
(2009) 04 DEL CK 0114

In the Delhi High Court

Case No : CS (OS) 2130 of 2003 and IA 3947 of 2008

Mrs. Pushpa Kakkar and Another

APPELLANT

Vs

The New India Assurance Co. Limited

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 5 ILR Delhi 538

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Sanjeev Anand, for the Appellant; H.L. Tikku and R.K.Tripathi, for the Respondent

Judgement

Reva Khetrapal, J.—The plaintiffs have filed the present suit for possession and recovery of office premises bearing Flat No. 202, Second Floor, E-9, Connaught House, Connaught Place, New Delhi, admeasuring approximately 2,388 sq. ft., more particularly, described in red in the site plan annexed with the plaint.

2. The suit property was originally owned by Mr. Triloki Nath Khanna HUF, who executed a registered deed dated 23.09.1996, letting out the suit property to the defendant w.e.f. 01.04.1996 for a period of three years, i.e., from 01.04.1996 to 31.03.1999, on a monthly rent of Rs. 14,925/- exclusive of electricity, maintenance charges, water taxes and surcharge. The lease deed provided for an option for the renewal of the lease for the period beginning from 01.04.1999 to 31.03.2002 at a rent of Rs. 8.10 per sq. ft., for which a fresh lease deed was to be executed. Clause 4(II) of the said lease deed also provided for the renewal of the lease beyond 31.03.2002 if the defendant desired and gave three months' notice in writing to the owner before the expiry of the term, on rent as mutually agreed and subject to the same covenants as contained in the earlier lease deed, except the clause for renewal. Both the lessor and the lessee were entitled to mutually agree and terminate the lease by giving three months' notice to the other party.

3. It is averred in the plaint that in terms of the Clause 4(II) of the lease deed dated 23.09.1996, a fresh lease was executed between Mr. Triloki Nath Khanna and the defendant on 26.04.1999, whereunder the suit property was leased to the defendant for a further period of three years from 01.04.1999 till 31.03.2002 at Rs. 19,343/- with an option for renewal. The said lease was duly registered with the Office of the Sub Registrar, Assurances. As per Clause 4(IV) of the Lease Deed dated 26.04.1999, in case the previous owner sold/cancelled his rights in the suit property, it was provided that the defendant CS(OS) 2130/2003 Page 2 of 27 shall attorn to such transferors on the same terms and conditions, as contained in the said lease deed.

4. It is further averred in the plaint that the defendant by its letter dated 19.10.2001 notified the owner/lessor that it wanted the renewal of the present lease deed for a further period w.e.f. 01.04.2002 on terms to be mutually agreed between the lessor and the lessee. Pursuant to the defendant's aforesaid notice dated 19.10.2001, there was some correspondence and meetings also took place between the parties. On 06.03.2002, a meeting was held between the representative of the lessor Mr. Triloki Nath Khanna and the officials of the defendant as to the renewal terms of the lease and the following terms were mutually agreed, subject to the final approval of the same from the Head Office of the defendant Company:

(a) The Lease Deed will be renewed for the period from 1.04.2002 to 31.03.2005 @ Rs. 32.50 per sq.ft.

(b) There will be provision of two further renewals of 3 years term each. At the time of each renewal, rent will be increased by 20% over the rent last paid.

(c) The owner will be given security deposits equivalent to 6 months rent as on 1st April, 2002. This security will be refundable at the time of termination of Lease Agreement and will not bear any interest.

(d) Other terms and conditions of the Lease will remain unchanged.

(e) The Stamp Duty for registration will be shared on 50-50 basis between The New India & the owners. Lease Deed for every term of 3 years will be registered separately.

5. However, before the renewal of the lease deed could take place, the lessor Mr. Triloki Nath Khanna by two separate registered sale deeds dated 13.05.2002 sold the suit property to the plaintiff Nos. 1 and 2 in equal shares, and by two separate letters dated 04.06.2002, one of which was sent by the previous owner and the other by the plaintiffs, the defendant was informed of the said transfer and requested to deal directly with the plaintiffs. The plaintiffs by the aforesaid letter suggested to the defendant that a meeting be held to discuss the renewal terms at the earliest.

