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*IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on :18.07.2019
Date of Decision : 31.07.2019

\+ **RFA No.20/2016 & CM Nos.3865/2019 (for interim directions), 8187/2019 (for stay), 8188/2019 (for exemption) & 1791/2019 (u/s 340 Cr.P.C.)**

HINDUSTAN PETROLEUM CORPORATION LTD..... Petitioner
Through: Mr.V.K. Garg, Sr. Adv. with Ms.Noopur Dubey & Mr.Rikesh Singh, Advs.

versus

MOHANJIT SINGH (DECEASED) THROUGH LEGAL HEIRS ..... Respondent
Through: Mr. Raman Kapur, Sr. Adv. with Mr.Dhiraj Sachdeva & Mr.Gurmehar Sistani, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908, filed by the tenant, assails the judgment and decree dated 09.10.2015 passed by the learned Additional District Judge, Central Delhi in Civil Suit No.40/09, whereby the suit preferred by the respondent/landlord for possession of the suit property along with mesne profits, has been decreed against the appellant.

2. A piece of land admeasuring 200x125x198x125 ft., situated at 11/1, Mathura Road, Delhi ('suit premises' for short), was leased out to the appellant for a period of ten years at a monthly rent of

Rs.506/- vide a lease deed dated 21.11.1964 executed by t predecessor-in-interest of the respondent. Though a provision for renewal of the lease for further periods was incorporated in Clause 3(d) of the lease deed, no renewal of the same was ever executed and the appellant continued to occupy the premises on payment of the initially agreed rate of rent, without any objection whatsoever from the respondent who continued to accept the rent from the appellant till October, 1999.

3. It was only on 01.12.1999 that the respondent issued a notice to the appellant terminating the lease and requiring the appellant to hand over vacant possession of the property to him on/before 01.01.2000. The said notice was followed by a clarificatory notice issued by the respondent on 03.03.2000.

4. Upon the failure of the appellant/tenant to vacate the suit premises, the respondent, on 30.04.2000, instituted a suit for possession and recovery of mesne profits before this Court, with the following prayers:-

> *"a) Pass a decree of recovery of possession of the land measuring 2763sq.yds.(200x 125x 1S8 x 125 ft.) situated at Mile 11/1,Mathura Road, New Delhi and duly shown in the red colour in the plan attached hereto*
>
> *b) Pass a decree for recovery of Rs.601350/-.*
>
> *c) Pass a decree for recovery of damages for use and occupation of the above referred land @ Rs. 2,00,000/- per month from 1.4.2000 till the plaintiff is put into the actual and physical possession of the said land. The plaintiff undertakes to pay the requisite court fee in such eventuality;*
>
> *d) Costs of Suit be awarded.*
>
> *e) any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiff and against the respondents."*

5. On the enhancement of the pecuniary jurisdiction of this court, the aforesaidsuit was transferred to the court of the learned District Judge, Central Delhi, where the appellant filed its written statement opposing the suit.

6. In its written statement filed before the trial Court, the appellant, while admitting the execution of the lease deed, claimed that its tenancy was permanent in nature. In the alternative, the appellant also claimed that the lease deed, though executed for an initial period of ten years, was in fact for a total period of forty years - as it included a provision for three automatic renewals of the lease deed after every ten years. The appellant contended that the lease, which was for a total period of forty years, was extendable by a further period of forty years, at the option of the appellant, on the same terms and conditions. The appellant also contended that as it had not been served with the requisite notice under Section 80 of the Code of Civil Procedure, 1908 ('CPC' for short), the suit filed by the respondents was not maintainable in its present form.

7. On the above pleadings, the trial Court framed the following seven issues on 22.05.2001:-

> *"1. Whether the defendant proves that notice under Section 80 CPC is required before institution of the suit? If yes, whether the suit is maintainable?*
>
> *2. Whether the defendant proves that suit is not maintainable in view of ESSO (Acquisition of Undertaking inIndia) Act 1974, as alleged in the written statement?*
>
> *3. Whether the defendant proves that there is permanent tenancy in their favour? If yes, what is the effect?*
>
> *4. Whether the defendant proves that the tenancy in favour of the defendant continues upto*

31.10.2004? If yes,whether the tenancy is liable to be renewed for another term offorty years?

5. Whether the plaintiff is entitled to the damages? If yes, from which date and at what rate?

6. Whether the notice under Section 116 of Transfer of Property Act, served by the plaintiff to the defendant is legal and valid?

7. To what relief, if any, the plaintiff is entitled to?"

8. At the stage of trial, when the cross-examination of the respondent as PW-1 was underway, the appellant moved an application under Order VI Rule 17 CPC seeking amendment of its written statement to incorporate a plea to the effect that the respondent was not the owner of the suit land and that ownership of the same, in fact, vested with the Gaon Sabha. After this application was rejected by the trial Court, the appellant moved another application once again seeking permission to amend its written statement - this time to incorporate a plea challenging the maintainability of the suit itself in the light of the applicability of Sections 5 and 6 of the ESSO (Acquisition of Undertakings in India) Act, 1974('ESSO Act' for short) upon the suit premises; which application also came to be dismissed by the trial Court on 23.11.2005. Aggrieved by the rejection of its prayer for seeking amendment of the written statement, the appellant approached this Court by way of an application being Civil Miscellaneous (Main) No.657/2015, which came to be allowed subject to payment of costs of Rs.15,000/- upon an assurance from the appellant that, as a consequence of such amendment, no prayer for framing of any further issues or opportunity to lead any fresh evidence would be sought before the trial Court. In the amended written statement

filed by the appellant on 26.05.2006, the landlord-tena relationship between the parties was again admittedby the appellant. However, another attempt to stall the trial was made by the appellant who moved an application, under Order 18 Rule 17 CPC, which was rejected by the trial Court on 18.11.2006. The appellant then approached this Court by an application being C.M. (Main) No.2162/2006 which was disposed on 02.02.2007, without grant of any relief to the appellant. This Court, however, in its order dated 02.02.2007 recorded the statement of the respondent's counsel that the respondent, without prejudice to its right to claim a decree for possession, was giving up its claim for mesne profits prior to 31.10.2004 - for which period he would accept use and occupation charges at the last paid rate of rent, as per the terms of the lease deed dated 21.11.1964 with timely increments in the same, as applicable thereon.

9. Aggrieved by this order dated 02.02.2007, the appellant preferred a Special Leave Petition before the Hon'ble Supreme Court being SLP(C) No. 2794/2007 ('SLP' for short) on the ground that while deciding C.M. (Main) No.2162/2006, this Court had observed that no useful purpose would be served by allowing the appellant to prove that it had exercised its right to renew the lease deed which amounted to a virtual rejection of its defence in the suit. The SLP remained pending for over a period of five years when the Respondent, in April, 2012 moved an application therein being I.A No. 3/2012, praying *inter alia* that the appellant be directed to pay to the respondent the prevailing monthly market rent of Rs. 15,00,000/- till the final disposal of the SLP. The I.A. was allowed by the Hon'ble Supreme Court, vide its order dated 04.08.2012, in the following terms by directing the appellant to pay

monthly damages of Rs.2,00,000/- to the respondent w.e.f. Augu , 2012 :-

> *"As per as IA No.3 is concerned, we allow the same to the extent that with effect from the month of August 2012, the Petitioner Corporation shall pay to the legal heirs of the respondent by way of damages for use of the property in question, a sum of Two lakh per month, until further orders."*

10. The appellant's SLP was finally disposed of by the Hon'ble Supreme Court, vide its order dated 07.08.2013, whereby the observations of this Court in paragraph 39 of its order dated 02.02.2007 were set aside. The apex court, after noticing that the appellant had been already directed to pay damages/monthly mesne profits at the rate of Rs.2,00,000/- from 30.04.2000 to 31.08.2012, directed the appellant to continue paying the damages/mesne profits at the rate of Rs. 2,00,000/- per month during the pendency of the suit. It was, however, clarified that the aforesaid direction for mesne profits was interim in nature and would not affect the calculation of mesne profits after the final disposal of the suit. In the light of the fact that the suit had remained pending at the trial Court for thirteen years, the Hon'ble Supreme Court directed the trial Court to give priority to the trial of the suit. The relevant extract of the order dated 07.08.2013 passed by the Hon'ble Supreme Court reads as under:-

> *"Since the suit is pending for the last thirteen years, we expect the trial court to give priority to the trial of this suit.*
>
> *However, the direction issued by this Court to the petitioner on 14.8.2012 directing the petitioner to pay damages/mesne profits at the rate of Rs.2,00,000/- per*

month from 30.4.2000 to 31.8.2012 shall continue during the pendency of the suit.
However, this order passed by us is interim in nature and will not affect the calculation of mesne profits after the suit is finally disposed of.

