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(2010) 12 DEL CK 0367

In the Delhi High Court

Case No : Regular First Appeal No. 126 of 1997 and CM No''s. 16554, 16555, 16556 of 2010

Shri Anil Kumar Jain and Another — APPELLANT

Vs

Bank of Baroda — RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:
Transfer of Property Act, 1882 — Section 106, 111, 112, 113, 114

Citation : (2010) 12 DEL CK 0367

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : O.P. Gupta, for the Appellant; Pallav Saxena, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.—The present appeal has been filed by the Appellants/ landlords challenging the impugned judgment and decree dated 29.3.1997 whereby the suit for possession and mesne profits of the Appellants against the Respondent bank was dismissed.

2. I may note that the Respondent has, during the pendency of the present appeal, vacated the suit premises on 30.10.2002 and, therefore, there does not remain any issue with regard to the decree for possession. I may only note that the counsel for the Appellants states that the premises were in fact vacated on 31.10.2002.

3. The only issue therefore which remains to be addressed by this Court is with respect to the finding on the issue of mesne profits. The relevant issue framed in this regard was Issue No. 3 and which reads as under:

3. Whether the Plaintiff is entitled to damages as claimed for in the suit? If so, at what rate.

4. The discussion with respect to Issue No. 3 so far as relevant for the purpose of

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determining the rate of mesne profits is contained in para 10 of the impugned judgment and decree. The relevant discussion reads as under:

ISSUE No. 3.

Whether the Plaintiff is entitled to damages as claimed for in the suit? If so at what rate.

10. Under issue No. 3, the Plaintiffs have claimed damages for use and occupation after 1.7.1990. The damages have been assessed @ Rs. 25000/- p.m. from the date of filing of the suit till the deft. Bank vacates the premises in question. To support this version of claim of damages, PW1 Shri Y.R. Khanna, Sr. Manager of the Oriental Bank of Commerce has stated that the deft. Bank is paying Rs. 10/- per sq.ft. on the carpet area. The said carpet area means inner portion of the bank plus open space plus water charges. He has stated that water charges are borne by the landlord. Another witness Shri Chaman Singh, Head Cashier, Punjab National Bank, Mahraja Agarsen Model School, C.D. Block, Pitampura has stated that deft. Bank is also paying Rs. 10/- per sq.ft. of the carpet area. In cross-examination he has started that the rent includes electricity and water charges and house-tax. The premises are not chargeable any penalty by the D.D.A. PW3 Shri Ram Dineshwar Jain, a Property Dealer of Rohini area has stated that the rate of rent in N.D. Block, Pitampura area was @ Rs. 10/- per sq.ft. in 1990 and it is now Rs. 20/- per sq.ft. He has further stated that he cannot produce any document to show that the rate of rent was @ Rs. 10/- per sq. ft. in 1990 in N.D. Block, Pitampura. DW4 Shri Anil Kumar Jain Plaintiff himself has stated that a portion measuring 3600 sq.ft. is under the tenancy of the deft. Bank. The Plaintiff has claimed damages for use and occupation @ Rs. 25,000/- P.M. Even if the market rent is taken in the locality as Rs. 10/- per sq.ft. then in the present case the market rent will become Rs. 36000/- P.M. The Plaintiffs have claimed Rs. 25000/- P.M. as damages from the date of suit till date of vacation of the premises.

5. In accordance with the aforesaid findings, it is quite clear that mesne profits were proved and were to be decreed, however, the suit itself was dismissed on account of tenancy not having been validly terminated and thus no mesne profits have been granted.

6. Two aspects are required to be examined by this Court. The first is, whether there was valid termination of tenancy by the notice dated 7.5.1990 (Ex. P-1) and if at all termination was necessary and secondly, whether the determination of the rate of mesne profits is correct.

7. The trial court has found that the legal notice Ex. P-1 only sought termination of tenancy on the ground of non-payment of rent and since there was no non-payment of rent, termination is not a valid termination. The relevant findings in this regard are in paras 11 to 17 of the judgment and which read as under:

11. The question is whether Defendant bank is liable to pay damages and if so to

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the extent of Rs. 25,000/-. The Plaintiff has issued notice Ex.P.1 terminating the tenancy of the deft. Bank on 30.6.1990 and on 1.9.1990 the deft. will become unauthorised occupant. Why this unauthorised occupant, this question has to be solved?

After the expiry of period of notice Ex.P.1 determining the lease/tenancy on 30.6.1990 and if thereafter the Plaintiff has been receiving the rent from the deft. @ Rs. 13000/-P.M if the rent paid by the bank to the Plaintiff after 1.7.1990 will be damages, if it cannot be a rent.