6. The defendant, in response to the letter dated 04.06.2002 of the plaintiffs", while asking for some documents, informed the plaintiffs that the terms

discussed with the previous owner had been sent to their corporate office at Mumbai for their sanction and the same was awaited. On 12.08.2002, a meeting was held between the plaintiffs and the Regional Office Committee of the defendant at the office of the defendant. At the said meeting, the plaintiffs offered to renew the lease on a monthly rent of Rs. 50/- per sq. ft. with interest free security deposit equivalent to six months' rent and on other terms and conditions to be mutually discussed and decided. By their letter dated 20.08.2002, the plaintiffs reiterated the said offer. The defendant, however, was not in agreement with the terms offered by the plaintiffs and wanted to hold fresh negotiations for the rent, which the defendant wanted to be less than Rs. 32.50 per sq. ft. By their subsequent letter dated 12.09.2002, the plaintiffs offered to accept monthly rent @ Rs. 42.50 per sq. ft. for the renewal of the lease. This not being acceptable to the defendant, on 27.12.2002, another meeting was held between the plaintiffs and the defendant to discuss the terms for the renewal of the lease w.e.f. 01.04.2002. At the said meeting, the revised offer was discussed, which the defendant decided to send to its Competent Authority at Mumbai for approval as follows:

(a) The lease agreement will be for 3 years effective from 1.04.2002 to 31.03.2005.

(b) The rent will be paid at the rate of Rs. 42.50 per sq. ft. This will be inclusive of all present and future taxes but exclusive of electricity and water charges which will be paid by the Defendant to the respective authorities as per actual consumption.

(c) The present lease agreement is for 3 years. However, the same is renewable for two further terms of 3 years and the Defendant agrees to enhance the rent by 20% at the time of each renewal of lease, other terms and conditions remaining unchanged. Renewal of lease after 31st March, 2011 will be on the terms to be mutually agreed and negotiated between the Defendant and the plaintiffs at the relevant time.

(d) The plaintiffs will be given security deposit equivalent to 6 months rent refundable at the time of vacating the premises by the Defendant. The security deposit will not bear any interest.

(e) The expenses on registration of lease will be shared on 50:50 basis.

7. By a communication dated 07.07.2003, the plaintiffs after a long wait, were informed by the defendant that their Head Office had agreed to increase the rent to Rs. 42.50 per sq. ft., as negotiated, applicable from the current date and not from 01.04.2002. The plaintiffs were requested to accord their approval. By their letter dated 08.07.2003, the plaintiffs informed the defendant that the said offer was not acceptable and the defendant was requested to "convey their final approval to the terms recorded in the minutes of the meeting dated 27th December, 2002 effective from 1st April, 2002 within one month of the receipt of the said letter failing which it will be concluded that the defendant was not

interested in the mutual extension of the lease and the plaintiffs would be at liberty to take such action which was in their interest."

8. No response was received by the plaintiffs to the aforesaid letter sent by the plaintiffs on 08.07.2003. The defendant unilaterally continued to tender the rent at the rate which was not acceptable to the plaintiffs and ultimately, the plaintiffs had no option left except to terminate the lease in favour of the defendant vide their letter dated 25.08.2003 w.e.f. 30.09.2003. By way of abundant caution, a registered notice dated 28.10.2003 was sent to the plaintiffs once again terminating the lease of the defendant w.e.f. 30.11.2003. By this notice, the defendant was requested to hand over the possession on 01.12.2003 to the plaintiffs and also called upon to pay the market rent that was prevailing from 01.04.2002 onwards upto 30.11.2003.

9. The defendant vide their letter dated 13.11.2003 replied to the aforesaid notice raising objections to the termination of the lease and refusing to hand over the possession of the premises, leading to the filing of the present suit for recovery of possession and mesne profits.