The special leave petition is disposed of with the aforesaid observations and directions."

11. Based on the evidence led before the trial Court, the respondent's suit came to be decreed under the impugned judgment in the following terms:-

"(A) A decree for Possession in respect of piece of land measuring200 X 125 X 198 X 125 ft situated at 11/1, Mathura Road, New Delhi as shown in the site plan Ex. PWl/1 is passed in plaintiffs favour and against the defendant.
(B) A Decree for award of damages/mesne profits in respect of suit premises against the defendant at the rate of Rs. 2 lacs per month w.e.f. 30.4.2000 is also passed with yearly 10% rational increase on the amount of damages in terms of description as provided while disposing of issue no. 7, alongwith interest at the rate of 6% p.a. onthe above amount till realization.
(C) A Decree for a sum of Rs.l350/- for rental of the suit property for the months of November and December 1999 is also passed.
(D) The above shall be subject to payment of deficient Court fees thereupon.
(E) Costs of the suit is also awarded to the plaintiff."

12. The appellant has approached this Court, by way of the present Appeal, impugning this judgment and decree dated 09.10.2015. When the present appeal was listed for preliminary hearing on 31.01.2016, the appellant was directed to deposit the entire decretal amount with this Court upto 31.01.2016. A further direction was issued to the appellant to continue to pay a monthly

sum of Rs.2,00,000/- to the respondent during the pendency of t appeal, along with depositing mesne profits in excess of Rs.2,00,000/- with the Registry of this Court. In compliance thereof, the appellant has deposited the entire decretal amount and a monthly payment of Rs.2,00,000/- is being made to the respondent.

13. In support of his plea that the appeal is liable to be allowed, Mr.V.K. Garg, learned senior counsel appearing on behalf of the appellant/tenant has raised three primary submissions: the first and foremost being that the trial Court has erred in not appreciating that the total agreed lease period of eighty years was yet to expire as Clause 3(d) of the lease deed clearly stipulates that the lease was extendable by the same length of period, i.e., forty years, for which it was initially entered into. He submits that even though clause 1 of the lease deed sets forth the initial period of the lease as 10 years, clause 3(d) thereof specifically envisaged three more renewals of ten years each. The cumulative period of the lease deed, thus, at the time of its execution itself, was forty years which was extendable by a further period of forty years at the option of the appellant/tenant. He submits that a necessary corollary of the aforesaid covenants of the lease deed is that once the appellant had made its request for extension of the lease deed, it was incumbent upon the landlord/respondent to renew the same for a further period of forty years. He, thus, submits that the decree for possession is liable to be set aside and that the appellant is entitled to retain the suit premises on lease for a further period of forty years reckoned from 01.11.2004.

14. The next submission of Mr.Garg is that in the light of the clear concession made by the respondent before this Court on

02.02.2007 that he would not claim mesne profits for the period t 31.10.2004, he was estopped from claiming any amount higher than the agreed rate of rent for the said period. He, thus, contends that the trial Court ought not to have even examined the issue of grant of mesne profits payable to the respondent for any period prior to 31.10.2004. He submits that the trial Court has, thus, erred in awarding mesne profits w.e.f. 30.04.2000 by ignoring the respondent's concession, which he has not sought to withdraw till date. He further submits that even the award of mesne profits at an exorbitant rate of Rs.2,00,000/- per month, without any evidence being adduced thereto, was wholly unsustainable and contrary to the settled legal position. He submits that once no evidence was led by the respondent in support of his claim for mesne profits at a monthly rate of Rs.2,00,000/-, it was incumbent upon the trial Court to independently determine the actual rate of mesne profits to be granted in the present case, by conducting an inquiry in accordance with the procedure prescribed under Order XX Rule 12 CPC. He submits that the trial Court has, instead, awarded mesne profits in the instant case by simply relying on the order dated 07.08.2013 passed by the Hon'ble Supreme Court while disposing of the appellant's SLP and contends that, in doing so, the trial Court has overlooked a categorical statement in the said order that the direction to pay Rs.2,00,000/- as monthly mesne profits was purely *interim* in nature and would be subject to the rate of mesne profits as determined by the trial Court during the final disposal of the suit. He further submits that even though the Courts have the discretion to award mesne profits as applicable to the facts and circumstances of each case, the said discretion has to be exercised sparingly, strictly on the basis of the evidence brought on

record and not at the ipse dixit of the Court. He submits that wh the lease deed was signed initially, the leased property had merely been a vacant plot on which the appellant constructed the building and the entire infrastructure present therein, including the petrol pump, underground diesel and petrol tanks, rooms, toilets and other constructions, made for operating the petrol pump. It is his contention that the trial Court, at the time of evaluating the mesne profits payable to the respondent, lost sight of the appellant's contributions to the leased property which had substantially enhanced its value. He, thus, reiterates that in the absence of any material or any inquiry made in regard thereto, the award of mesne profits at the rate of Rs.2,00,000/- is unsustainable and liable to be set aside.

15. In support of his aforesaid contentions, Mr. Garg has placed reliance on the decisions of thisCourt in ***M.C. Agrawal HUF Vs. Sahara India & Ors.*** *183 (2011) Delhi Law Times 105****; National Radio & Electronic Co. Ltd. Vs. Motion Pictures Association*** *122 (2005) Delhi Law Times 629* ***(DB); Om Prakash Chopra & Ors. Vs. State Bank of India and Ganapati Madhav Sawant (Dead) Through His LRs Vs. Dattur Madhav Sawant*** *(2008) 3 SCC 183.*

16. Mr.Garg, finally submits that the learned trial Court has erred in directing an annual enhancement of 10% on this monthly sum of Rs.2,00,000/- found to be payable to the respondent as mesne profits. He submits that it is a settled legal position that the Courts can only grant reliefs claimed by the parties in their pleadings and that, in the instant case, the trial Court travelled beyond the pleadings of the respondent while granting relief to him; which is legally unsustainable. In this context, he draws my attention to the prayers made in the plaint and submits that the

respondent had specifically prayed for grant of mesne profits at t rate of Rs.2,00,000/- per month w.e.f. 01.04.2000, till the date the vacant possession of the property is handed over to him. Evidently, the respondent had not sought any annual increment on the amount of mesne profits claimed by him. He, therefore, contends that the trial Court could not have granted any annual enhancement on the mesne profits. He submits that this relief granted by the trial Court is not only beyond the pleadings, but is contrary to the settled legal position that the decision of a case ought to be based only on the issues arising from the pleadings of the parties. In support of this contention, he places reliance on ***M/s Trojan & Co. Vs. R. M. N. N.Nagappa Chettiar*** *AIR 1953 SC 235****; Om Prakash & Ors. Vs. Ram Kumar &Ors.*** *AIR 1991 SC 409****; Bachhaj Nahar Vs. Nilima Mandal & Anr.*** *2008 (17) SCC 491****,*** and ***Chittoori Subbanna Vs. Kudappa Subanna & Ors.*** *AIR 1965 SC 1325*.