The notice has been issued only on the ground of non-payment of rent or there was a default in making payment of the rent. The Plaintiff himself has admitted that there is no claim before filing of the suit and after 1.7.1990 for mesne profit/ damages. In that situation it can be reasonable to hold that the Plaintiff has been receiving the rent from the deft. from 1.7.1990 till 27.5.1991. This suit was filed on 27.5.1991 on the basis of notice of termination. This period of complete one year cannot be over looked and ignored to give effect to the notice of termination of tenancy. The simple ground in the notice Ex.P.1 is as above said non-payment or default in the payment of rent. For determination of lease there should be justifiable and sufficient cause and the provisions of Transfer of Property Act are quoted as under:

111. Determination of lease.-A lease of immovable property, determines-

(a) by efflux of the time limited thereby;

(b) where such time is limited conditionally on the happening of some event-by the happening of such event;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;

(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease; (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

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12. There is a provision of waiver of forfeiture clause of the lease, which is provided in Section 112 of Transfer of Property Act. If there is a forfeiture as per Clause (g) of Section 111, then the provision of Section 112 are as under:

112. Waiver of forfeiture.-A forfeiture u/s 111, Clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

13. u/s 113, the notice to suit will be deemed to have been waived. If there is a consent, express or implied on the part of the lessee by any act or on the part of the lessee to treat the lease as subsisting. The provisions of Section 113 are hereby quoted as under:

113. Waiver of notice to quit.-A notice given u/s 111, Clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

14. As per Section 114, a relief has been granted for forfeiture of lease for non-payment of rent, then provision of Section 114 are herebyquoted as under:

114. Relief against forfeiture for non-payment of rent.-Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

15. In view of the above said provisions of Transfer of property Act, the determination of lease can be if there is a default in payment of rent, if that default is expressly made a condition for determination of lease. Even if there determination of lease due to non-payment of rent, the lessee has a remedy u/s 114 for paying the arrears of rent together with interest thereon and fully costs of the suit. It can be even on giving such security for payment of such arrears within fifteen days. If there is compliance with the order of the court, whereby the order was passed by the court for extension of payment of arrears of rent as abovesaid, the lease will be relieved against the forfeiture and the lessee shall hold the property leased as if no forfeiture has occurred.

16. In the present case there is no arrears of rent. There is no allegation of

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violation of any terms and conditions of the lease-deed. In fact there is no lease deed between the parties, so there is no question of any violation of terms and conditions of the lease. If there is violation as alleged by the Plaintiff in the notice Ex. P.1 the same relates to only non-payment of rent. Before this Court there is no allegation in the plaint as well as in the evidence of the Plaintiff that the deft. still has to pay the rent for these months. Even if there is any default that stand waived when the Plaintiff has accepted the rent for these months. So in my view the notice Ex. P.1 does not disclose any justifiable cause and sufficient grounds for determination of the lease. Even if it does show sufficient cause for determination, then that cause/ground stands waived by acceptance of rent before filing of the suit. So on the basis of notice Ex. P.1 there cannot be any ejectment of the deft. from the suit premises. No other ground pleaded in the notice or in the plaint under which the ejectment from the leased property could be made. So in view of the above said findings, notice Ex. P.1 cannot be said to have been served with justifiable and sufficient ground and if there was any ground for issuance of notice then these grounds have been satisfied before filing of the suit. The Plaintiff has accepted the rent from 1.7.1990 till the date of filing of the suit and the deft. has paid the arrears of rent. The tussle may be between the words =rent'' on the part of the bank and damages on the part of the Plaintiff. So mere use of these words cannot be a sufficient ground for notice Ex. P. 1 to subsist. Notice has been satisfied even before filing of the suit. There is no claim of arrears of rent before filing of the suit. The only claim is after the institution of the suit.

17. The Plaintiff cannot say that in view of notice Ex. P. 1, future arrears of rent as damages for use or occupation or mesne profit So under the notice of termination Ex. P.1 the Plaintiff is not entitled to get possession of the demised premises and Plaintiff is also not entitled to claim damages or mesne profit after the institution of the suit. Since the notice has been served, and even satisfied, so there is no question of possession being taken by the Plaintiff and there is no question of payment of damages and mesne profit. The tenancy will continue month by month. Since there is no lease deed in existence whether registered or otherwise, so far as damages/mesne profit are concerned, if the notice of termination of tenancy does not stand, no benefit under it can be availed of, then the tenancy will continue as it is. The rate of rent is Rs. 13000/- P.M. In the notice Ex. P.1, the claim is that there was a default in the payment of rent and on that account there was determination of the lease. Enhancement of the rent, not claim is any manner, what is claimed is the amount of Rs. 25,000/- P.M. as mesne profit/damages for use and occupation. Damages could only be possible if the notice of termination of tenancy stands valid. When notice Ex. P.1 does not survive then the question of damages cannot arise. So issues No. 2 and 3 are decided in favour of the deft. bank and against the Plaintiff in view of the above said findings.