10. Summons of the suit were issued to the defendant and after the completion of the pleadings, the following issues were framed on 16.05.2005:

(1) Whether Mr. T.N.Khanna (HUF) was the owner of the suit property and had leased the same to the defendant through the registered deed? OPP

(2) Whether the said lease came to an end on 31.3.2002 and was not renewed thereafter? OPP

(3) Whether the plaintiff is a successor in interest of Mr. T.N.Khanna (HUF) in respect of the suit property? OPP

(4) Whether the tenancy of the defendant in the suit property with effect from 1.4.2002, was on month to month basis and had been validly terminated by notice dated 28.10.2003, by the plaintiff? OPP

(5) Whether the plaintiffs have no locus standi to file the present suit? OPD

(6) Whether the plaintiffs had no right to terminate the lease and the lease is valid and subsisting upto 31.3.2005? OPD

(7) Whether the defendant is not liable to hand over the possession of the suit property to the plaintiffs? OPD

(8) Whether the plaintiffs are entitled to claim damages from the defendant and if so, for what period and at what rate? OPP

(9) Whether the suit is bad for non-joinder of necessary parties?

OPD

(10) Whether this Court has no pecuniary jurisdiction to entertain the present

suit? OPD

(11) Relief

11. After the framing of the above issues, the suit was sent to trial. In the course of the trial, the plaintiff No. 1, Mrs. Pushpa Kakkar examined herself as P.W.1. The defendant too examined only one witness, namely, D.W.1, Mr. B.L. Gupta and both the parties closed their respective evidence.

12. It was at this stage that the plaintiff filed an application u/s 151 CPC and Order XII Rule 6 CPC, being I.A. No. 3947/2008, praying for judgment and decree on the basis of the admissions of the defendant in the present suit. The defendant filed its reply, in which it submitted that the present application was not maintainable at this belated stage and, in view of the fact that even otherwise it is well settled by this Court that where the admissions are not unequivocal and the defendant raises certain preliminary pleas, which must be decided before the plaintiff can be held entitled to decree, no decree on the basis of the alleged admissions could be passed (State Bank of India Vs. Midland Industries and Others,). Alternatively, it was submitted by the defendant that the preliminary objections raised by it in the written statement, were required to be examined in detail, and if allowed, would non-suit the plaintiffs.

13. After having gone through the record and having heard Mr. Sanjeev Anand, the learned Counsel for the plaintiffs and Mr. H.L. Tikku, the learned Counsel for the defendant, it is deemed expedient and more appropriate to deal with the issues framed by this Court rather than to return a finding on the application under Order XII Rule 6 CPC filed by the plaintiffs. While this Court is conscious of the fact that there is no merit in the contention of the defendant that the application has been filed belatedly and, therefore, cannot be entertained at this stage, the nature of case is such as requires it to be decided taking recourse to the evidence adduced by the parties. Thus, though the admissions made by the defendant may obviate the necessity of looking into the evidence of the parties so far as the prayer of the plaintiffs for recovery of the possession is concerned, while considering the preliminary objections raised by the defendant to the maintainability of the suit and the prayer for damages/mesne profits, this Court may have no option (keeping in view the provisions of Order XX Rule 12 CPC, which mandate an inquiry into the matter), but to look at the result of the said inquiry as it emerges from the evidence of the parties. It is, therefore, proposed to straightaway embark upon adjudication of the issues framed.

ISSUE No. 1

14. This issue is wholly covered by the admissions made by the defendant in the pleadings and the evidence. Thus, in para-1 of the Preliminary Submissions to its written statement, the defendant states:

The defendant is tenant of the premises, i.e., Flat No. 202, Second Floor, 9-E, Connaught House, Connaught Place, New Delhi, admeasuring 2,388 sq. ft., of

which the initial rent as per the lease deed dated 23.09.1996 was Rs. 14,925/- for the period from 01.04.1996 to 31.03.1999 @ Rs. 6.25 per sq. ft.

15. In the course of evidence, the original lease deed dated 23.09.1996 executed by Mr. Triloki Nath Khanna HUF in favour of the defendant, and exhibited as Exhibit P-1, was admitted by the defendant and is relied upon in the affidavit by way of evidence filed by D.W.1, Mr. B.L.Bhatia.

16. Then again, the registered lease deed dated 26.04.1999 between Mr. Triloki Nath Khanna HUF through its Karta, Mr. Triloki Nath Khanna and the defendant Company, whereunder the demised premises were leased for a further period of three years from 01.04.1999 to 31.03.2002, has been specifically admitted by the defendant in para-3 of its written statement, wherein, it is specifically stated that a fresh lease dated 26.04.1999 was executed by the landlord in favour of the defendant and registered in the Office of the Sub-Registrar, New Delhi as Document No. 7090 in Additional Book No. 1 Volume 75 at pages-69 to 81. The said lease deed (Exhibit P-3) has also been specifically admitted by the defendant in evidence.