17. Per contra, Mr.Raman Kapur, learned senior counsel for the respondent submits that the appellant's plea that as per the lease deed, the initial tenancy itself was for a period of 40 years, extendable by a further period of 40 years, is wholly misconceived, and has been rightly rejected by the trial Court. He submits that a bare perusal of Clauses 1 and 3(d) of the lease deed would show that, initially, the lease term was only for a period of ten years and that, subsequently, the same could be extended thrice - at best; each extension being for a further period of ten years. This meant that the maximum lease term, as per the covenants of the lease deed and keeping in mind the provisions for extensions therein, was forty years.

18. Refuting the second contention of the appellant that mesne profits have been awarded by the trial Court without adhering to

the prescribed procedure or adducing any evidence thereof. Mr.Kapur submits that Order XX Rule 12 of CPC confers absolute discretion upon the Court to determine the mesne profits on its own or to order an inquiry to that end. He submits that the appellant's plea that no evidence had been led on the question of mesne profits and, therefore, an inquiry ought to have been made by the trial Court before award of mesne profits is contrary to record. The trial Court, in the present case, exercised its discretion to award mesne profits only after taking into account the relevant evidence led by the parties thereon and that, therefore, its findings could not be faulted. At the stage of evidence, in his statement as PW-1, the respondent specifically stated that the suit premises was located in a posh area on the main Mathura Road and that such properties fetched a minimum of Rs.2,00,000/- per month on rent. In the same statement, the respondent also set down that the suit premises, owing to its proximity to the renowned Apollo Hospital and the surrounding industrial belt, had great commercial value and that damages at the rate of Rs. 2,00,000/- per month for such property was reasonable. Mr. Kapur contends that the appellant did not cross-examine the respondent on these aspects of his statement and, thus, the evidence of the respondent on this aspect remained unrebutted and was, therefore, rightly relied upon by the trial Court while computing the mesne profits accruing to the respondent.To lend credence to the aforesaid contention, Mr.Kapur draws my attention to the cross-examination of the appellant's own witness wherein he had specifically admitted that the suit property was indeed situated on main Mathura Road and was surrounded by showrooms and petrol pumps thereby affirming the respondent's claim that the suit property had good commercial value. He further

submits that, in fact the appellant did not ever state, either in h examination in chief or in his cross-examination, that the rentals of similarly placed property were lower than what was being claimed by the respondent.

19. In the light of the settled legal position that at the time of awarding mesne profits it is for the Court to exercise its discretion by taking into account the entirety of facts and circumstances of the case, Mr. Kapur submits that no interference in the direction of the trial Court is called for. He further submits that the trial Court was justified in taking judicial notice of the factum of increase in rent owing to efflux of time during the pendency of litigation and for also taking into account the interim direction passed by the Hon'ble Supreme Court to the appellant to pay mesne profits at the rate of Rs.2,00,000/- per month to the respondent w.e.f. 30.04.2000. In support of this contention, he places reliance on ***Consep India Pvt. Ltd. vs. CEPCO Industries Pvt. Ltd.****(2010) ILR 3 Delhi 766*

20. Mr. Kapoor submits that in fact, the monthly mesne profits of Rs.2,00,000/-, as awarded by the trial Court, was rather on the lower side, when compared with the corresponding rates of rent being charged on comparable properties located on the main Mathura Road.

21. Mr. Kapur also refutes the appellant's plea that the trial court could not have awarded mesne profits for the period prior to 31.10.2004 as the respondent had already made a concession, on 02.02.2007, that he would not claim mesne profits for the said period. He submits that once the Supreme Court had, while disposing of the appellant's SLP, set aside this court's order dated 02.02.2007 and had specifically directed the appellant to pay an

enhanced rent at the rate of Rs.2,00,000/- per month to t respondent w.e.f. 30.04.2000, the respondent has been rightly awarded mesne profits from the said date. The appellant had, infact, sought review of the Supreme Court's order dated 07.08.2013 which came to be dismissed. Mr. Kapur thus, contends that the issue of the concession given by the respondent's counsel before this Court on 02.02.2007 does not survive any longer as the said order already stands quashed by the Apex Court. He further contends that in the light of the orders passed by the Hon'ble Supreme Court, the appellant is now estopped from contending that mesne profits are not payable w.e.f. 30.04.2000.

22. Learned senior counsel for the respondent also refutes the appellant's plea that in view of the prayer in the plaint being only for an award of monthly mesne profits at the rate of Rs.2,00,000/- till the date of vacation of the suit premises, the Court could not have granted any enhancement thereon. He submits that in the facts of the present case, where the trial has been prolonged for fifteen years on account of the appellant moving repeated applications, the trial Court has rightly directed payment of future mesne profits with an annual enhancement of 10%. He submits that it is to cater to such protracted litigations, that Section 2(12) of the CPC entitles a plaintiff to future mesne profits, even without making a specific claim thereto. As it may not always be possible for a plaintiff to foresee the duration of the litigation, the award of future mesne profits at a rate higher than that claimed in the plaint, is fully justified. In support of his contention, Mr. Kapur places reliance on ***R.S. Madanappa vs. Chandramma & Ors.*** *AIR 1965 SC 1812* and ***Smt. Santosh Arora vs. M.L. Arora****211 (2014) DLT 312.*

23. The final contention of Mr.Kapur is that the appellan reliance upon the decisions in ***M.C. Agrawal HUF (supra)*** and ***National Radio (supra)*** is misplaced as the said cases pertain to lease deeds executed in the recent past, in which circumstances, this Court found it fair and proper to award mesne profits by granting an annual enhancement of 15% on the agreed rent. On the other hand, in the present case the subject lease deed had been executed in the year 1964 and the respondent is yet to receive possession of his premises even after more than 55 years. He submits that with the passage of time, the complexion of the entire area where the suit premises is situated, viz., main Mathura Road, has undergone a sea of change and presently, the rates of rent of similarly situated properties in the area is more than Rs.20,00,000/- per month, which fact has been duly taken into consideration by the trial Court while passing the impugned judgment and decree. He, therefore, prays that the appeal be dismissed with costs.

24. This Court has heard the learned Senior Counsel appearing for the parties at length and has, with their assistance, perused the record.

25. Before dealing with the rival contentions advanced, it is apposite to refer to the relevant terms and conditions of the lease deed as contained in Clauses 1 and 3(d) therein. The same read as under:-

> *"1. The Landlord hereby lets and the tenant hereby takes ALL THAT Place of land situate at 11/1 Mathura Road, New Delhi in the Registration sub - District of New Delhi District Delhi and more particularly described in the schedule hereto and delineated on the plan hereto annexed being thereon surrounded by a red colour boundary line TOGETHER with all ways passage, lights, drains sewers water courses rights,*

easement, advantages and appurtenances whatsoever to the said place of land belonging or there with usually held or enjoyed AND TOGETHER ALSO with the right for the tenant to install erect and maintain in and up the said place of land, roadways and pathways and underground tank (s) and delivery pump (s) connected with the said tank (s) and shelter for an attendant and any other building erection or equipment whether of a permanent or temporary nature for the purpose of storing selling or otherwise carrying on trade in petrol, petroleum products oil and kindred motor accessories and any other trade or business that can conveniently be carried on therewith TO HOLD the demised premises upto the tenant from the first day of November 1964 for the term of 10 years (determinable as hereinafter provided) at the monthly rent of Rs 506/-.

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3(d) That the landlord will on the written request of the tenant made 2 calendar months before the expiry of the term hereby created and if there shall not at the time of such request by any existing breach or non - observance of any of the covenants on the part of the tenant herein before contained grant to it a lease of the demised premises or the future term of 10 years from the expiration of the said term at the rent of Rs. 675/- per month and containing the like covenants and provisos as are herein contained with a option for a further period of 10 years from the expiration of the said extended termat the same rent and containing the like covenants and provisos as are herein contained including a clause for two renewals for a further term of 10 years each at the same rent and on the same terms and conditions so as to give the lease in its option an aggregate of three renewals each of 10 years."