8. The fact of the matter however is that the notice u/s 106 of the Transfer of Property Act, 1882 dated 7.5.1990 is not only for termination of the tenancy for

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non-payment of rent but on account of other factors also, to appreciate this it would, therefore, be necessary to reproduce the entire notice Ex. P-1 which reads as under:

To

The Assistant General Manager,

Bank of Baroda,

13th Floor, 16 Parliament Street,

New Delhi - 110001.

NOTICE u/s 106 OF TRANSFER OF PROPERTY ACT.

Sir,

Under instructions from and on behalf of my clients Smt. Krishna Jain W/o Shri Abhaya Ram Jain and Shri Anil Kumar Jain S/o Shri Abhaya Ram Jain, previously R/o C-106, Ashok Vihar Phase-1, Delhi-110052 and now R/o ND-6, Vishakha Enclave, Pitampura, Delhi-110034, I hereby serve upon you with the following notice:

1. That a portion measuring about 3600 sq.ft. comprising of basement and one big hall, toilet and front open space on the ground floor was let out to the Bank at a monthly rent of Rs. 13,000/- w.e.f. 15.3.1985 for a period of five years as per the terms and conditions of Lease Deed duly executed by your Bank and my clients on 14.5.1986 and the same was registered before the Sub Registrar, Delhi. The original Lease Deed is in the possession of the Bank.

2. The rent was to be paid by your Bank on or before 25th of each month as per the terms of the Lease Deed. The penalty for misusing the said plot from residential to commercial was also to be paid by the Bank to the D.D.A. as per the terms and conditions of the above said Lease Deed. Besides this, the Bank has also to pay the water and electricity charges. The above said premises was to be used for running a Branch or for residential purposes for any of the Executives/officials of the bank or for the purposes of guest house as per the terms and conditions of the lease Deed and you have been running a Branch office in the said premises since 15.3.1985.

3. That before the expiration of the above said Lease Deed, my clients on 21.11.89 and 5.12.89 clearly told you to vacate the above said tenanted premises on the expiration of the said Lease Deed and hand over the peaceful vacate possession to my clients. But the Bank through its Branch Manager very cleverly sent a registered notice dated 10.11.89 asking my clients for renewal of Lease Deed of the above said tenanted portion for a further period of ten years with a condition that the bank will reserve its right to vacate the premises at any time after giving one month''s notice in advance, but this right has not been given to my clients. Even otherwise the letters dated 10.11.89 are illegal,

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unwarranted and against the spirit of the original Lease Deed dated 14.5.86 because the further Lease Deed after the expiry of five years could be executed on the terms and conditions mutually agreed upon and it could be extended for a further period of five years, not for a period of ten years.

4. I may also mention here that the bank has been a regular defaulter in making the payment of rent to my clients and mostly the bank never paid the rent in time as agreed between my clients and the bank as per the above said Lease Deed. Therefore, my clients hereby determine the Lease Deed dated 14.5.86 executed by the Bank and my clients and determine the tenancy of the bank w.e.f. 30.6.90 and I, therefore, call upon you to vacate the above said tenanted premises on 30.6.90 in the night and hand over the peaceful vacant possession of the above said tenanted premises to my clients as the bank has contravened and violated the terms and conditions of the Lease Deed dated 14.5.86 for not paying the rent to my clients in time, failing which my clients shall be constrained to take legal steps against the bank for getting the above said tenanted premises evicted from the bank and for which the bank shall be liable for the cost, risk and consequences arises thereof, which please note.

5. I may further mention that the bank has deposited an advance rent of three months amounting to Rs. 39,000/- which can be returned to the bank at any time and my clients are ready to return the same provided the bank vacate the above said tenanted portion. I may further mention here that if the bank fails to vacate and hand over the physical possession of the above said tenanted portion to my clients on the night of 30.6.90 or in the morning of 1.7.1990, the bank shall be liable to pay the Mesne-Profit/damages for using the above said tenanted portion @ Rs. 25,000/- (Rupees twenty five thousand only) per month excluding penalty which is being paid at present by the bank to the D.D.A., electricity and water charges and other charges as per the terms and conditions of the Lease Deed, which is the prevalent market rate of the rent in the locality at present.

