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

Date of decision: 20th FEBRUARY, 2025

IN THE MATTER OF:

\+   **CS(COMM) 494/2016**

AR. JAI KUMAR MEERANI .....Plaintiff

Through: Mr. Jai Sahay Endlaw, Mr.Ashutosh Rana, Advocates

versus

PUNJAB NATIONAL BANK ...Defendant

Through: Mr. Rajesh Katyal, Mr. S S Katyal, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present suit was initially filed by the Plaintiff for recovery of Rs.1,48,64,343/- and for specific performance of agreement of lease deed in respect of property bearing No.16-B/1, Desh Bandhu Gupta Road, Dev Nagar, New Delhi admeasuring 3872 sq. ft (hereinafter referred to as "tenanted premises"). This suit has been filed seeking the following reliefs:-

> *"(i) For Specific Performance of Lease aforesaid by directing and commanding the Defendant to execute and register the lease deed as per Annexure "A" to the Plaint and which has already been engrossed on the Stamp Papers of the appropriate value and to pay the amount of security deposit with interest thereon @24% per annum from August, 2002 till date of payment and to pay future rent to the Plaintiff in terms of the said lease agreement.*
>
> *(ii) For recovery of Rs. 1,48,64,343/- together with*

future interest on the said amount at the rate of 18% per annum, to be compounded quarterly from the date of institution of the suit and till the date of payment.
(iii) Costs of the Suit be also awarded to the Plaintiff.

AND / OR

(iv) Such other and further order(s) may be passed as may be deemed fit and proper in the facts and circumstances of the case."

2. Since the period of lease was over, this Court *vide* Order dated 04.05.2004 appointed a Local Commissioner to visit the tenanted premises and prepare an inventory of the goods, if any, lying in the premises and ascertain the position and status of the suit premises. The Local Commissioner was also asked to receive the keys to the premises from the tenant/Defendant and to hand over the vacant possession of the suit premises to the landlord/Plaintiff. Following the directions of this Order, the possession of the vacated premises was handed over to the Plaintiff on 06.05.2004 in the presence of the Local Commissioner. Thereafter, the Plaintiff moved an application under Order VI Rule 17 CPC seeking amendment of the plaint which was allowed by this Court vide Order dated 26.04.2006. Therefore, after the amendment, the suit of the Plaintiff was turned into a suit simplicitor for a recovery of Rs.1,75,56,334/-.

3. Shorn of unnecessary details, the facts as narrated in the plaint are as follows:-

a. The tenanted premises was let out to the Defendant by erstwhile owners namely Sh. O. P. Chopra and Sh. Dharamvir Khattar vide a lease deed dated 18.03.1986 at a monthly rent of Rs.29,396/- for a period of five years commencing from

01.01.1986, with the option of continuing the lease for a further period of five years along with an increase of 15% on the last paid rent.

b. The erstwhile owners sold the property/tenanted premises vide a Sale Deed dated 26.06.1986 to the Plaintiff along with seven other people who then, became the owner of the tenanted premises.

c. On 01.01.1991, the Defendant exercised the option of renewal of lease for another five years. Therefore, the monthly rent was increased from Rs.29,396/- to Rs.33,805/-.

d. On 19.09.1995, the Plaintiff wrote a letter to the Defendant communicating to the Defendant that the lease deed would be expiring on 31.12.1995 and that if the Defendant wishes to continue occupying the tenanted premises it could do so on fresh terms and conditions approved by the Plaintiff.

e. On 14.09.1995, the Defendant/Bank wrote to the Plaintiff conveying its intention to continue the lease of the tenanted premises and stated that it was ready to discuss the fresh terms and conditions of the new lease deed and further informed that it will be referring the matter to its Zonal Office for necessary instructions for renewal of the lease.

f. On 17.10.1995, the Defendant/Bank wrote another letter to the Plaintiff conveying its intention to execute a fresh lease deed and informed that the increase in rent will be discussed in a joint meeting.