26. A conjunctive reading of these two clauses of the lease deed leaves no doubt that there is absolutely no merit in the appellant's first submission that the initial term of the lease under the existing

deed was for a period of forty years which expired only on 31.10.2004, whereafter it was extendable at the appellant/tenant's option for a further period of forty years. Clause 1 of the lease deed specifically stipulates that the lease term was for a period of ten years. It is only this term of ten years which, in accordance with Clause 3(d), was further renewable for three terms of ten years' each; subject to a written request being made by the tenant to that effect, within the specified time period. Nowhere does the lease deed envisage an initial lease term of forty years, as is sought to be contended by the appellant.

27. Even though the appellant claims to have made requests to the respondent for extension of the lease from time to time, its first written communication to that effect, as placed on record, was on 12.10.2004, by which time the initial ten years' period of lease had already stood expired. As per Clause 3(d) of the lease deed, any request for extension had to be made at least two months prior to the expiry of the initial ten years' period and, that too, in writing. In the light of the admitted position that the first written request for extension of the lease was made only after the expiry of almost forty years, i.e., on 12.10.2004, it is evident that no request for extension *in accordance with* the provisions of Clause 3(d) of the lease deed was ever made by the appellant within the specified time period, i.e., before the expiry of the initial ten years' term and, therefore, the initial lease term of ten years' itself never stood extended. In these circumstances, there is no merit in the appellant's submission that the term of the lease, having been extended, was, in fact, for a period of forty years which term could be extended at the option of the appellant for a further period of forty years.

28. Thus, what emerges is that though the initial term of t years, for which period the property was leased to the appellant had already expired on 01.11.1974, and even if the lease had been extended in the manner prescribed in the lease deed, the maximum period for which the lease could have possibly subsisted, i.e., forty years, had already expired in 2004; yet, the respondent is still waiting for the appellant/tenant to return his property which rightfully belongs to him.

29. In the light of the aforesaid, there is absolutely no ground made out to interfere with the decree, insofar as it concerns the relief for possession granted in favour of the respondent, who is being unfairly deprived of a valuable property owned by him merely on the erroneous interpretation of the terms of the lease deed by the appellant/tenant.

30. I may now refer to the appellant's challenge to the grant of mesne profits awarded in favour of the respondent. As noted hereinabove, the grant of mesne profits has been assailed by the appellant on three counts: the period for which the same have been granted, the rate of mesne profits granted and the annual enhancement and interest granted thereon.

31. Before dealing with the rival contentions on this aspect, it would be appropriate to refer to Section 2(12) of the CPC, which defines mesne profits and under which provision the claim of the respondent is premised. Reference may also be made to Order XX Rule 12 CPC, which prescribes the procedure to be followed by the Court while dealing with a claim for grant of mesne profits. These provisions read as under:-

> *"**Order XX Rule 12:-Decree for possession and mesne profits**.- (1) Where a suit is for the*

recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

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

32. The aforesaid provisions have already been extensively examined in decisions of the various High Courts as well as the Hon'ble Supreme Court. A common vein of these judgments is that mesne profits, which a landlord is entitled to receive from a tenant who is continuously in occupation of the lease property despite the termination of the lease, has been laid down to mean the rate of rent which would otherwise accrue on a suit premises during the period of its illegal occupation by a tenant. However, the burden which the Courts are often tasked with is to determine the appropriate amount payable to the landlord/owner towards such mesne profits. This process of determination of mesne profits begins with the landlord discharging the onus placed upon him to prove his claim for mesne profits, in accordance with the law. Thereafter, it is for the Court to ascertain the appropriate mesne profits to be awarded to the claimant by adhering to the parameters as set out in Order XX Rule 12 CPC which prescribes that while passing the decree for possession, the Court may either straightaway pass a decree for mesne profits or direct that an inquiry be conducted for assessing the rate of mesne profits payable. If the Court finds that there is sufficient and authentic evidence available on record for determination of the landlord's claim for mesne profits, the Court may, in its discretion, award the same by relying on such evidence. In the alternative, in situations when the Court finds that the evidence brought on record is not sufficient for such determination, the Court may direct that an inquiry be conducted thereto, in accordance with the provisions of the CPC. In this regard, reference may be made to ***Chittoori Subbanna (supra), Ganpati Madhav Sawant (supra), National Radio (supra)*** and ***M.C. Agrawal HUF (supra)*** on which heavy

reliance has been placed by the learned senior counsel for t appellant. I find that, in fact, the ratio of the decisions relied upon by the learned senior counsel for the respondent, viz., ***Consep India Pvt. Ltd. (supra)*** and ***Suman Verma & Ors. vs. Sushil Mohini Gupta & Ors.*** *2014(140) DRJ 595,* concurs with the ratio of the decisions sought to be relied upon by the appellant in this regard and also lay down the same parameters for determining mesne profits.

33. While bearing in mind the broad parameters statutorily prescribed for determination of the mesne profits payable, as noted hereinabove, it is now time to refer to the evidence led before the trial Court on this aspect. The admitted case of the parties is that the claim for mesne profits was based only on the oral evidence led by the landlord and the tenant and that no lease deeds for the said period for similarly situated properties in the area were brought on record by any of the parties.

34. The respondent tendered his own evidence by way of an affidavit dated 27.11.2002; the relevant extract whereof reads as under:-

> *"15. I say that the property is situated on main Mathura Road near Badarpur and the land is measuring approximately 2763 Sq.Yards. It is situated in posh locality of the town and such like land is not available less than Rs.2 lakhs per month.*
>
> *16. I say the tenancy of the Defendant have been terminated and despite the same and calling upon them to hand over physical and actual possession, the Defendant has failed to do so. As such, Defendants are not only liable to hand over actual andphysical possession of the land, but also liable to pay damages for use and occupation of the said piece of land @ Rs.2 lakhs per month. It has been clarified by me in the notice of demand for damages in itself in no*

manner can be construed that I am permitting the Defendant to continue to occupy the said land.

17. I say that the notice was duly served on the Defendant. However, due to some typographical mistake in the said notice, another notice dated 3rd March 2000 was issued through Advocate, Shri G.L. Rawal who signed in my presence, which is placed on record and marked as EXHIBIT PW 1/7. The same was sent by Registered A.D. Post on 7th March 2000. The same are placed on record and marked as EXHIBIT PW 1/8. The same was duly received by the Defendant vide acknowledgement card marked as EXHIBIT PW 1/8. I say that the said notice of 3rd March 2000 was without prejudice to all my rights and contentions, as set out in my notice dt. 1.12.99. I say despite the same neither the Defendant has handed over the actual and physical possession of the land nor paid the damages. I say 1 am entitled not only for possession of the land, but also entitled to get the rent for the months November to December 99 and damages w.e.f. January 2000. Rent was Rs.675 per month and I am claiming damages @ Rs.2 Lakhs per month. I say that no payment on account of alleged rent has been accepted by me after termination of the tenancy of the Defendant. The area in which the said land is situated is at Badarpur, adjoining Delhi and Faridabad and on high-way. It is situated next to posh colonies like Friends Colony, Sukhdev Vihar, and huge massive industrial area, namely Mohan Cooperative Industrial Area. It is situated near famous hospital, APOLLO HOSPITAL. It is situated at a very strategic point between Faridabad and Delhi and very accessible. It is situated right at Badarpur, which boost of huge commercial activities and has tremendous amount of commercial potential. It is also adjacent to Faridabad Border and areas near border of Faridabad which also commands huge premium rental value having a good commercial value, since the industrial block isalso there adjacent to Faridabad Border. The damages @ Rs.2 lakhs per month for huge area like 2763 Sq. yards is reasonable for said piece of land and said area commands this kind of rent."