17. Even otherwise, it is trite to say that a tenant in a legal proceeding is estopped from questioning the title of the landlord u/s 116 of the Evidence Act. Reference in this connection may be made to the three Judge Bench decision of the Hon"ble Supreme Court in Sri Ram Pasricha Vs. Jagannath and Others, wherein it is held:

...The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law in a suit between landlord and tenant the question of title to the leased property is irrelevant....

18. In view of the aforesaid, in my view, the plaintiffs must be held to have discharged the onus placed upon them of proving that Mr. Triloki Nath Khanna HUF was the owner of the suit property and had leased the same to the defendant through the aforesaid registered lease deeds.

19. Issue No. 1 is accordingly answered in the affirmative in favour of the plaintiffs.

ISSUE Nos. 2 AND 6

20. Since issue Nos. 2 and 6 are inter-connected and deal with the controversy as to whether the lease came to an end on 31.03.2002 or continued to subsist till 31.03.2005, they are being dealt with together.

21. With reference to the aforesaid issues, the learned Counsel for the plaintiffs relies upon the letter dated 19.10.2001 sent through registered A.D. post by the Senior Divisional Manager of the defendant Insurance Company to Mr. Triloki Nath Khanna captioned:

Renewal of lease deed in respect of premises Flat No. 202, E-9, 2nd Floor, Connaught House, Connaught Place, New Delhi belonging to you expiring on 31st

March, 2002." The relevant portion of the aforesaid letter reads as under:

As per Lease executed in respect of this premises vide Lease Deed dt.26.4.1999, the lease deed is expiring on 31.3.2002.

Now, we wish to inform you that we want to renew the present Lease Deed for the further period w.e.f. 1.4.2002 on terms to be mutually agreed between you and our company. You are requested to make it convenient to finalise the renewal of Lease Deed.

22. The aforesaid letter was admitted by the defendant in its written statement as well as in the course of admission/denial of documents and is, therefore, exhibited as Exhibit P-6. This was followed by a letter dated 15.12.2001 from Triloki Nath Khanna HUF to the defendant offering to renew the lease deed on a monthly rent of Rs. 62/- per sq. ft. with interest free security deposit equivalent to six months" rent. This letter too is admitted by the defendant and exhibited as Exhibit P-7.

23. Next, there appears on record the minutes of the meeting dated 06.03.2002, which are admitted by the defendant and exhibited as Exhibit P-8, whereby it was agreed between the parties, subject to the final approval of the same from the Head Office of the defendant that the lease deed would be renewed for the period from 01.04.2002 to 31.03.2005 @ Rs. 32.50 per sq. ft. However, the defendant has not disputed that the said minutes did not fructify in the execution of the lease deed and in the meanwhile, by two separate sale deeds, the previous lessor Triloki Nath Khanna HUF sold the demised premises to the plaintiffs. It is also not in dispute that no lease deed was ever executed between the plaintiffs and the defendant and thus it must be held that the lease dated 26.04.1999 came to an end on 31.03.2002 and was not renewed thereafter.

24. Issue No. 2 is accordingly decided in favour of the plaintiffs and, issue No. 6 must be decided against the defendant, and is decided accordingly by holding that there was no valid or subsisting lease upto 31.03.2005.

ISSUE Nos. 3 AND 5

25. Both the aforesaid issues are intricately connected with each other as Issue No. 3 deals with the aspect of the plaintiffs being successors in interest of Triloki Nath Khanna in respect of the suit property and Issue No. 5 deals with the locus standi of the plaintiffs to file the present suit.

26. In the context of the aforesaid issues, the learned Counsel for the plaintiffs, Mr. Sanjeev Anand relied upon two admitted documents, being Exhibits P-9 and P-10, both dated 04.06.2002. The document, Exhibit P-9, as noticed above, is a letter written by Mr. Triloki Nath Khanna, Karta of Triloki Nath Khanna HUF to the defendant Company, informing the defendant Company of the two registered sale deeds dated 13.05.2002 executed by him for the sale of the demised property to the plaintiff No. 1 and the plaintiff No. 2 in equal shares. It categorically states that pursuant to and in terms of the said sale deeds, the plaintiffs were the new

owners/landladies of the suit property. It is also requested in the said letter that the defendant henceforth directly deal with them in respect of the lease deed and also pay the rent directly to them. It further clarifies as follows:

As you are aware the lease of the premises in your favour has already come to an end on 31.3.2002. You may discuss the matter directly with them for the terms and conditions at which the lease has to be renewed.