g. On 08.11.1995, the Plaintiff wrote a letter informing the

Defendant of the market rent prevalent at that time and told the Defendant that the meeting would be fixed soon so that details of the execution of the fresh lease deed could be finalized.

h. On 13.12.1995, the lease of the Defendant expired by efflux of time.

i. On 15.02.1999, the Plaintiff along with seven co-owners of the tenanted premises entered into a Memorandum of Understanding whereby the seven co-owners of the tenanted premises decided to relinquish their shares in favour of the Plaintiff for a sum of Rs.40 lacs in total to be divided among the seven co-owners

j. The Defendant continued to be in possession of the tenanted premises even after the expiry of the lease deed on 31.12.1995 on the pretext of negotiations on the question of the rent payable under the new lease deed. The Defendant did not pay any rent whatsoever. On 21.06.2001, the Plaintiff wrote another letter to the Defendant stating that the Defendant is stalling renewal of the lease deed. It has been further contended that the Defendant/Bank has been in unauthorized occupation of the tenanted premises without payment of rent since 31.12.1995.

k. On 27.06.2001, the Defendant/Bank issued a certificate stating that the Plaintiff along with other co-owners of the tenanted premises are the landlords and that after expiry of lease on 31.12.1995, it has issued a cash order of Rs.33,805/- p.m. starting from 01.01.1996 till date i.e 27.06.2001 which

comes to Rs.22,31,120/- i.e. up to the Month of June, 2001. The certificate also mentions that the amount of rent will be changed after the negotiations are complete.

l. Around January, 2002 a negotiated settlement was reached between the Plaintiff and the Defendant Bank through its General Manager Sh. P. L. Madan acting under the aegis of Managing Director Sh. S. S. Kohli whereby the Defendants agreed to pay a sum of Rs.1,20,032/- p.m. as monthly rent starting from 01.01.1996.

m. On 26.04.2002, the Defendant Bank sent a letter to the Plaintiff for renewal of lease with the enhanced rent and attached along with it the draft lease which showed the monthly rent to be of Rs.1,20,032/- for a period of five years commencing from 01.01.2001 till 31.12.2005.

n. On 22.05.2002, the Defendant Bank sent another letter in furtherance of its aforesaid letter dated 26.04.2002 for renewal of lease deed and enhancement of rent and attached along with it the final draft of the lease deed which showed the monthly rent to be of Rs.1,20,032/- for a period of five years commencing from 01.01.2001 till 31.12.2005.

o. Thereafter, the Defendant Bank purchased the stamp paper of Rs.28,810/- for the purpose of execution of the lease deed and the terms agreed between the parties were engrossed on the stamp papers and the photocopy of the said lease deed was handed over to the Plaintiff.

p. It was agreed between the Plaintiff and the Defendant

that the monthly rent of Rs.1,20,032/- will be paid from the expiry of the lease deed i.e. 31.12.1995. The Defendant mentions the period of lease deed commencing from 01.01.2001 till 31.12.2005 to save money on stamp duty. In pursuance of the same the Defendant issued a certificate dated 20.08.2002 acknowledging its liability of rent of Rs.1,20,032/- p.m. However, the period from which the rent is due i.e. from 01.01.1996 was not mentioned but a lump sum of Rs.49,00,000/- approx. was acknowledged as due towards rent.

q. The Defendant after all the aforesaid facts and circumstances still did not execute and register the final lease deed in favour of the Plaintiff. Hence the present suit.

4. The Defendant filed its written statement to the amended plaint wherein *inter alia* it is stated that

i. the relief sought in the suit is barred by limitation,

ii. the suit filed by the Plaintiff is bad for non-joinder of the parties,

iii. there was never any agreement between the parties wherein the Defendant agreed to pay a sum of Rs.1,20,032/- p.m. w.e.f. 01.01.1996,

iv. the certificate dated 20.08.2002 given by the Defendant to the Plaintiff was not on account of arrears of rent but was instead for the Plaintiff to show his financial status for admission to a foreign university which the Plaintiff's son was to attend,

v. the negotiations between the parties for terms and conditions of the lease could not fructify on account of Plaintiff's failure to

provide ownership details of all the co-owners of tenanted premises.