35. The respondent was extensively cross-examined by t appellant and his cross-examination reads as under:-

> *"It is correct that initially the suit property was let out by me to M/s ESSO Standard Eastern Inc. I am not aware of the ESSO (Acquisition of Undertakings in India) Act no. 4 of 1947. I am not aware that after this act M/s ESSO Standard Eastern Inc. came to be known as ESSI Standard Refinery Company India Limited. The company was taken over by the Act but I am not aware that it was Govt. Company. It is correct that thereafter the name of the company was changed to M/s Hindustan PetroleumCorporation Ltd. as told by the defendant. It is wrong to suggest that the lease was for a period of 40 years commencing from 1.11.1964. Whatever rights the defendants have on the lease land was as per the lease deed. It is correct that the defendant has constructed underground diesel and petrol tanks, rooms, toilets etc. for running the petrol pumps. It is wrong to suggest that all these constructions were made with me consent. I have not visited many times this petrol pump since 1964. These constructions were there right from the beginning. I did not write to defendants that the defendant is raising constructions without my consent. It is true that the site where petrol pump is constructed has been shown as the Landment for petrol pump. It is wrong to suggest that every time after the expiry of 10 years defendants expressed their intention to continue with the renewal of lease. I do not remember the date when the rent was increased from 506/- to 675/-. It is correct that rent was increased from 506/- to 675/-. It is correct that defendant used to give yearly rent in advance. I have not given detail of any property which has been let out at a monthly rent of Rs. 2 Lakhs for similar accommodation. It is wrong to suggest that this property has no commercial value as per the master plan. It is wrong to suggest that I am deposing falsely."*

36. In the light of the evidence led by the respondent/landlord as reproduced hereinabove, I may now refer to the evidence of the

appellant tendered by way of an Affidavit and the relevant portion thereof reads as under:-

> *"9. The defendant has been paying regular rentals for full year in advance i.e. rent have paid yearly and accepted as such by the plaintiff.*
> *10. It is not admitted that land is located in a posh locality. It is wrong that land is not available there at a rate of less than rupees two lakhs per month. The defendant is not liable for payment of damages Rs.2,00,000/- p.m. or at any other rate defendant is not liable for payment of agreed rental.*
> *11. No notices as alleged dated 3.3.2000 was sent to defendant. Suit is liable to be dismissed."*

37. It is manifest from the evidence tendered by the respondent that he categorically stated on oath that the suit property was situated in a posh locality on the main Mathura Road near Badarpur, and that the same would not be available for a rate of rent less than Rs.2,00,000/- p.m. It was also stated that the suit premises was situated at a strategic juncture between Faridabad and Delhi, flanked by posh colonies such as Friends Colony, Sukhdev Vihar and the Mohan Cooperative Industrial Area and was, in fact, situated at Badarpur which boasts of huge commercial activities. It was further stated that corresponding properties in the area commanded a huge premium rental value and that the damages quantified at the rate of Rs.2,00,000/- p.m. for the suit property admeasuring a large tract of 2763 sq. yards was reasonable. Curiously, at the time of his cross-examination, except a vague suggestion made to the effect that the property had no commercial value, the respondent was not cross-examined on the aspect of the prevailing rates of rent in the area being lesser than the amount claimed by him nor was he asked to depose specifically on the

falsity of his claim that the rentals of similarly situated properti in the area were Rs.2,00,000/- p.m.

38. By contrast, it is interesting to note that despite the respondent's aforenoted categorical pleadings regarding the rates of rent in the lease property, the only defense offered thereto by the appellant were bald denials. No attempt was in fact made to dislodge the respondent's statements that the lease property was located in a posh locality and that similar land was not available for a rate of rent of less than Rs.2,00,000/- p.m. What emanates from the above is that, essentially, the respondent/landlord's oral evidence in support of his claim for mesne profits remained unrebutted at the stage of adjudication of the suit. In the light of the respondent's specific plea and assertions regarding the quantum of mesne profits payable, it was incumbent upon the appellant to adduce some evidence, even if oral in nature, to demonstrate that the prevailing rate of rent of similar properties in the area, as claimed by the respondent in his plaint as well as his testimony, was exorbitant. The appellant has miserably failed to discharge this burden.

39. In the light of the above discussion, I am unable to appreciate the appellant's plea that there was no evidence in support of the respondent's claim for mesne profits. In my view, when evidence of the respondent/witness, in the form of his statement by way of an Affidavit, had been tendered and the same remained uncontroverted, the appellant's plea that no evidence had been led before the Court to justify the grant of mesne profits at the rate of Rs.2,00,000/- p.m. is without any merit.

40. Even though there may be merit in the submission of the appellant that the mesne profits, as fixed by the Hon'ble Supreme

Court in its order dated 07.08.2013, was interim in nature and wa[illegible] therefore, subject to final adjudication by the trial Court; it cannot be denied that the Hon'ble Supreme Court arrived at this computation of the mesne profits after taking into account the location of the suit premises and other circumstances germane thereto. Clearly, the trial Court has taken judicial notice of the interim award granted by the Hon'ble Supreme Court but its findings with respect to the award for mesne profits cannot be stated to be based only thereon. Thus, I find no merit in the appellant's contention that the mere factum of the amount of mesne profits, as awarded by the trial Court and the Hon'ble Supreme Court, being the same implies that the trial Court has awarded mesne profits without examining the evidence on record. This contention, at best, is a shot in the dark by the appellant to substantiate its claim that the amount of mesne profits awarded in the instant case is erroneous. Even otherwise, the calculation of mesne profits always involves some guess work and the Courts have, hitherto in several cases, taken judicial notice of the prevalent market rents of different areas within the city while awarding mesne profits. In this regard, reference may be made to paragraphs 22 (a) to (e) of ***Suman Verma (supra)***, relied upon by the respondents, in which it was held as under:-

> *"(a) though undoubtedly the Division Bench of this Court in National Radio & Electronic Co. Ltd. supra has held that judicial notice, only of a general increase in rent in the city of Delhi and not of the rates of rent, in the absence of proof thereof can be taken but it cannot be lost sight of that the Courts are for doing justice between the parties and not for, on hyper technicalities, allowing the parties to suffer injustice.*

(b) The property of the respondents/plaintiffs which the appellants/defendants are admittedly in unauthorized occupation of, is situated in one of the poshest colonies of the city of Delhi, properties wherein fetch high rentals and which only the elite, affluent, expats and foreigners are able to afford.

(c) the said property is a independent bungalow constructed over 400 sq. yd. of land and comprising of two and a half floors.

(d) the calculation of mesne profits always involves some amount of guess work, as held by this court in International Pvt. Ltd. Vs. Saraswati Industrial Sundictes Ltd. (1992) 2 RCR 6, M.R. Sahni Vs. Doris Randhawa and reiterated in Consep India Pvt. Ltd. supra and applicability of prevalent rents in the city and of which the Judges manning the Courts and who are born and brought up in the same city, are generally aware of.

(e) The Division Benches of this court in Vinod Khanna Vs. Bakshi Sachdev AIR 1996 Delhi 32 and S.Kumar Vs. G.K. Kathpalia 1991 (1) RCR 431, taking judicial notice, refused to interfere with the rate of mesne profits even where the landlord had not led any documentary evidence. Notice of such increase has also been taken by the Supreme Court in Saradamani Kandappan Vs. S. Rajalakshmi (2011) 12 SCC 18."

41. Further reference may be made to paragraphs 31-33 of the decision in ***National Radio*** (***supra***), on which reliance has been placed by the appellant itself, where the Division Bench has, after referring to some of the earlier decisions of this Court, observed asunder:

"31. We find that this Court has in several cases taken judicial notice of the factum of increase of rent and made awards of mesne profits and damages. Noteworthy in this behalf is a judicial pronouncement of the Division Bench reported at (supra) entitled Vinod Kumar v. Bakshi

Sachdev. This judgment was delivered by a Division Bench of which one of us (Dr. M.K. Sharma, J.) had delivered the judgment. It was held as under:

"21. The learned Counsel for the appellants also urged before us that the learned Trial Court was not justified in taking a judicial notice of the fact of increase of rents like the suit property and also in providing Rs. 10,000/- per month as fair amount towards damages/mesne profits in favor of the plaintiff. It is true that no substantial evidence has been led by the plaintiff 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 making judicial notice of the increase of price of land 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 notice in case of D.C. Oswal v. V.K. Subbiah .

