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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25.02.2025

+ **RC.REV. 327/2018 & CM Appls.28461/2018, 40696/2022**

SARADA UKIL SCHOOL OF ART

.....Petitioner

Through: Mr. Alok Kumar, Sr. Adv. with Mr.
Raunak Jain and Mr. Manan Soni,
Advs.

versus

M/S REGAL TOWERS (P) LTD

.....Respondent

Through: Mr. Sidharth Yadav, Sr. Adv. with
Mr. Indresh Upadhyay, Mr. Brijesh
Upadhyay, Mr. Saurabh Kumar and
Mr. Mohd. Faraz, Advs.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM Appl.11360/2025[Seeking modification of order dated 15.01.2025]

1. This is an Application filed on behalf of the Petitioner seeking modification of the order dated 15.01.2025.
2. Learned Senior Counsel for the Petitioner submits that the Application is in nature of a review.
3. Learned Senior Counsel for the Petitioner submits that the condition of the subject premises, as can be seen from the photographs, is not very good and is in a dilapidated condition. It is contended that the contemporaneous lease deeds for other commercial premises cannot be considered given the condition of the subject premises.
- 3.1 In addition, learned Senior Counsel for the Petitioner has contended



that the Respondent has obtained the Impugned Order by playing a fraud on the Court, hence user and occupation charges should not be paid.

4. Learned Senior Counsel for the Respondent, at the outset, submits that the Application that has been supplied to him is not the Application which is before the Court and the Application supplied to him is seeking review of the order dated 15.01.2025. However, in the interest of expediency, he would make his submissions. In any event, it is submitted that no ground for review has been made out under the law by the Petitioner since this aspect of the matter has already been dealt with by this Court by its order dated 11.02.2025. Reliance is placed on paragraph 5, 6 and 6.1 of the order dated 11.02.2025 which are extracted below:

“5. Learned Senior Counsel for the Petitioner makes two submissions. In the first instance, he submits that the Petitioner is not running a commercial art school but is running a school based on a government grant and the students are nominated by the Government and the fees goes to the Government. Thus, it is contended that the venture is not strictly a commercial venture for the Petitioner. Learned Senior Counsel seeks to rely upon paragraph 4 of the Eviction Petition to submit that even as per the Respondent, the Petitioner is using the first floor for non-commercial activities.

6. The premises in issue is a property bearing No.66/1, First Floor, Janpath, New Delhi-110001 as shown in red colour in the site plan annexed with the eviction petition before the learned Trial Court [hereinafter referred to as “subject premises”].

6.1 Undisputedly, the subject premises is situated in the centre of the city which has a prime retail value.”

4.1 Learned Senior Counsel for the Respondent seeks to rely upon photographs that have been filed along with the affidavit of compliance dated 22.02.2025 to submit that condition of the subject premises as can be seen from the photographs is not what is stated to be seen in the photographs



filed by the Petitioner.

4.2 Lastly, it is contended by the learned Counsel for the Respondent that the only contention made by the Petitioner is that the subject premises is non-commercial in nature. Relying on the sale deed executed by the Delhi High Court in favour of the Respondent, it is submitted that the document clearly sets out that the subject premises are commercial premises and that the consideration of Rs. 42 crores paid by him in public auction in the year 2008 was for a commercial premises. Reliance is placed upon the provisions of Section 91 and 92 of the Indian Evidence Act, 1958, and it is stated that the document cannot be read as residential when in fact it is a commercial premises, no matter the use for which the Petitioner is using the subject premises for.

5. The record reflects that the Petition is pending from the year 2018 and despite interim protection being granted by this Court on 15.03.2024, no user and occupation charges are being paid by the Petitioner.

6. This Court has heard this matter on 15.01.2025 and 11.02.2025 as well. It is apposite to set out the following extract of order dated 15.01.2025:

“5. The present Petition has been filed on behalf of the Petitioner impugning the order dated 15.02.2018 [hereinafter referred to as “Impugned Order”] passed by the learned Rent Controller, New Delhi District, Patiala House Court, New Delhi. By the Impugned Order, an eviction order was passed on account of the fact that despite service of the Petitioner on 25.06.2014, no Leave to Defend/Contest Application was filed by the Petitioner in accordance with the provisions of the Delhi Rent Control Act, 1958 [hereinafter referred to as “DRC Act”].

6. The premises in issue is a property bearing No.66/1, First Floor, Janpath, New Delhi-110001 as shown in red colour in the site plan annexed with the eviction petition before the learned Trial Court [hereinafter referred to as “subject premises”].



7. Notice in this Petition was issued on 02.08.2018, and thereafter, on 16.08.2018, a statement was made by the Respondent that he will not seek execution of the Impugned Order. This interim protection to the Petitioner has thereafter continued until today. Subsequently, by an order passed by a Coordinate Bench of this Court on 15.03.2024, the operation of the Impugned Order was directed to remain stayed. The interim protection to the Petitioner has continued thereafter.