5. The Plaintiff filed his replication denying the above averments.

6. The Court vide Order dated 29.05.2007 framed the following issues:-

> *"1. Whether the plaintiff is entitled to receive a sum of Rs.1,75,56,334/- from the defendant as claimed in the suit? OPP*
>
> *2. Whether the plaintiff is entitled to interest as claimed or interest at any other rate, if so, for what period? OPP*
>
> *3. Whether the suit is barred by limitation? OPP*
>
> *4. Whether the suit is bad for non joinder of necessary parties? OPP*
>
> *5. Whether the certificate dated 20th August, 2002 issued by the defendant*
> *was not binding on the defendant? OPD*
>
> *6. Whether the rent agreed between the parties was @ Rs.1,20,032/- per month with effect from 1.6.1996? OPP*
>
> *7. Relief."*

7. Thereafter, the Plaintiff led his evidence by examining himself as PW-1. The Defendant examined Sh. R. K. Gupta, Senior Manager of Defendant Bank from 1996 to May 2004 as DW-1 and Sh. V. K. Parashar, Senior Manager, Punjab National Bank as DW-2.

8. The learned Counsel for the Plaintiff submits that a sum of Rs.1,75,56,334/- is due and payable from the Defendant Bank from 01.01.1996 till 31.05.2004 which is from the period of expiry of lease deed

on 31.12.1995. The break-up of that amount is as under:-

TABLE A

Towards rent @ Rs. 1,20,032/- from 1.1.1996 to 31.3.2003	*Rs. 1,04,784/-*
Towards simple interest on arrears of rent @ 18% per annum from the month, when the rent fell due and till 31.3.2003	*Rs. 68,92,237/-*
Less the amount paid by the Defendant to the Plaintiff	*Rs. 24,70,678/-*
Total ('A')	*Rs. 1,48,64,343/-*

TABLE B

Towards rent for the period 1.4.2003 to 31.5.2004 at the rate of Rs. 1,20,032/- per month for 14 months	*Rs. 1,20,032x14* *= Rs. 16,80,448/-*
Towards simple interest on arrears of rent @ 18% per annum from the month when the rent fell due till 31.3.2005	*Rs. 4,41,126/-*
Towards outstanding Water Charges payable to the Municipal Corporation	*Rs. 51,902/-*
Towards outstanding Electricity Charges payable to the Municipal Corporation	*Rs. 15,739/-*
Towards six months' notice period rent in terms of the Agreement of January 2002	*Rs. 7,20,192/-*
Towards damages caused by the Defendant to the Tenanted Premises and cost of repair and restoration thereof	*Rs. 2,19,176/-*
Total	*Rs. 31,28,583/-*
Less TDS on amount of Rs. 29,07,270 received from the Defendant	*Rs. 4,36,592/-*
Total ('B')	*Rs. 26,91,991/-*