9. A reference to the notice Ex. P-1 clearly shows that in para 4 thereof it has been stated that the issue in respect of the termination of tenancy on account of non-payment of rent is only one of the factors because the first line of para 4 uses the expression "also". A reading of this para shows that the Appellants in para 3 of the notice specifically mentioned that the lease has to come to an end by efflux of time and consequently the Respondent bank could not occupy the premises. It is settled law that once there is a fixed period of lease, there is no requirement to terminate such tenancy and the lease automatically comes to an end by efflux of time on the expiry of the lease period. In this case, the registered lease deed dated 14.5.1986 was exhibited as Ex. D-1. The lease in terms of the lease deed was originally for a period of five years commencing from 15.3.1985 and with an option of renewal for 10 years to either of the parties. In regard to exercise of this option, it would also be necessary to refer to the relevant Clause 2(c) (i) and which reads as under:

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That in case either party exercises the option to renew the lease beyond five years, a fresh lease deed shall be executed in terms & conditions mutually agreed upon as mentioned in this lease deed.

10. The admitted case is that no fresh lease deed has been executed after the expiry of the period mentioned in the registered lease deed dated 14.5.1986 as was required in law and Clause 2(c) (i) above. As per Section 107 of the Transfer of Property Act, 1882 read with Section 17(1)(b), and 17(1)(d) a lease deed for a period of a year or more has necessarily to be by means of an agreement in writing, duly stamped and registered. In the present case, merely because there was an option of renewal does not mean that there automatically comes into existence a fresh lease deed. Admittedly, no fresh lease deed has been executed between the parties hence the occupation of the suit premises by the Respondent bank after the expiry of the period of five years would only be as an unauthorised occupant.

11. One of the contentions raised by the Respondent bank was that the Appellant landlord had accepted the rent for over one year after the expiry of the terms of the lease and, therefore, it was said that the legal notice Ex. P-1 stands waived. This issue is no longer res integra as to what is the nature of charges which the landlord accepts after the expiry of the terms of the lease i.e. the same is rent or only charges towards use and occupation. The direct judgment in this regard is the recent judgment of the Supreme Court in the case of Sarup Singh Gupta Vs. S. Jagdish Singh and Others, in which it has been said that the amount received by the landlord after the period of notice is in fact towards compensation for use and occupation of the premises and there is a positive onus on the tenant to show that a fresh lease had been created in order to assert that the notice terminating tenancy had been given a go-bye. The relevant paragraphs of the judgment of the Supreme Court are paras 5 to 8 and which read as under:

5. Shri S.P. Goyal, learned Senior Counsel appearing on behalf of the Appellant, drew our notice to Section 113 of the Transfer of Property Act, 1882 which reads as follows:

113. Waiver of notice to quit.-A notice given u/s 111 Clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

He submitted that the acceptance of rent by the Respondent landlord even after effecting notice u/s 111 Clause (h), amounted to waiver of notice to quit within the meaning of Section 113 of the Transfer of Property Act. He submitted that waiver in the instant case was on account of implied consent of the landlord, who accepted the rent despite the notice, thereby evincing an intention to treat the lease as subsisting. He emphasised that even after filing the suit, the landlord continued to accept the rent tendered by the tenant.

6. The learned Senior Counsel also relied upon a decision of a learned Single

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Judge of the Calcutta High Court in Manicklal Dey Chaudhuri v. Kadambini Dassi1 wherein it was held that where rent is accepted after the notice to quit, whether before or after the suit has been filed, the landlord thereby shows an intention to treat the lease as subsisting and, therefore, where rent deposited with the Rent Controller under the Calcutta Rent Act is withdrawn even after the ejectment suit is filed, the notice to quit is waived. In our view, the principle laid down in the aforesaid judgment of the High Court is too widely stated, and cannot be said to be an accurate statement of law. A mere perusal of Section 113 leaves no room for doubt that in a given case, a notice given u/s 111 Clause (h), may be treated as having been waived, but the necessary condition is that there must be some act on the part of the person giving the notice evincing an intention to treat the lease as subsisting. of course, the express or implied consent of the person to whom such notice is given must also be established. The question as to whether the person giving the notice has by his act shown an intention to treat the lease as subsisting is essentially a question of fact. In reaching a conclusion on this aspect of the matter, the court must consider all relevant facts and circumstances, and the mere fact that rent has been tendered and accepted, cannot be determinative.

