s all. It cannot be held that the lease deeds proved and exhibited by the plaintiffs cannot be relied upon at all.

7. A reference to the lease deeds filed by the plaintiffs as Ex.PW1/18 to Ex.PW1/25 show that the rates of rents have varied from Rs. 52 per sq. ft. to Rs. 75 per sq. ft. The rates are the rates for different periods from the years 1993 to 2000. The rents also vary because in some of the lease deeds which have been

proved and exhibited on behalf of the plaintiffs, the portion which is let out is situated either on the basement or the ground floor or the first floor or the second floor. These aspects will be considered by me when I give the findings with respect to each of the suits inasmuch as, whereas in suit no. CS (OS) 1911/2000, the premises for which the mesne profits have to be calculated are situated on the ground floor and the mezzanine floor, the portions which are the subject matter of the suit no. CS (OS) 2552-2554/2000 are on the first and second floor of the same property.

8. There is another factor which has to be considered by me and which is that the defendant claims that the areas which are the subject matter of the lease deeds proved on behalf of the plaintiffs are renovated premises, and therefore, would be capable of fetching much more rents than the demised premises which are stated to be in a dilapidated condition. Another reason urged for claiming reduction of mesne profits is that within the demised premises there is a tree which is stated to be existing.

9 (i) On the aspect as to whether the areas which are subject matter of the lease deeds Ex.PW1/18 to Ex.PW1/25 are more modern/renovated than leased premises, the defendant bank has led oral evidence of its officer Mr. Ujjesh Sinha as DW-2. DW-2 Mr. Ujjesh Sinha has deposed with respect to the premises which are subject matter of the lease deeds Ex.PW1/18 to Ex.PW1/25 having better aesthetic looks on account of better interiors such as mosaic/granite floorings in some cases and tile flooring in another cases. There is deposition as to the inferior comparison of location of the suit premises qua other leased premises. There is also a reference to a Jamun Tree within the hall of subject building and which causes leakage in the premises. I may state that in fact the plaintiffs themselves had put a specific letter Ex.DW2/4 dated 2.8.1997 which no doubt talks of bank seeking to renew the lease w.e.f. 5.2.1997, and which bank would not have if the demised premises were really not suitable to the defendant, as now alleged, though, the bank has also stated that the roof is leaking and requires repairs.

(ii) The relevant portion of deposition of DW-2 reads as under:-

5. That there existed one very old Jamun Tree within the Hall of the premises of the Bank near the outer door. The Trunk and the branches of the Jamun Tree erupted beyond the roof of the Hall, which caused blockade of rain water on the roof as all outgoing points of rain water used to get clogged with the dry leaves falling from the Jamun Tree. The accumulated rain water also seeped in the premises along with trunk of the tree and through the ceiling as well as due to heavy logging of water at the roof due to clogging of rain water pipes causing much damage to the furniture and stationary of the Bank. The demised premises was not even worthy of rent @ Rs. 27.50 per Sq. ft. per month, which the Bank was paying upto the date of vacation. It could never fetch Rs. 100/- per Sq. ft. per month as claimed. S. Bhupinder Singh-landlord/Plaintiff used to visit the branch premises every Thursday in the evening to lit a Diya and pray to some

Peer Shah Baba, narrated by him to be in the suit premises.

6. xxx

7. That the respective premises were taken on lease by the J&K Bank Limited and the Tamilnad Mercantile Bank Ltd. for the first time in the year 2000 and hence were on a separate footing on account of fresh lease and cannot be compared with the suit premises, which was being renewed since prior to 1955. The premises occupied by the J&K Bank Limited and the Tamilnad Mercantile Bank Ltd. has mosaic/granite floorings alongwith aesthetic look in the entire interior of the building, which is well maintained. These premises are directly approachable on the main Chandni Chowk Road.

8. That the premises occupied on lease by the Punjab National Bank on Fountain Chowk was exactly opposite the parking at Gandhi Maidan and was directly approachable from the Main Road and was thus better located then the premises taken on rent by the Defendant and therefore both the premises cannot be equated for comparing the rent, which these premises could fetch.

9. That the premises occupied by the Federal Bank Limited is on main Katra Baryan Road and also falls on the ground floor with direct approach to the Main Road. This premises was taken on lease by the Federal Bank for the first time in 1997 and hence the rent of a first timer branch is not comparable with the rent of a building on lease being renewed from time to time since prior to 1955.

10. That the premises occupied by the Oriental Bank of Commerce is on main Fatehpuri Chowk is on ground floor with easy access approach and the vinyl tiles have been laid on the floor giving it a very good looking appreciative look while the floor of the suit premises was simple plastered with cement with many cracks in the floor as well as in the walls.

11. That various branches of other Banks upon which the Plaintiff had relied are situated with better and direct approach to the main Chandni Chowk Road as well as are and were well maintained.