TABLE C

Total ('A')	*Rs. 1,48,64,343/-*

Total ('B')	*Rs. 26,91,991/-*
Grand Total	*Rs. 1,75,56,334/-*

9. The Plaintiff further submits that the Defendant has acknowledged that the lease deed has expired and the Bank had conveyed its intention to execute a fresh lease deed for the tenanted premises. The learned Counsel contends that from 01.01.1996, the Defendant Bank was in unauthorized occupation of the tenanted premises. The Plaintiff also submits that the rate of rent was agreed at Rs.1,20,032/- which was acknowledged by the Defendant *vide* its letters dated 26.04.2002 and 22.05.2002. The Defendant Bank *vide* said letters had informed the Plaintiff that they are ready to execute the new lease deed and had sent the final draft of the lease deed attached with these letters. The rate of rent in the draft lease deed was agreed as Rs.1,20,032/- per month w.e.f. 01.01.2001 till 31.12.2005. The learned Counsel for the Plaintiff further submits that the Defendant had also purchased the stamp papers of Rs.28,810/- for the purpose of execution of the lease deed and the photocopy of the typed lease deed engrossed on the stamp papers was handed over to the Plaintiff. The Plaintiff also submits that a certificate dated 20.08.2002 was issued by the Defendant Bank which mentions that the Defendant Bank in order to save the stamp duty showed the period of lease deed commencing from 01.01.2001 till 31.12.2005. However, since it was agreed between the Plaintiff and the Defendant that the monthly rent of Rs.1,20,032/- will be paid from the expiry of the lease deed i.e. 31.12.1995, the Defendant issued the certificate acknowledging its liability of rent of Rs.1,20,032/- p.m. but did not mention the period from which rent was due i.e. 01.01.1996 instead a sum of Rs.49.00 lacs was

acknowledged as due towards rent. The learned Counsel for the Plaintiff submits that as per the lease deed dated 16.03.1986, the tenanted premises was to be handed over in the same condition in which it was taken on rent by the bank hence a sum of Rs.1,75,56,334/- is due with respect to the rent, outstanding charges for utility as well as restoration of the damage caused by the Defendant. The Plaintiff submits that the rate of interest should be @18% p.a. compounded quarterly as it was a commercial transaction and the interest payable thereon has to be at a commercially viable rate. The Plaintiff further submits that the rate of interest levied on the amounts found due in the present case is also to be in the nature of punitive damages as the Defendant has attempted to delay the payment of the Plaintiff by prolonging the litigation for more than two decades. The Plaintiff submits that the Defendant in its written statement has admitted the fact that the Defendant Bank was in continuous touch with the Plaintiff with regard to the execution of the fresh lease deed with respect to the tenanted premises. The Plaintiff further submits that the certificate dated 20.08.2002 is proof of the fact that the Defendant is acknowledging its liability of the rent of Rs.1,20,032/- per month. The Plaintiff states that as per the settled principle of law, an acknowledgement of rent due from one party to another has the effect of extending the limitation period within which the said amount can be claimed therefore the suit is not time-barred. The Plaintiff submits that it is not necessary to implead other co-owners/landlords as the Plaintiff produced proof of his sole ownership of the property in question and there was no time limit fixed by the Defendant for the Plaintiff to produce the records of his sole ownership, the Plaintiff filed the relinquishment deed as soon as it was prepared, executed and registered. The Plaintiff submits that the

Defendant in his written statement has stated that the Plaintiff was asked by the Defendant to produce the proof of sole ownership which the Plaintiff failed to do so. But it was only on 26.04.2002 that the Defendant Bank for the first time had asked the Plaintiff for proof of his sole ownership with respect to the property in question and the Defendant Bank has not produced any document to show that it had asked for proof of sole ownership from the Plaintiff.

10. *Per contra*, the Defendant contends that the Defendant Bank has been a lawful tenant in respect of basement floor, ground floor and the first floor having a total carpet area of 3872 sq. ft. of property No.16-B/1, Desh Bandhu Gupta Road, Dev Nagar, New Delhi and has been paying rent @Rs.33,805/- per month to the Plaintiff. The Defendant contends that the Plaintiff alone was/is not the owner of the suit property and there are eight co-owners/landowners of the suit property. The Defendant further contends that it sent letters dated 14.09.1995 and 17.10.1995 to the Plaintiff for visiting the branch for negotiation with full proof of sole ownership of the Plaintiff in respect of the suit property but the Plaintiff failed to comply with the same. The Defendant Bank contends that four more letters dated 02.02.2002, 26.04.2002, 22.05.2002 and 22.08.2002 including other letters were sent to the Plaintiff to show proof of ownership but the same was not produced therefore, the matter was delayed on account of non-production of required documents. The Defendant also contends that there have been talks and negotiations between the Plaintiff and Defendant Bank which took a long time of about 6-7 years to finalize the rent. It is further contended that the terms and conditions of the proposed lease deed were discussed between the parties and the defendant submitted letter dated 22.05.2002 as approved