22. In that view of the matter we have no hesitation in our mind in holding that the Trial Court did not commit any illegality in taking judicial notice of the fact of increase of rents and determining the compensation in respect of the suit premises at Rs. 10,000/- per month w.e.f. 19.1.1989, 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. We may, however, note here that the learned Counsel for the appellants did not seriously challenge the findings of the learned Judge that Rs. 10,000/- per month would be the fair market rent of the suit premises. Accordingly, in view of the aforesaid findings arrived at by us the submissions of the learned Counsel for the appellant in our view have no substance at all."

32. In another Division Bench pronouncement reported at (supra) entitled S. Kumar v. G.R. Kathpalia the issue raised was as follow:

> *"4. Lastly, the learned Counsel for the appellant vehemently argued that the judgment of the learned Addl. District Judge cannot be sustained insofar as it has fixed damages @ Rs. 50,000/- p.m. It is submitted that in the plaint the plaintiff has claimed damages @ Rs. 10,000/- p.m. And, therefore, the Trial Court could not go beyond the said figure while fixing the amount of damages/mesne profits. It is true that in the plaint the plaintiff claimed damages @ Rs. 10,000/- p.m. up to the date of filing of the suit. However, it is to be noted that the plaintiff has further prayed that till such time that the possession of the suit premises is delivered to the plaintiff, the Court may hold an inquiry under Order 20 Rule 12, CPC and determine the mesne profits/damages and decree in respect thereof may also be passed. The plaintiff has also undertaken to pay the requisite Court fee on such a decree. The Trial Court has considered the evidence in this behalf and reached a conclusion that the damages/mesne profits for the premises at the relevant time ought to have been @ Rs. 50,000/- p.m. It is a premises built on a 500 sq. yds. plot in East of Kailash, New Delhi and the period under consideration is the year 1994. The learned Counsel for the respondent submitted on this aspect of the matter that the amount of mesne profits/damages may be fixed by this Court as it may be deemed proper and the decree of the Trial Court in this behalf could be modified. We have heard learned Counsel for the parties on this aspect and considered the evidence adduced. Respondent/landlord has not led any documentary evidence of the prevalent market rate of other premises in the vicinity. However, keeping in mind the prime location of suit premises, its proximity to Community Centre and commercial activity, we are of the view that a sum of Rs. 25,000/- p.m.*

would be a just and fair amount by way of damages/mesne profits from the date of institution of the suit till the delivery of the possession of the premises. The decree of the Trial Court will stand modified to this extent. The respondent will pay the decree and the requisite Court fee stamps will be deposited in the trial (sic treasury) within four weeks from today."

33. The respondents have also drawn our attention to the pronouncement of learned Single Judge of this Court in (supra) entitled Mrs. Dr. P.S. Bedi v. The Project and Equipment Corporation of India Ltd. Adverting to the several pronouncements, noticed by us hereinabove the Court answered the issue relating to damages/mesne profits as follows:

"29. Next question that arises for consideration would be at what rate the damages/mesne profits should be awarded in favor of the plaintiff and against the defendant. In this case the defendant has not vacated the premises in spite of legal notice and also particularly when the period of lease was renewed by the plaintiff. The defendant has occupied the premises without any authority of law, therefore, the plaintiff is entitled to damages/mesne profits at the market rate provided the same is not penal and unconscionable.

30. The plaintiff has produced evidence about the market rate of rent prevailing in that area at the relevant time i.e. in 1989 whereas the defendant has not produced any evidence at all. The plaintiff appearing as PW 1 in her statement has specifically stated in cross-examination that the market rate of rent of similar premises in the year 1989 was about Rs. 32/- sq. ft. She has also in this context proved a document dated 19.6.1985, Ex. PW2 Shri PC Bedi, PW 2 has also deposed about the market rent of the premises. He has brought certain lease deeds dated 22.8.1989 (Mark A)

showing the rent for the relevant period. Document Mark A dated 22.8.1989 produced during cross-examination of PW 2 is in respect of 8th floor of Hansalaya building for a flat rate of Rs. 1333 sq. ft. from 22.8.1989 to 21.8.1992. This document however cannot be taken into consideration as it has not been exhibited. However, having regard to the oral evidence of PWs 1 and 2, the document Ex. PW 1/4 and the phenomenal rise in rents in Delhi and particularly in the area where the property in suit is located, in my opinion it would be just and equitable to fix the market rate of rent for the demised premises at the rate of Rs. 25/- per sq. ft. which such premises might have fetched on 30.4.1989."'"

42. Accordingly, in the facts of the present case, once the Court has exercised its discretion to award mesne profits by relying upon the virtually uncontroverted testimony of the landlord/respondent along with the prevalent rents of similarly situated properties in the area, which had been taken judicial notice of, it cannot be said that the mesne profits awarded is, in any manner, whimsical or not based on the evidence brought on record. Since it is apparent that the mesne profits awarded by the trial Court is based on the evidence led before it, the appellant's contention that the trial Court could not have awarded mesne profits without conducting an inquiry under Order XX Rule 12of the CPC has also been rendered without any merit and is rejected. Even the decisions in ***Bachhaj Nahar (supra), Ganpathy (supra)*** and ***National Radio (supra)***, relied upon by the appellant, reiterate the settled legal position that the Courts ought to order an inquiry as per the provisions of Order XX Rule 12 of the CPC only in cases where absolutely no evidence has been led by the parties on the issue of quantum of mesne

profits to be awarded. In the present case, given that the eviden led by the respondent/landlord on the quantum of mesne profits to be awarded remained uncontroverted, I find no merit in the appellant's submission that the award of mesne profits without an inquiry was not justified. I am of the view that, in the light of the evidence on record, there is absolutely no reason to interfere with the monthly mesne profits awarded by the trial Court.

43. I may now refer to the next contention of the appellant that considering the admitted position that the respondent had, in his plaint, not claimed mesne profits at a rate higher than Rs.2,00,000/-, the trial Court could not have granted any enhancement or interest thereon; or that the award of any enhancement on the amount of mesne profits as prayed for in the plaint, amounts to granting a relief to the respondent beyond his pleadings. In my opinion, this contention of the appellant overlooks the fact that the grant of relief for future mesne profits at a rate higher than what was claimed in the plaint was, in fact, a natural consequence of the delay in adjudication of the respondent's claim for mesne profits. Merely because the respondent, in his plaint filed in April, 2000, claimed mesne profits at the rate of Rs.2,00,000/- p.m. the same would not preclude him from subsequently claiming a higher amount towards mesne profits for the period which has elapsed during the pendency of the suit, especially in cases like the instant one where the suit remained pending for over a period of 15 years. Unscrupulous parties delaying the disposal of cases is a common sight in our litigation system and even when the landlord/owner of the suit property succeeds in obtaining a decree for possession in his favour, the execution of such decree may still take a long time. It is for this reason that it is necessary for the Courts to remain mindful

of such extenuating circumstances and award reasonable mes profits, as per the prevailing market rent; the grant of enhanced mesne profits, in such circumstances, to accommodate loss of rent endured during the pendency of the suit proceedings cannot be deemed as granting relief beyond the pleadings of the parties. As noted earlier, mesne profits under section 2(12) of the CPC is a compensation which the owner is entitled to receive from the person who has been in wrongful possession of the property and the determination thereof would be based on the evidence led before the Court. A substantive right of this nature cannot be diluted on the pretext of a technicality and a landlord/owner of the suit property cannot be estopped from claiming a larger sum as mesne profits than what was claimed in the plaint. I find that the reliance placed on ***Trojan (supra)***, ***Om Prakash (supra)***, and ***Bachhaj Nahar (supra)*** by the appellants is wholly misplaced as these decisions only concern cases where the Court had granted reliefs which were not only beyond the pleadings but were neither consequential nor ancillary to the relief sought in the plaint and were, therefore, held to be impermissible.