10. In my opinion, the evidences which have been led on behalf of the defendant are merely oral depositions, and thus I would not like to attach far too much weight to these oral depositions. The relevancy of evidence which is led in a case, and the weight which is to be attached to the evidence are two separate aspects. I am not attaching too much weight for the reason that the statements as reproduced aforesaid are general statements without any specific date or specific details of the persons before whom inspections were done and how the deposition must be taken as correct without specific facts/documents/details. In fact, if the deposition was correct, it was not difficult for the officer of the defendant bank DW-2 to have taken photographs with respect to the various leased premises which he visited, and which leased premises are the subject matter of the leases Ex.PW1/18 to Ex.PW1/25. The witness has also not filed any record of the defendant bank showing that inspection was in fact carried out by

the witness DW-2 and as deposed to. There had to be some official record as the witness was doing official work of the bank.

11. So far as the other witness of the bank DW-1 is concerned, the said officer has again deposed similarly as DW-2. In his cross-examination this witness has however clearly admitted that he has absolutely no recollection of the details of the dates of the visits to the different leased premises which are the subject matter of Ex.PW1/18 to Ex.PW1/25. This witness also specifically admitted that he never informed any superior at any time before going on the visits to the leased premises which are the subject matter of Ex.PW1/18 to Ex.PW1/25. This officer further admits that he does not remember any name of the officer of the banks where he visited. I must further to this add the same rationale which I gave with respect to DW-2 in that this witness if he was telling the truth could well have taken photographs of the premises he visited and at least if not the photographs, there would have been a record of inspection and a detailed note in this regard maintained by defendant-bank but admittedly, that is not the case.

12. I therefore reject the argument on behalf of the defendant that lease deeds Ex.PW1/18 to Ex.PW1/25 cannot be looked at as they pertained to renovated premises.

13 (i) Counsel for the defendant has also drawn the attention of this Court to three lease deeds, Ex.DW3/1, DW4/1 and DW4/2 which were entered into with M/s Vijaya Bank and Syndicate Bank in the years 2001/2002 and 1992 to argue that the rate of rent in fact is to be taken at Rs. 6.56 per sq. ft. or Rs. 15 per sq. ft. or Rs. 34.98 per sq. ft. as stated in those lease deeds exhibited on behalf of the defendant.

(ii) Once again, in my opinion, this argument raised on behalf of the defendant-bank is to be rejected because counsel for the plaintiff has rightly pointed out to me that these low rate of rents are as a result of compromise between the landlords and the banks which had the leased premises which are the subject matter of the leases Ex.DW3/1, Ex.DW4/1 and Ex.DW4/2. The banks had vacated huge areas voluntarily of the landlords, and because of this mutual benefit, the rate of rents were kept low.

(iii) It is relevant in this regard to refer to the following admissions of DW-1, DW-3 and DW-4 in their cross-examinations as under:-

Statement of Sh. A.K. Nangia, DW-1

Ques. Are you aware that in 2002 Vijaya Bank had returned possession of about 1400 sq. ft. on the ground floor of the premises concerned to the landlord?

Ans. I am not aware of that.

Ques. Is it correct that Vijaya Bank now has 1340 sq. ft. on ground floor and 1888 sq. ft. on the mezzanine floor.

Ans. I do not know.

(iv) In fact, more important is the cross examination of officer Sh. Vikas Mehra of M/s Vijaya Bank, Chandni Chowk, DW-3, and who in so many terms as stated herein, admitted the reason of compromise for the low rent with respect to the premises leased out vide Ex.DW3/1 and which reads as under:-

It is correct that prior to the execution of Ex.DW3/1, bank was in the possession of total area of 4840 sq. ft. (Vol. Bank had surrendered some portion from the said area). It is correct that bank had surrendered 1610 sq. ft. on the ground floor to the land lord at the time of executing Ex.DW 3/1. It is correct that the terms and conditions mentioned in Ex.DW3/1 were on the basis of concessions shown by both the side.

(v) Similar is the statement of officer, Sh. Subhash Chander who came from Syndicate Bank, Chandni Chowk Branch as DW-4 and who in his cross-examination on 11.1.2011 stated as under:-

It is correct that Ex.DW4/2 the total area of rented premises is 5570 sq. ft. whereas in Ex.DW4/1 the area is mentioned as 4635 Sq. ft. I do not know that at the time of execution of Ex.DW4/1, whether Bank had surrendered 935 Sq. ft. to the landlord or not.

14. In view of the above admission, in my opinion, the lease deeds relied on by the defendant Ex.DW3/1, Ex. DW4/1 and Ex.DW4/2 cannot show the actual market rent because the same show artificial/deflated rent because of the compromises entered into between the landlords and lessee-banks in those cases.

15. So far as the argument on behalf of the defendant-bank that there is a tree in the premises, counsel for the defendant could not dispute that this tree existed right from the commencement of the tenancy of the defendant- bank. Therefore, in my opinion, existence or non-existence of the tree will hardly have any impact though of course, the fact that there is a leaking roof, and there will be cost for the repaires, which is being taken note of by me for determining the final figure of the rate of mesne profits.