by its authorities for execution/registration and the same was agreed to by the Plaintiff. The Defendant contends that the Plaintiff prepared the relinquishment deeds and filed the said copies of the relinquishment deeds dated 17.06.1999, 03.04.2001, 04.05.2001, 05.06.2002 and 06.08.2002 executed by the respective co-owners in favour of the Plaintiff which indicates that the Plaintiff was not the exclusive owner of the property till 06.08.2002. The Defendant Bank contends that it has been paying rent at the rate of Rs.33,805/- p.m. to the Plaintiff and others in the form of cash orders. The Defendant Bank submits that it never agreed to pay rent at the rate of Rs.1,20,032/- p.m. w.e.f. 01.01.1996. The Defendant Bank further submits that due to failure of proof of sole ownership by the Plaintiff, a doubt was created therefore the Defendant Bank dropped the idea of execution of the new lease deed in respect of the tenanted premises and decided to vacate the premises. The Defendant Bank contends that the lease deed was prepared by the Plaintiff without the consent of the Defendant Bank. The Defendant Bank contends that vide letter dated 23.01.2004, it informed the Plaintiff that the bank has decided to surrender the premises and the premises will be vacated on 31.01.2004 and the Plaintiff was called upon to take possession on 01.02.2004 against receipt. The Defendant Bank also served a legal notice dated 12.02.2004 and further notice dated 27.02.2004 through its Advocate requiring the Plaintiff to take possession of the vacated tenanted premises but the Plaintiff avoided the same. The Defendant Bank contends that with regard to the certificate dated 20.08.2002 the certificate was issued in good faith by the Defendant Bank on the pretext that the son of the Plaintiff was going abroad for studies for which the Plaintiff required the certificate to show his financial status for submission to the foreign

university, the certificate is now being misused by the Plaintiff. The Defendant Bank further submits that this document cannot be construed as admission of enhanced rate of rent on behalf of the Defendant. The Defendant Bank contends that it has used the tenanted premises for about 18 years therefore there has been normal wear and tear and in view of the report of the Local Commissioner, there has been no substantial damage. The Defendant contends that the suit is liable to be dismissed as it is based on a draft lease deed which was never approved or singed by the Defendant Bank and it is time barred.

11. Heard the learned Counsels for the parties and perused the material placed on record.

12. Section 2(12) of Code of Civil Procedure, 1908 defines *mesne profits* which reads as under:-

> *"**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."*

13. The landlord is entitled to the *mesne profits* against a tenant who continues to stay in the tenanted premises after the termination of the tenancy. It is now well accepted that the amount which a landlord is entitled to receive on the termination of tenancy is the amount which the premises can fetch if let out on rent during the period of its illegal occupation by the tenant.

14. The rent which the premises can fetch during the period of the illegal

occupation by the erstwhile tenant is a fact which can be easily demonstrated in a suit for possession and *mesne profits* against the tenants by leading evidence. In the present case, the Plaintiff has not led any evidence with respect to rent of similar premises within the locality. The Apex Court in ONGC v. Saw Pipes Ltd., **(2003) 5 SCC 705** has held that if it is possible to calculate the loss on account of breach of contract then reasonable damages can be awarded.

15. Even though the Plaintiff has not led evidence with respect to the rent of similar premises of the locality that does not mean that the Plaintiff would not be entitled to any *mesne profits* on account of the Defendant who was staying on the premises after the termination of the lease. The Defendant continued as a month to month tenant and was liable to pay rent. In the opinion of this Court, the Defendant was liable to pay rent over and above the contractual rate of rent as the rent agreement had itself stipulated an increase after the expiry of the period of the rent.