44. The question as to whether the plaintiff can be awarded future mesne profits at a rate higher than what has been claimed in the plaint has been dealt with in various decisions of this Court. Reference, in this regard, may be made to ***Santosh Arora (supra)*** where the Division Bench of this Court held as under:-

> *"24. Section 2(12) of the CPC defines the mesne profits of property as meaning those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profit. Thus, what is to be the*

rate of mesne profits, is to be determined by evidence and is not a matter of contract.

25. The Supreme Court in Gopalakrishna Pillai Vs. Meenakshi Ayal AIR 1967 SC 155 has held:-

> *"With regard to future mesne profits, the plaintiff has no cause of action on the date of the institution of the suit, and it is not possible for him to plead this cause of action or to value it or to pay court-fees thereon at the time of the institution of the suit.."*
>
> *It is for this reason only that payment of Court Fees of future mesne profits decreed is a condition to the execution thereof and is not to be paid at the time of institution of the suit. At the time of institution of the suit and which often remain pending for long, it is not possible for the plaintiff to state as to what benefits the defendant in wrongful possession of the property would receive from time to time.*

26. The question which arises is that if the plaintiff, without even making a specific claim for future mesne profits is in law entitled thereto, as held in R.S. Madanappa & Bhagwati Prasad (supra) if makes a claim for future mesne profits at a particular rate, whether he is entitled to future mesne profits at the maximum of that rate only or if the same are determined / found to be due at a higher rate, would be entitled to such higher rate.

27. In our opinion the plaintiff in such a situation would be entitled to such higher rate since he was not obliged to make a claim for future mesne profits, not obliged to pay Court Fees thereon and could not have in any case known to future mesne profits at what rate he would be entitled to as observed by the Supreme Court in Gopalakrishna Pillai supra. Once it is held to be the duty of the Court under Order 20 Rule 12 to award future mesne profits even without a specific prayer in this regard, the specific prayer even if made by the plaintiff cannot limit the entitlement of the plaintiff to future mesne profits.

28. We find the High Court of Bombay in Nathumal Chandanmal and Co. Vs. Damodar Prabhat Sharma MANU/MH/0310/1978 to have succinctly dealt with the question as under:-

"The first question that has to be considered in this appeal is simply because the landlords in the plaint have claimed mesne-profits at the rate of Rs. 34 per month, are they precluded, when direction is given for determination of mesne-profits, from claiming a larger amount. So far as the claim for mesne-profits is concerned, it is for a period subsequent from the date of institution of the suit in the present case. Any party, however much foresight it may use, may not be able to foresee the duration of the litigation and the compensation that may be received from the premises in future after the institution of the suit in case a prudent owner is to give his property for occupation on leave and licence. Thus, merely because in the plaint the amount is restricted to the sum of Rs. 34 per month/a decree holder cannot be prevented from claiming appropriate compensation by way of mesne-profits. For claims in future it is a mere surmise on the part of the landlords, who mentioned the amount that, according to him, would be reasonable. But such mentioning of a specific amount does not deter him from claiming an appropriate amount by way of compensation towards mesne-profits, if he is in law able to establish the same."

We respectfully agree in toto with the same.

29. The Division Bench of the Calcutta High Court in Gauri Prosad Koondoo Vs. Reily ILR 9 Cal 112, High Court of Andhra Pradesh in Magunta Kota Reddy Vs. Pothula Chendrasekhara Reddy AIR 1963 AP 42 and the High Court of the Rajasthan in Prithvi Singh Vs. Pahap Singh MANU/RH/0369/2006 have also held that a plaintiff is not estopped from claiming a larger sum as mesne profits than what was claimed in the plaint.

30. The aforesaid reasoning is supported by the observations of the Supreme Court in M/s. Marshall Sons & Co. (I) Ltd. vs. M/s. Sahi Oretans (P) Ltd. (1999) 2 SCC 325 to the effect that because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural

complications; even after obtaining a decree for possession of immovable property, its execution takes long time; in such a situation, for protecting the interest of the judgment creditor, it is necessary to pass appropriate order so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

31. Reference with advantage can also be made to the judgment of the Division Bench of the Kerala High Court in Saraswathi Pillay Vs. Parameswara Kurup MANU/KE/0180/1977 reiterating as under:-

> *"It is pointed out on behalf of the 1st Defendant that the claim made in the plaint in respect of mesne profits is only at the rate of Rs. 5,000 per annum and it is contended that the decree cannot award anything more. This is to misunderstand the nature of the claim for mesne profits made in this particular case and the nature of such a claim in general. Having regard to the definition of 'mesne profits' in Section 2(12) of the Code, it is apparent that mesne profits are something which a Plaintiff cannot evaluate and which it is solely for the court to determine on the evidence before it. As in a suit for an account the Plaintiff can only mention rough figure as the amount which will be found due to him, and that is why the second paragraph of Order VII Rule 2 of the Code makes an exception to the general principle laid down in the first paragraph that in a suit for money the plaint shall state the precise amount claimed and says that when the claim is for mesne profits, or for an amount which will be found due on taking unsettled accounts, the plaint need only state approximately the amount sued for. Section 11 of the Court Fees Act, 1870 makes the position even clearer. It shows that the claim in a suit for mesne profits is only a rough estimate even if a precise amount is stated and that it is for the court to ascertain is the true amount. And this can be in excess of the amount claimed. For, it says that in suits for mesne profits or for an account, if the profits or amount decreed are in excess of that claimed, the decree shall not be executed until the*

difference in court fee is paid. In this particular case, the relief sought in respect of the mesne profits (by prayer No. 2 in the plaint is that the court should award all profits received by the Defendants from the property, both before and after the institution of the suit, at the rate estimated by the Plaintiff at 35,625 fanams (Rs. 5,000) per annum. This, it seems to us, is just what is required by Order VII Rule 2 of the Code".

32. This Court in Holiday Home Vs. R.P. Kapur HUF MANU/DE/3498/2010 has held that enquiry under Order 20 Rule 12 of the CPC is warranted only where the landlord has not been able to adduce sufficient evidence during trial; else, if sufficient evidence during trial has been led, there is no need for a separate enquiry under Order 20 Rule 12. Similarly in Kavita Gambhir v. Hari Chand Gambhir 162 (2009) DLT 459 it was held that it is in the discretion of the Court whether mesne profits are determined along with the adjudication for the relief of recovery of possession or an enquiry thereto has to be ordered after the adjudication as to the recovery of possession. Thus it is not as if the higher rate than claimed can be given only in an enquiry and not if the issue of mesne profits is decided along with the issue of recovery of possession of the premises.

33. The contention of the counsel for the respondent / plaintiff before the learned Single Judge that if the respondent / plaintiff were to amend the plaint in the first suit to enhance the rate at which mesne profits are claimed, the same would result in the Court of the learned Additional District Judge losing pecuniary jurisdiction to try the suit, causing further delays was also misconceived. The Supreme Court in Mahadeo Savlaram Shelke Vs. Puna Municipal Corporation (1995) 3 SCC 33 held that the limits of the pecuniary jurisdiction of the Court of first instance does not impede and is not a bar to award damages beyond its pecuniary jurisdiction."

45. In the present case, I find that the trial Court has granted an annual enhancement of only 10% in the mesne profits which, in my considered opinion, cannot be deemed to be arbitrary or exorbitant in any manner, especially in the light of the decisions of this Court in ***M.C. Agrawal HUF (supra)*** and ***Om Prakash Chopra (supra)***,

wherein this Court had approved an annual enhancement of 15% mesne profits. That being so, I find no infirmity in the trial Court's decision to grant an annual enhancement of 10% in the mesne profits awarded to the respondent.