16 (i) In view of the aforesaid discussion, and keeping in view all the aforesaid aspects, I am of the opinion that the mesne profits which would be payable in the different suits would be as per the chart hereunder:-

Suit No.

Owner/Landlord

Property No.

Property Details

Tenant Since

Date of Notice of Termination

Unauthorised

Occupant w.e.f.

Mesne profits awarded

1911/00

Bhupender Singh

1822/1ChandniChowk, Delhi-06

Main Demised Premises=1820 sq. ft.

Main hall on the ground floor, small strong room, adjoining room, bath and W.C., and part of the mezzanine

Additional Demised Premises= 315.84 sq. ft. Extended portion of the mezzanine floor, in the main hall on the ground floor of the said Property, admeasuring about 315.84 sq. ft.

1970(earlier with the State Bank of Patiala since the 1950s)

29.6.91

12.8.97

12.8.97

5.9.97 till 2.9.99

5.9.97 till 2.9.99

23mths28 days)

Rs. 60 per sq. ft.

Rs. 25 per sq. ft.

2552/00

Pushpa Singh w/o Bhupendra Singh

1822(C) Chandni Chowk, Delhi-06

2 Halls on the First and Second Floor (Western Side) along with part of the Balconies on

15.9.83

7.10.97

15.11.97 till 2.9.99

(21mths18 days)

Rs. 45 per sq. ft.

the 2 floors and the Bathroom on the First Floor= 427 sq. ft.

2553/2000

Virendra Singh s/o Bhupendra Singh

1822/2(A) Chandni Chowk, Delhi-06

2 Halls on the First and Second Floor (Eastern Side) along with part of the Balconies on the 2 floors and the Bathroom on the First Floor= 427 sq. ft.

15.9.83

7.10.97

15.11.97 till 2.9.99

(21mths18 days)

Rs. 45 per sq. ft.

2554/2000

Rajendra Singh s/o Bhupendra Singh

1822(B) Chandni Chowk, Delhi-06

2 Halls on the First and Second Floor (Middle Side) along with part of the Balconies on the 2 floors and the Bathroom on the First Floor= 427 sq. ft.

15.9.83

7.10.97

15.11.97 till 2.9.99

(21mths18 days)

Rs. 45 per sq. ft.

(ii) I am giving a lesser rate of mesne profits as regards the premises which are the subject matter of the suit nos. 2552/2000 to 2554/2000 as they are situated on the first and second floor as compared to the ground floor premises which is the subject matter of suit no. 1911/2000.

(iii) I was initially inclined to grant different rates for the first floor and the second floors, however considering the totality of the facts of the present case and where bank would be essentially using the first and second floors as its office, I feel that a consolidate rate of rent at Rs. 45 per sq. ft. per month will meet the interest of justice.

17. The plaintiff will also be entitled to interest at the rate of 12% per annum simple from the end of the month for which the mesne profits have become payable by the defendant to the plaintiffs in view of the judgment of the Supreme Court in the case of Indian Oil Corporation vs. Saroj Baweja 2005 (12) SCC 298. Of course, in case the bank has made any payments during this period,

the interest will only be payable on the balance amount of mesne profits which remains to be paid. This is an aspect which will be look into, if so required, in execution proceedings. It is again clarified that the bank will be entitled to adjustment for all amounts which it has paid to the plaintiffs, against the money decree being pressed today. Credit will be given to the defendant bank as on respective dates of payments of the amounts by the defendant bank to the plaintiff. Relief:-

CS (OS) 1911/2000

A money decree is passed in favour of the plaintiff and against the defendant for mesne profits at the rate of Rs. 60 per sq. ft. per month from 5.9.1997 to 2.9.1999 with respect to ground floor and at the rate of Rs. 25 per sq. ft. per month from 5.9.1997 till 2.9.1999 with respect to the mezannine floor portion.

CS (OS) 2552/2000

A money decree is passed in favour of plaintiff and against the defendant for mesne profits at Rs. 45 per sq. ft. per month from 15.11.1997 to 2.9.1999.

CS (OS) 2553/2000

A money decree is passed in favour of plaintiff and against the defendant for mesne profits at Rs. 45 per sq. ft. per month from 15.11.1997 to 2.9.1999.

CS (OS) 2554/2000

A money decree is passed in favour of plaintiff and against the defendant for mesne profits at Rs. 45 per sq. ft. per month from 15.11.1997 to 2.9.1999.

In each of the suits, plaintiffs will be entitled to interest at the rate of 12% per annum simple from the end of the month when mesne profits are payable on the arrears of the mesne profits which would remain due to the plaintiffs i.e. after plaintiffs give adjustment with respect to the amounts which have been paid by the defendant to the plaintiffs. Adjustment of payments already made will be given to the defendant on the respective dates of the payments made by the defendant to the plaintiffs. The balance amount which would remain to be payable by the defendant to the plaintiffs when paid will first be taken towards interest and costs and thereafter towards the principal amount of mesne profits payable. Plaintiffs in each of the suits will also be entitled to costs in terms of the rules as applicable to this Court. Decree sheets be prepared.