27. The second document, which too is an admitted document, exhibited as CS(OS) 2130/2003 Page 14 of 27 Exhibit P-10, is a similar communication jointly sent by the plaintiffs Nos. 1 and 2 to the defendant Company, informing the defendant Company as under:

This is to inform you that we have purchased the property No. 2nd Floor, E-9, Con.House, Con.Place, New Delhi vide two separate registered Sale Deeds dated 13.5.2002 executed in our favour and as such you have attorned to us as the tenants of the said premises.... Even after the expiry of the lease on 31.3.2002, we have been informed that you have been sending the rent at the same rate as agreed under the lease deed dated 26.04.1999, which have not been accepted by Mr. T.N.Khanna and are not acceptable to us (sic.). We would like to discuss with you the terms and conditions at which the lease can be renewed in your favour and suggest a meeting be held for this purpose at the earliest at a mutually convenient date and time.

28. In response to both the letters dated 04.06.2002, the defendant by its communication dated 24.06.2002 (admitted and exhibited as Exhibit P-11), after acknowledging receipt of the letter dated 04.06.2002, wrote to the plaintiffs that they had noted that the plaintiffs had purchased the property. Significantly also, the defendant by the same communication sought to inform the plaintiffs that:

...the lease deed in respect of the property had expired on 31.03.2002 and the same was due for renewal w.e.f. 01.04.2002. Mr. T.N.Khanna (HUF) the previous owner of the property had negotiated the terms for renewal of lease deed w.e.f. 01.04.2002 with the Company. These proposals have already been sent to our Corporate Office at Mumbai for their sanction and we are awaiting their reply very shortly. After negotiations on the renewal terms, it was verbally agreed by the previous owner that the increased rent will be paid immediately after our getting the approval from our Head Office.

29. Reference was also made by Mr. Anand to Clause 4 (IV) of the lease deed dated 26.04.1999, to submit that the aforesaid letter is a candid admission on the part of the defendant of having attorned to the plaintiffs and entered into negotiations with them for the renewal of the terms and conditions of the lease deed. Thus, it cannot be said that the plaintiffs had no locus standi to file the present suit.

30. Issue Nos. 3 and 5 are accordingly decided in favour of the plaintiffs and against the defendant.

ISSUE No. 4

31. The learned Counsel for the plaintiffs contended that the tenancy of the defendant in the suit property w.e.f. 01.04.2002 was on month-to-month basis and had been validly terminated by notice dated 28.10.2003 (Exhibit P-24), which was duly served, as borne out by the postal receipts (Exhibit P-25) and registered acknowledgment due cards (Exhibit P-26) placed on record. The learned Counsel further contended that the defendant had at no point of time raised any objection as to the validity or sufficiency of the said notice, and the only contention raised by it was that it was not a three months' notice in terms of Clause 4 (III) of the lease deed and thus cannot amount to legal or valid termination of the lease. This objection, learned Counsel stated, is to be noted in order to be rejected, for, a bare glance at Clause-4 (III) makes it evident that the said clause was to operate only during the subsistence of the lease deed. The said clause reads as follows:

That the lessor and the lessee may mutually agree to terminate this lease on giving three months' notice, therefore, to the other part.

32. I find merit in the contention of Mr. Anand, the learned Counsel for the plaintiffs and have no hesitation in holding that the Clause 4(III), which provides for three months' notice, was to operate only during the subsistence of the lease and that too by mutual agreement, and had no relevance whatsoever after the lease expired and the tenancy became a tenancy on month to month basis.

33. Accordingly, it is held that the tenancy of the defendant in the suit property w.e.f. 01.04.2002 which was on a month-to-month basis had been validly terminated by the plaintiff's notice dated 28.10.2003. Issue No. 4 is decided accordingly.