8. The matter is listed today for affixation of use and occupation charges.

9. Learned Senior Counsel for the Respondent submits that the order of eviction was passed on 15.02.2018, and thereafter, no use and occupation charges are being paid by the Petitioner.

10. Learned Senior Counsel for the Respondent submits that the Respondent was an auction purchaser pursuant to an auction conducted by this Court in the year 2008. Secondly, it is contended that no rental was paid by the Petitioner.

11. This contention is disputed by the learned Counsel for the Petitioner. However, what is not disputed by the learned Counsel for the Petitioner is that, after passing of the Impugned Order i.e., 15.02.2018, no use and occupation charges are being paid by the Petitioner.

12. Learned Counsel for the Respondent relies upon a registered sale deed dated 23.04.2009 filed on behalf of the Respondent, which is for a premises situated on the ground floor and mezzanine of the building in which the subject premises is situated to submit that the rental for the period from 25.06.2015 to 24.06.2018 was at the rate of Rs.562.06/- per sq. ft. per month.

12.1 It is further submitted that since the Impugned Order was passed in the year 2018, the same rental could be ascertained for the subject premises as well. In addition, it is contended that the subject premises are being utilized for commercial purposes, in as much as, the Petitioner is running an art school from there.

13. Learned Counsel for the Petitioner, in the first instance, seeks to rely upon paragraph 18(a)(ii) of the Eviction Petition to submit that the area in issue as recorded therein is 13675 sq. ft. Learned Senior Counsel for the Respondent fairly submits that that is not the area in issue and submits that the Respondent has informed him that the area of the subject premises is 2859 sq. ft.

14. Learned Counsel for the Petitioner does not dispute that the subject



premises are on the first floor and that the subject premises are being used for running an art school. It is however submitted that the art school is getting grant-in-aid from the Government to function.

14.1 Learned Counsel for the Petitioner further submits that the Petitioner is not liable to make payment of any rental since the Petitioner has challenged the existence of the relationship of landlord-tenant between the parties.

15. Learned Counsel for the Petitioner contends that the present Revision Petition should be decided first and that no use and occupation charges are payable, as stated above.

16. The contentions of the learned Counsel for the Petitioner are without merit.

17. In matters wherein a tenant endeavours to seek a stay on an eviction order, it is deemed equitable, and reasonable that said tenant be directed by the High Court to provide compensation to the landlord. This compensation serves to counter potential adverse effects suffered by the landlord due to the delay or suspension of the eviction order. This view is articulated by Supreme Court in *Martin & Harris Private Limited and Another v. Rajendra Mehta and Others* while relying on the *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* case and reads as follows:

“17. In *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* [*Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2005) 1 SCC 705], this Court held that the appellate court does have jurisdiction to put reasonable terms and conditions as would in its opinion be reasonable to compensate the decree-holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent court, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises in present and earn the profit if the tenant would have vacated the premises. **The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a later date.**”

[Emphasis supplied]

17.1 The Supreme Court in *Atma Ram* case, has laid down that once an



order for eviction has been passed against a tenant and the tenant continues in possession of the tenanted premises, such tenant is required to pay use and occupation charges to the landlord at the market rate applicable to “like” premises situated in the vicinity, until the disposal of the Petition impugning such order of eviction.

17.2 It has further been held in the Atma Ram case that this interim compensation is granted based on the discretion of Court in its judicial wisdom, to offset the detrimental effects of prolonged litigation on landlord. The relevant extract reads as follows:

“9. Robust common sense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record — all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in Olga Tellis v. Bombay Municipal Corpn. [(1985) 3 SCC 545] : (SCC p. 574, para 35)

“Common sense which is a cluster of life’s experiences, is often more dependable than the rival facts presented by warring litigants.””

[Emphasis supplied]

17.3 A similar view has been taken by the Supreme Court in the cases of State of Maharashtra and Anr. v. Super Max International Private Limited and Ors.; Sumer Corp. v. Vijay Anant Gagan & Ors. and Heera Traders v. Kamla Jain. It has also been held that in fixing the interim compensation/use and occupation charges, the Court would exercise restraint and not fix excessive, fanciful or punitive amount. However, the Appellate/Revisional Court while staying an eviction decree can direct payment of such compensation for continued use of the premises and the compensation would be at the same rate of rental at which the landlord would have been able to get if he had let out such premises after they were vacated by the tenant. It has been held that the direction to pay mesne profits or use and occupation charges, will depend on the facts and circumstances of each case including the location of the property as well as its nature whether it is a commercial or residential area.