7. A somewhat similar situation arose in Shanti Prasad Devi v. Shankar Mahto2. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was urged on behalf of the tenant in that case that Section 116, Transfer of Property Act was attracted and there was a deemed renewal of the lease. Negativing the contention, this Court observed that mere acceptance of rent for the subsequent months in which the lessee continued to occupy the premise even after the expiry of the period of the lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after the expiry of the lease period. Their Lordships noticed the conditions incorporated in the agreement itself, which provided for renewal of the lease and held that those conditions having not been fulfilled, the mere acceptance of rent after expiry of period of lease did not signify assent to the continuance of the lease.

8. ...It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by the courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary, the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.

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(Emphasis added)

12. A reference to the evidence in the present case shows that the Respondent bank has not been able to show that there is an agreement between the parties for creation of a fresh tenancy. There is nothing said by any of the witnesses of the Respondent bank to discharge the onus and prove the stand that a fresh tenancy came into existence after the expiry of the lease. Creation of a fresh lease is a pro-active action by two parties who agree to a new tenancy. No doubt, such tenancy can be inferred, however, such inference has to be clear cut to explain that actually an agreement for a fresh tenancy took place. Nothing has been pointed out to me except the fact that the monthly rental charges were continuously received by the landlord after the service of the notice Ex. P-1. This argument of waiver of notice does not impress me because the Supreme Court in Sarup Singh Gupta''s case (supra) held that charges received by the landlord after expiry of lease are towards use and occupation of the premises and unless and until it is shown that receipt of rent along with other factors point to a new agreement it cannot be said that mere receipt of charges after the expiry of lease will of its own result in creation of a fresh tenancy.

13. On the aspect of the rate of mesne profit, the learned Counsel for the Respondent bank had taken me through the evidence of PW-1 and PW-2. PW-1 was the witness being the Manager of one Oriental Bank of Commerce and he proved the rate of rent of Rs. 10/- per sq.ft. Oriental Bank of Commerce was paying the rent @ Rs. 10 per sq. ft. with respect to a premises in the same locality viz. Pitampura. This rent also included electricity charges as stated by the said witness and which ordinarily is not possible and, therefore, the counsel for the Respondent-bank contends that the witness lacks credibility. In my opinion, this argument is also of no avail to the Respondent bank because the witness PW-2 had brought the lease deed with him and there was no question put forth by the Respondent- bank on the lease deed to the said witness. The counsel for the Respondent also urged that the Property Dealer/PW 3 who was examined had not filed any document to prove the rate of rent. Of course, this contention that a mere oral testimony of the witness PW-3 cannot be believed is correct and even on disbelieving the same, however, that is not the end of the matter because PW-1, an independent witness being a Manager of a Bank duly proved the rate of rent in the locality as Rs. 10/- per sq.ft. In fact, if damages are awarded at Rs. 10/- per sq.ft. the trial court in such case ought to have awarded Rs. 36,000/- per month but the landlord/claimant had only claimed Rs. 25,000/- and so consequently only Rs. 25,000/- can be awarded. In my opinion, even assuming there is some discrepancy in the evidence of PW-2 with respect to the rent including electricity charges, this need not detain me inasmuch as instead of 36,000/- only Rs. 25,000/- is being decreed with respect to monthly use and occupation charges after expiry of the lease by efflux of time.

14. In view of the above, the impugned judgment and decree is set aside to the extent that the mesne profits were declined to the Appellants on the ground that

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the notice Ex. P-1 was for termination only on the ground of non-payment of rent and not for other the reasons. This finding is clearly illegal and perverse because the trial court missed out the most obvious part of the notice which showed that the notice was a composite one and the non-payment of the rent was only one aspect in the notice Ex. PW-1. Accordingly, the suit of the Plaintiff for imposing mesne profits is decreed @ Rs. 25,000/- per month from 15.03.1990 till 30.10.2002 when the Respondent bank is stated to have vacated the premises. The Appellants will also be entitled to interest on the arrears of mesne profits per month @ Rs. 9% per annum simple from 15th day of the subsequent month for which the mesne profits were payable till the amount is actually paid by the Respondent bank to the Appellants. The Appellants are also entitled to the costs of the present appeal. In case any amounts have been paid by the Respondent bank to the Appellants with respect to the period for which mesne profits are awarded then the Appellants are bound to give adjustment of such amount. Obviously for those months for which payments already stand paid the interest would not be payable because there would be no arrears to that extent on which interest is payable.

The appeal is, therefore, allowed by partly modifying the impugned judgment and decree. Decree sheet be prepared. The trial court records be sent back.

CM Nos. 16554, 16555, 16556/2010

No further orders are required in these applications as the main appeal itself stands disposed of and these accordingly stand disposed of.

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