ISSUE No. 7

34. The onus of proving this issue was upon the defendant, but the defendant has miserably failed to discharge the same by adducing any worthwhile evidence to show that it is not liable to hand over the possession of the suit property to the plaintiffs. This issue is accordingly decided against the defendants.

ISSUE No. 9

35. Before dealing with Issue No. 8, it is proposed to deal with this issue which pertains to a preliminary objection raised by the defendant that the suit is bad for non-joinder of Mr. Triloki Nath Khanna HUF, who was the landlord of the premises and hence, is liable to be dismissed outright.

36. It is not in dispute between the parties that the previous landlord of the premises was Mr. Triloki Nath Khanna HUF and that Mr. Triloki Nath Khanna HUF, as agreed, had executed the registered lease deed dated 23.09.1996, leasing the property to the defendant for a period of three years. It is also not in dispute between the parties that a fresh lease deed was executed between Mr. Triloki

Nath Khanna HUF and the defendant on 26.04.1999 for a further period of three years from 01.04.1999 till 31.03.2002, with an option for renewal. However, a provision was made in Clause 4(IV) of the lease deed dated 26.04.1999, that in case the previous owner sold or cancelled its rights in the property, the defendant shall attorn to such transferors, on the same terms and conditions as were contained in the said lease deed.

37. As already stated above, it is also the admitted case of the parties that Mr. Triloki Nath Khanna HUF had sold the leased premises to the plaintiffs and the defendant had attorned to the plaintiffs. However, the lease deed could not be renewed for want of any mutual agreement between the plaintiffs and the defendant. The renewal for the period from 01.04.2002 to 31.03.2005 was subject to increase in rent, as mutually agreed between the parties. The parties were not able to mutually agree upon the quantum of increase in the rent, the tenancy thereupon became a month-to-month tenancy and was terminated by the plaintiffs vide notice dated 23.10.2003. In such circumstances, in my considered opinion, the previous owner Mr. Triloki Nath Khanna, who was admittedly no longer the landlord of the premises, was neither a necessary nor a proper party.

38. At this juncture, it may be noted that CS(OS) No. 1919/03 stated to be filed by the mother of the plaintiff challenging the sale deed executed by Mr. Triloki Nath Khanna, (the father of the plaintiff, in favour of the plaintiffs) as void is pending adjudication in this Court, but the same has no bearing on the relief prayed for in the present suit, which is a suit for possession and recovery of damages from the plaintiff Nos. 1 and 2. Issue No. 9 is accordingly decided against the defendant.

ISSUE No. 10

39. This issue relates to the pecuniary jurisdiction of this Court to entertain the present suit. A reading of para-14 of the plaint shows that according to the plaintiffs, the defendant is liable to pay the plaintiffs a sum of Rs. 28,65,600/- with interest @ 18% p.a. and as such, the preliminary objection with regard to the pecuniary jurisdiction of this Court to entertain the present suit has no merit.

Issue No. 10 is decided accordingly.

ISSUE Nos. 8 AND 11

40. The substratum of both these issues relates to the relief to be granted to the plaintiffs and accordingly both these issues are being dealt with together. In my considered opinion, in view of the foregoing discussion, the plaintiffs must be held entitled to a decree for possession in their favour and against the defendant, directing the defendant to hand over the actual vacant physical possession of the suit property. Apart from this, the defendant must also be held liable to pay rent from 01.04.2002 onwards upto 30.11.2003 at the market rate that was prevalent for the suit property as well as future damages from 01.12.2003 onwards till

such time as they hand over the vacant possession of the suit property to the plaintiffs.

41. According to the plaintiffs, the rate of rent during the period intervening 01.04.2002 to 30.11.2003 was Rs. 60/- per sq.ft. per month. On this basis, the defendant, the learned Counsel for the plaintiffs contended, is liable to pay to the plaintiffs a sum of Rs. 28,65,600/- as rent for the aforesaid period, i.e. 2,388 sq.ft.xRs.60x20 months. Thereafter, the defendant was a trespasser in the suit property and as such is liable to pay damages/user charges at the market rate, which, according to the plaintiffs' counsel must be held to be Rs. 60/- per sq. ft. The plaintiffs' counsel thus submitted that the defendant is also liable to pay to the plaintiffs future damages from 01.12.2003 onwards at Rs. 60/- per sq. ft. per month till such date the possession of the suit property is handed over by the defendant to the plaintiffs. The defendant had been sending to the plaintiffs, during this period, rent by way of cheques @ Rs. 19,343/- per month, making it liable for payment of the balance with interest @ 18% p.a., i.e., from 01.12.2003.