18. Thus, the settled legal principle is that once a decree for eviction has been passed and such decree cannot be executed by the landlord in view of the fact that the Eviction Order is stayed, the tenant can be put to such terms which in the opinion of the Appellate Court would reasonably compensate



the landlord for loss occasioned by a delay in execution of the decree for possession. The tenant is liable to pay mesne profits or compensation for use and occupation at reasonable rate as prevalent in the market.

19. In the present case, concededly, the Respondent/landlord has an eviction decree in its favour that has been stayed by this Court. For this delay, the Respondent/landlord is entitled to receive use and occupation charges.

20. Concededly, the subject premises is on the First Floor in a commercial building in the heart of the city at Janpath, it is not disputed that the subject premises are being used commercially for running an art school. In fact, the name of the Petitioner itself sets out the same.

21. By an order dated 20.11.2024, this Court had directed the parties file their respective lease deeds/documents and photographs in support of their respective contentions qua use and occupation charges along with a short note. The said order has not been complied with by the Petitioner.

22. The lease deed relied upon by the learned Senior Counsel for the Respondent is for a ground floor. The subject premises are however on the first floor. The ground floor is always more expensive than the first floor. Accordingly, the rental for the subject premises is affixed at the rate of Rs.470 per sq. ft. per month. The payments shall be made for the period from 15.08.2018 onwards.

23. In view of the fact that the site plan setting out the dimensions of the subject premises is not available with the present Petition, the Registry is directed to place on record the digital copy of the Trial Court Record duly paginated and bookmarked in accordance with the rules of the High Court within three weeks.

24. The parties are at liberty to calculate the use and occupation charges and file an appropriate Affidavit, once the area of the subject premises is ascertained. The affidavit shall be filed within a period of three weeks.”

6.1 In addition, in view of the fact that no Application for leave to defend was filed by the Petitioner, the Court relied on the judgment of the *Directorate of Education & Ors. v. Mohd. Shamim & Ors.*¹ and further held:

“25. The attention of parties is also drawn to the judgment of the

¹ 2019 SCC OnLine Del 11490



Division Bench of this Court in the case of *Directorate of Education & Ors. vs. Mohd. Shamim & Ors 2019 SCC OnLine Del 11490* has held that the learned Trial Court has no power to condone the delay in case of a Leave to Defend/Contest Application being filed belatedly, however, the power does lie with this Court, provided that a twin test threshold is crossed. Firstly, the tenant is required to show that he was prevented by reasons beyond his control from applying for Leave to Defend within the prescribed time. Secondly, the tenant is to make out a substantial defence warranting consideration of the Application for Leave to Defend. The relevant extract of the order passed by the Division Bench in the *Directorate of Education* case is set out below:

“25. We, therefore, hold that merely because the Controller has passed an order of eviction in a proceeding governed under Section 25B, on failure of the tenant to, within the prescribed time, apply for leave to defend and merely because the Controller vide Prithpal Singh supra has been held to be not empowered to recall the said order, would not prevent this Court from, in exercise of powers under proviso to Section 25B(8), considering once a case for the landlord to be not entitled to an order of eviction to be deemed admission following non-filing of leave to defend within the prescribed time, the said order cannot be said to have been made according to law and would qualify as being contrary to law and liable to be set aside.

26. Having held so, we answer the question no.(A) framed in the referral order in the affirmative and with the condition that this Court would be empowered to set aside the order of eviction only if the tenant passes the dual test of prevented by reasons beyond control from applying for leave to defend within the prescribed time (as distinct from every default) and if makes out a substantial case for consideration of the application for leave to defend. We, however, in deference to Prithpal Singh supra choose/opt to not answer the question (B) framed in the referral order.

27. We answer the reference accordingly.”

[Emphasis Supplied]

25.1 Thus, the Petitioner is required to satisfy the twin tests as are set out above, to be entitled to relief from this Court.

26. The parties seek and are granted time to file their respective written synopsis, not exceeding three pages each, at least one week before the next date of hearing, along with the compilation of judgments, if any, they wish to rely upon.”

7. Given the fact that this Court had already spent substantial time on affixation of user and occupation charges, this Court deems it apposite to pass directions today, to facilitate the final hearing of this matter.

8. As stated previously, the name of the Petitioner itself reveals that he is



not using the subject premises for residential purposes but for running a school of Art. There cannot be any dispute that a school of art is a not residential use. The documents of purchase executed by the Respondent also evidence that the premises has been purchased for commercial purposes. There is also no dispute that the subject premises is situated in the centre of the city which has prime retail value, however, at the time of affixing of user and occupation charges, this Court agrees that the condition of the subject premises is also required to be looked into.