46. I may now turn to the last submission of the appellant that the grant of interest on mesne profits was unjustified. This submission needs to be noted only to be rejected. In the face of the settled proposition of law that interest forms an integral part of the mesne profits and, therefore, once the Court awards mesne profits, the interest accruing thereon has to be allowed in the computation of the mesne profits itself. A tenant cannot be permitted to urge that mesne profits which in fact ought to have been paid years ago, should not bear any interest. In this regard, reference may be made to the ratio laid down in paragraphs 64 and 65 of ***Consep India (supra)*** wherein this Court, after examining the decision of the Hon'ble Supreme Court in ***State Bank of Bikaner and Jaipur v. I.S. Ratta and Ors.****120 (2005) DLT 407*, observed as under:-

> *"64. As regards the claim for interest on mesne profits, in I.S. Ratta (supra),relying upon the judgment of the Supreme Court in Mahant Narayana Dasjee Varu & Ors. vs. The Board of Trustees, the Tirumalai Tirupathi Devasthanam AIR 1965 SC 1231, it was held that interest is an integral part of the mesne profits and, therefore, the same has to be allowed in the computation of mesne profits itself. Paragraphs 16 to 18 of the said judgment are apposite and are reproduced hereunder:-*
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> > *"16. Having decided the aforesaid question in the aforesaid manner, we proceed to deal with the next contention of Counsel appearing for the appellant that the interest awarded by the learned Trial Court for the damages is unknown in law. We have given our anxious consideration to the aforesaid contention of Counsel appearing for the appellant. The said contention is however,*

liable to be rejected straightaway in view of the settled position of law in that regard in the decision of the Supreme Court in Mahant Narayana Dasjee Varu & Ors. v. The Board of Trustees, the Tirumalai Tirupathi Devasthanam, reported in AIR 1965 SC 1231. The Supreme Court in the said decision held that Section 2(12) of the CPC has defined what 'mesne profits' is. It was also held in the said judgment that interest is an integral part of the mesne profits and, therefore, the same has to be allowed in the computation of mesne profits itself. The following paragraph from the judgment is relevant to be extracted which accordingly stands quoted herein: "The last of the points urged was that the learned Judges erred in allowing interest up to the date of realisation on the aggregate sum made up of the principal and interest up to the date of the decree, instead of only on the principal sum ascertained as mesne profits. For the purpose of understanding this point it is necessary to explain how interest has been calculated by the learned Judges. Under Section 2(12) of the Civil Procedure Code which contains the definition of "mesne profits", interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. That proceeds on the theory that the person in wrong possession appropriating income from the property himself gets the benefit of the interest on such income. In the present case the Devasthanam was entitled to possession from and after June 7, 1933 i.e., when the Act came into force and the Devasthanam Committee was appointed. The Mahant having wrongfully resisted the claim of the Devasthanam to possession without surrendering the property, was admittedly bound to pay mesne profits. This, it may be stated, is not disputed. The question raised are, however, two: (1) when is the aggregation of the principal amount of the mesne profits and the interest thereon to be made for the purpose of the total carrying further interest? (2) What is the rate of interest to be charged. The learned trial Judge allowed interest at 6 per cent for the calculation of interest which is part of

mesne profits. Having calculated mesne profits on this basis he aggregated the amount of mesne profits, i.e., income from the several items of property plus the interest on it up to the date of the plaint i.e., January 10, 1946. On the total sum so ascertained he decreed interest at 6 per cent till the date of his decree i.e., March 28, 1952. He passed a decree for this sum with further interest at 6 per cent till the date of realisation."

17. The aforesaid issue is no longer res integra that interest on mesne profits could be paid. The next question, therefore, would be as to what would be the appropriate rate of interest. The learned Trial Court has awarded 16.5% p.a., interest on the rent. In the aforesaid case decided by the Supreme Court 6% interest was held to be a reasonable interest. In the said case it was held that: "In any event, if the Trial Court in its discretion awarded interest at 6 per cent, and that is admittedly not per se an unreasonable rate, there was no compelling equity in the Mahant to justify interference with that discretion."

18. Considering the facts and circumstances of the case we consider that direction to pay interest @ 16.5% p.a was on the higher side. We, in the facts and circumstances of the case, deem it proper to fix the rate of interest payable by the appellant to the respondents towards the arrears of mesne profits from the date of decree till the date of possession at 12% p.a. Ordered accordingly. The amount paid in excess shall be returned by the respondents to the appellant, failing which security furnished for restitution shall be enforced and the amount which is lying with the Trial Court amounting to Rs.40 lakhs and TDS amount of Rs.5 lakhs shall be returned to the appellant. The appeal stands disposed of in terms of the aforesaid order."

65. In the facts and circumstances, the learned trial court, in my view, has rightly held that the respondent is entitled to mesne profits at the rate of Rs.50/- per sq. ft. per month, i.e., Rs.45,000/- per month with effect from the month of November, 2005 till the vacation of the tenanted premises. As held by the Division Bench in the

> *I.S. Ratta's case (supra), interest is liable to be awarded on mesne profits. The only question, therefore, which remains to be considered is what would be the appropriate rate of interest on the mesne profits awarded by the learned trial court. The learned trial court has awarded 12% p.a. interest on the rent. Considering the facts and circumstances of the case, it is deemed appropriate to fix the rate of interest payable by the appellant to the respondent towards the arrears of rent and mesne profits @ 9% p.a. throughout."*

47. In the present case the trial Court, in its discretion, has awarded simple interest only @ 6% per annum towards the arrears of mesne profits. In the facts of the present case, where the appellant has successfully resisted the respondent's claim to get possession of his property for nineteen years even after filing the suit for possession and that too when the respondent's title to the same is undisputed, the grant of interest @ 6% per annum can neither be termed as arbitrary nor exorbitant. In my view, such interest upon mesne profits is not only fair and reasonable, but was fully justified to meet the ends of justice. Thus, I do not find any reason to interfere even with this direction of the trial Court.

48. Before I conclude, I may also refer to the appellant's plea that inasmuchas this Court, in ***M.C. Agrawal HUF (supra)*** and ***Om Prakash Chopra (supra)***, had awarded mesne profits at the rate of 15% increased rent over the contractual rate of rent, the trial Court's decision to grant mesne profits at the rate of Rs.2,00,000/- in the instant case, which is almost 300 times the contractual monthly rent of Rs.675/-, cannot be sustained. I find no merit in this submission as the aforementioned decisions bear upon cases where no evidence was led in support of the claim for mesne profits. In such cases, therefore, while dealing with instances involving lease deeds executed only about four to five years prior

to the claim for mesne profits being raised, the Court had grant an enhancement of 15% on the contractual rent as mesne profits. On the other hand, in the present case, not only was there sufficient evidence led before the trial Court on the quantum of mesne profits, but the subject lease deed itself was executed 55 years ago, during which period the area where the suit premises is situated has undergone a tremendous transformation. Therefore mesne profits accruing on the suit premises, the economic value of which has increased exponentially over recent years, cannot, in the facts of the present case, be based on the contractual rent.

49. For the aforesaid reasons, I find no merit in the appeal which is dismissed along with pending applications without any order as to costs.

50. Pursuant to the order dated 31.01.2016, the appellant has deposited the decretal amount and has further deposited on a monthly basis, after paying Rs.2,00,000/- to the respondent, the differential amount of mesne profits with the Registry of this Court, which amount has been kept in an interest bearing FDR. In view of the appeal being dismissed, the Registry is directed to forthwith release the entire amount deposited by the appellant, in favour of the respondent, with upto date accrued interest thereon.

(REKHA PALLI)
JUDGE

JULY 31, 2019/aa