42. Per contra, the learned Counsel for the defendant categorically denied that the defendant was liable to pay market rent or damages @ Rs. 60/- per sq. ft. and thus liable to pay arrears of rent of Rs. 28,65,600/-. He emphatically denied that the defendant was a trespasser from 01.12.2003 and was additionally liable to pay damages/misuser charges at Rs. 60/- per month or at any other rate. According to him, the plaintiffs were not entitled to any amount in excess of the monthly rent at Rs. 19,343/-, which in any case, the defendant had been regularly paying to the plaintiffs by cheques, not encashed by them. He submitted that the plaintiffs had not explained the basis of their demand or the basis on which the aforesaid figure was arrived at.

43. In the course of the hearing, the learned Counsel for the plaintiffs, in order to buttress his claim in respect of the damages, relied upon the judgement of a Division Bench of this Court (Hon"ble Mr. Justice D.P.Wadhwa and Hon"ble Dr. M.K.Sharma) in Vinod Khanna and Others Vs. Bakshi Sachdev, , to contend that even in the absence of any evidence being led by the plaintiffs in respect of the increase of rents, judicial notice can be taken of the fact of increase of rents for the purpose of calculating the fair amount payable towards damages/mesne profits in favour of the plaintiffs. In the said case which was a suit for possession of rented premises and recovery of mesne profits, the Division Bench held that the learned trial Judge, in the absence of any evidence led by the landlord in respect of increase of rent, did not commit any illegality in taking judicial notice of the fact of increase of rent and determining the compensation in respect of the suit premises at Rs. 10,000/- per month w.e.f. 19.01.1989 in view of the fact that the rent fixed for the said premises was at Rs. 6,000/- per month as far back as in the year 1974. In paragraph-21 of the judgment, the Division Bench observed as follows:

It is true that no substantial evidence has been led by the plaintiffs in respect of the increase of rent in the properties like that of the suit property. However, it is

a well known fact that the amount of rent for various properties in and around Delhi has been rising staggeringly and we cannot see why such judicial notice could not be taken of the fact about such increase of rents in the premises in and around Delhi, which is a city of growing importance being the capital of the country, which is a matter of public history. At this stage, we may appropriately refer to the Court taking judicial notice of the increase of price of rents rapidly in the urban areas in connection with the land acquisition matters. Even the Apex Court has taken judicial notice of the fact of universal escalation of rent and even raised rent of disputed premises by taking such judicial in case of D.C. Oswal Vs. V.K. Subbiah and other, .

44. Reference was next made by the learned Counsel for the plaintiffs to the judgement of a learned Single Judge of this Court in M/s. Atma Ram Properties (P) Limited v. Pal Properties (India) Pvt. Ltd. and Ors. reported in 91(2001) DLT 438. In the said case, as in the instant cast, an inquiry, as contemplated under Order XX Rule 12 of the Code of Civil Procedure, had already been undertaken by the Court through the Joint Registrar, who had recorded evidence in this regard and it was held that this Court after taking the said evidence into account should also take judicial notice of the increase of rents in Delhi, which would be fully justified in fixing the quantum of damages/mesne profits payable by the defendant to the plaintiffs.

45. A look at the evidence in the above context is warranted at this juncture. In the affidavit by way of evidence filed by the plaintiff No. 1, Pushpa Kakkar, the said witness deposed as follows:

I state that the lease under the registered deed in favour of the defendant with respect to the suit property came to an end on 31st March, 2002. Thereafter the lease was not renewed in their favour under any agreement or document, registered or otherwise. The tenancy as such of the defendant with effect from 1st April, 2002 was on month to month basis starting from 1st day of the month and ending with the last day of the month.... As there was no consensus on the rent which the defendant was liable to pay to us from 1st April, 2002 onwards upto 30th November, 2003, the defendant is liable to pay to us the market rent that was prevailing for the suit property/similar properties for this entire period. I am attaching hereto as Mark "A", photocopy of the registered lease deed dated 5th May, 1995 with respect to the ground floor of the same building in which the suit property is located, entered into by the landlord Sh.Bhola Nath and the tenant, Centurion Bank Limited. As per this lease deed, the rent was Rs. 110/- per sq. ft. per month for the period 05.05.1995 to 04.05.1998 with a renewal in lease for two further periods of 3 years each with an increase in rent by 25% on the last paid rent. According to us, the market rent during this period of our suit property was also Rs. 110/- per sq.ft. per month. On this basis the defendant is liable to pay to us a sum of Rs. 52,53,600/-.