8.1 Although, the Petitioner has stated that the amount as set out in the order dated 15.01.2025 is not the correct amount, however the learned Counsel for the Petitioner is unable to assist the Court with lease deeds of properties situated in the vicinity of the subject premises showing a lesser amount. The only argument that has been raised by the learned Counsel for the Petitioner is that the subject premises is old and that the first floor “does not have permissible commercial use”. This averment is without merit. There is no dispute that the subject premises is a commercial building at Janpath, New Delhi-110001 and the permitted user of this area by the authorities is for commercial use. This Court has already dealt with this aspect of the matter in terms of order dated 15.01.2025 which is extracted above.

9. It is not disputed that the Petitioner is enjoying the interim protection as granted by this Court on 15.03.2024 and that the Petitioner has been in continuous occupation after the expiry of statutory period of six months as provided under Section 14(7) of the Delhi Rent Control Act, 1958 from the date of the Impugned Order which was passed on 15.08.2018.



10. This Court has examined the Application filed by the Petitioner and the documents filed. As stated in paragraph 4 and 4.1 above, the averments in this Application were also made in the previous hearing and have been dealt with by the Court in its order dated 11.02.2025.

10.1 So far as concerns the contentions of the Petitioner on the merits of the case, the Petitioner is required to, in the first instance, cross the hurdle *qua* in the *Directorate of Education* case, as is set out above.

11. The Supreme Court in *Martin & Harris Private Limited and Another v. Rajendra Mehta and Others*² case has while discussing the factor involved in ascertaining user and occupation charges/damages, this Court has to examine the place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential area and the rate of rent precedent on which premises can be let out. The relevant extract is set out below:

“19. The basis of determination of the amount of mesne profits, in our view, depends on the facts and circumstances of each case considering the place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential area and the rate of rent precedent on which premises can be let out are the guiding factor in the facts of individual case.”

[Emphasis Supplied]

12. No doubt, the condition of the subject premises is not as a brand new one, however the Court is required to keep in mind the location of the subject premises as well. The contemporaneous lease deeds of the area filed by the Respondent (as discussed above) are for a rental at the rate of Rs. 562.06/- per sq. ft. per month.

² (2022) 8 SCC 527



13. Both parties have filed their respective affidavits in compliance in terms of order dated 15.01.2025. The affidavit of the Petitioner sets out that the subject premises admeasures 3130 sq. ft. while the affidavit of the Respondent sets out that the subject premises admeasures 3369 sq. ft., thus the difference in the two measurements is approximately 200 sq. ft.

14. Keeping in mind the contentions of the Petitioner on the condition and use of the subject premises, this Court deems it apposite to reduce the user and occupation charges as affixed on 15.01.2025 from Rs. 470 per sq. ft. to Rs. 400/- per sq. ft. per month.

15. The Application is accordingly disposed of.

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16. The order is in continuation of the orders passed on 15.01.25 and 11.02.25. In view of what has been discussed above, this Court deems it apposite to affix user and occupation charges in the sum of Rs. 13,50,000/- per month for the present.

17. Accordingly, without prejudice to the rights and contentions of the parties, the following directions are passed:

(i) The user and occupation charges for the period commencing from 15.08.2018 to 31.03.2022 shall be paid by the Petitioner at the rate of Rs.9,50,000/- per month;

(ii) The user and occupation charges for the period commencing from 01.04.2022 to 28.02.2025 shall be paid by the Petitioner at the rate of Rs.11,00,000/- per month;



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(iii) The user and occupation charges from 01.03.2025 onwards, shall be paid by the Petitioner at the rate of Rs.13,50,000/- per month, on or before 7th day of each calendar month directly to the Respondent;

(iv) The payment of user and occupation charges as set out in (i) and (ii) above shall be made by the Petitioner in three quarterly instalments payable on 31.03.2025, 30.06.2025 and 30.09.2025 and deposited with the Registry of this Court.

18. All payments as set out in para 17(ii) above, shall be made into the bank account of the Respondent. The details of the bank account shall be provided by the learned Counsel for the Respondent to the learned Counsel for the Petitioner on his email address within two days.

19. It is clarified that these user and occupation charges as affixed hereinabove are subject to the final outcome of the present Petition.

20. The Respondents shall file an Undertaking by way of an Affidavit before the Court within a period of one week which shall state that in the event of the Petitioner succeeding in the present Petition, the payments of the user and occupation charges as directed hereinabove, shall be restored to the Petitioner.

21. Subject to the payment of user and occupation charges by the Petitioners, the interim protection granted by this Court on 15.03.2024 shall continue till the next date of hearing. In the event that there is any default in the payment of use and occupation charges on behalf of the Petitioner, interim protection as granted by this Court on 15.03.2024 shall automatically stand dissolved.



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22. The parties once again seek and are granted time to file their respective written synopsis, not exceeding five pages each, at least one week before the next date of hearing, along with the compilation of judgments, if any, they wish to rely upon.
23. List for hearing on 23.07.2025 at 3:45 PM.
24. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 25, 2025/r

Click here to check corrigendum, if any