46. In the course of cross-examination of P.W.1 Pushpa Kakkar, a suggestion was put to her that she had falsely stated in the affidavit that the market rate of the

premises at the time of filing of the suit was @ Rs. 110/- per sq. ft., which was categorically denied by her and she reiterated that at the time of filing of the suit, the rate of rent in the vicinity was around Rs. 110/- per sq. ft. per month.

47. The defendant Insurance Company in the course of its evidence, as already stated above, examined only one witness viz. D.W.1 B.L.Gupta, its Divisional Manager, who, in his affidavit by way of evidence, merely stated that no consensus could be arrived at with regard to the rate of rent and that the rate of rent was mutually agreed at Rs. 32.50p. per sq.ft. in a meeting held on 06.03.02. In the course of his cross-examination, however, he candidly admitted that he did not know what was the rate of rent in the years 2002 to 2007 in the Connaught Place area and that he had never tried to make inquiry in that regard. He further stated:

It may be that present rate of rent in Connaught Place is Rs. 140 per sq. ft. and I do not know whether it was Rs. 110 per sq. ft. in the year 2002.... I cannot tell if Insurance Company had written a letter dated 07.07.2003 to the landladies offering to increase the rent of Rs. 42.50 per sq. ft. from the current rate i.e. 07.07.2003 and not from 01.04.2002 because I was not there at that time.

48. In my considered opinion, the aforesaid evidence clinchingly establishes the plaintiffs' stand that the plaintiffs had received a communication dated 07.07.2003 from the defendant wherein it was mentioned that its head office had agreed to increase the rent to Rs. 42.50 per sq. ft. applicable from the current date and not from 01.04.2002 and that the said offer was not acceptable to the plaintiffs. In my considered opinion also, judicial notice can be taken of the fact that the rate of rent in the Connaught Place area in the year 2002 onwards upto 30.11.2003 was not less than Rs. 60 per sq. ft. per month, though it is possible that for certain buildings/floors, the rent was as high as Rs. 110 per sq. ft. as deposed by P.W.1, Pushpa Kakkar. It is accordingly held that the defendant is liable to pay to the plaintiffs rent/damages at the rate of Rs. 60 per sq. ft. per month from 01.04.2002 onwards till such date the possession of the suit property is handed over by the defendant to the plaintiffs. The defendant during this period claims to have sent cheques to the plaintiffs in the sum of Rs. 19,343 per month towards rent. The said amount if any received by the plaintiffs shall be entitled to be set off from the amount calculated to be payable by the defendant to the plaintiffs. The plaintiffs shall also be entitled to receive interest @ 9% p.a. on the balance amount.

49. In the result, a decree for possession in favour of the plaintiffs and against the defendant directing the defendant to hand over the actual vacant physical possession of the suit property being Flat No. 202, Second Floor, E-9, Connaught House, Connaught Place, New Delhi-110001 admeasuring approximately 2,388 sq. ft., more particularly described in the Schedule A and delineated in red in the plan annexed to the plaint, is passed. A decree is also passed for a sum of Rs. 28,65,600/- in favour of the plaintiffs against the defendant as rent for the period intervening 01.04.2002 onwards upto 30.11.2003 and for future damages

at Rs. 60/- per sq. ft. per month from 01.12.2003 onwards till such time as the possession of the suit property is handed over by the plaintiffs to the defendant. The defendant shall, however, be entitled to deduction of the amount of Rs. 19,343/- per month, if paid, making it liable for payment of the balance with interest at 9% p.a. Costs payable to the plaintiffs shall also be calculated by the Registry and paid to the plaintiffs by the defendant.

CS(OS) 2130/2003 and IA 3947/2008 are disposed of accordingly.