16. A five-Judges Bench of the Apex Court in Fateh Chand v. Balkishan Dass, **AIR 1963 SC 1405**, has observed as under:-

> *"**10**. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach and (ii) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems*

reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damage"; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.

11. *Before turning to the question about the compensation which may be awarded to the plaintiff, it is necessary to consider whether Section 74 applies to stipulations for forfeiture of amounts deposited or paid under the contract.* ***It was urged that the section deals in terms with the right to receive from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however, no warrant for the assumption made by some of the High Courts in India, that Section 74 applies only to cases where the, aggrieved party is seeking to receive some amount on breach of contract and not to cases where upon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty" comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or***

delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture. *We may briefly refer to certain illustrative cases decided by the High Courts in India which have expressed a different view.*

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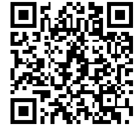
14. *In these cases the High Courts appear to have concentrated upon the words "to be paid in case of such breach" in the first condition in Section 74 and did not consider the import of the expression "the contract contains any other stipulation by way of penalty", which is the second condition mentioned in the section. The words "to be paid" which appear in the first condition do not qualify the second condition relating to stipulation by way of penalty. The expression "if the contract contains any other stipulation by way of penalty" widens the operation of the section so as to make it applicable to all stipulations by way of penalty, whether the stipulation is to pay an amount of money, or is of another character, as, for example, providing for forfeiture of money already paid. There is nothing in the expression which implies that the stipulation must be one for rendering something after the contract is broken.* ***There is no ground for holding that the expression "contract contains any other stipulation by way of penalty" is limited to cases of stipulation in the nature of an agreement to pay money or deliver property on***

breach and does not comprehend covenants under which amounts paid or property delivered under the contract, which by the terms of the contract expressly or by clear implication are liable to be forfeited.

***15**. Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties pre-determined, or where there is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract predetermining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression "to receive from the party who has broken the contract" does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having regard to the conditions existing on the date of the breach.*

***16**. There is no evidence that any loss was suffered by the plaintiff in consequence of the default by the defendant, save as to the loss suffered by him by being kept out of possession of the property. There is no evidence that the property had depreciated in value since the date of the contract provided; nor was there evidence that any other special damage had resulted.*



> *The contact provided for forfeiture of Rs 25,000 consisting of Rs. 1039 paid as earnest money and Rs 24,000 paid as part of the purchase price. The defendant has conceded that the plaintiff was entitled to forfeit the amount of Rs 1000 which was paid as earnest money. We cannot however agree with the High Court that 13 percent of the price may be regarded as reasonable compensation in relation to the value of the contract as a whole, as that in our opinion is assessed on an arbitrary assumption. The plaintiff failed to prove the loss suffered by him in consequence of the breach of the contract committed by the defendant and we are unable to find any principle on which compensation equal to ten percent of the agreed price could be awarded to the plaintiff. The plaintiff has been allowed Rs 1000 which was the earnest money as part of the damages. Besides he had use of the remaining sum of Rs 24,000, and we can rightly presume that he must have been deriving advantage from that amount throughout this period. In the absence therefore of any proof of damage arising from the breach of the contract, we are of opinion that the amount of Rs 1000 (earnest money) which has been forfeited, and the advantage that the plaintiff must have derived from the possession of the remaining sum of Rs 24,000 during all this period would be sufficient compensation to him. It may be added that the plaintiff has separately claimed mesne profits for being kept out possession for which he has got a decree and therefore the fact that the plaintiff was out of possession cannot be taken, into account in determining damages for this purpose. The decree passed by the High Court awarding Rs 11,250 as damages to the plaintiff must therefore be set aside."*
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> (emphasis supplied)

17. A Coordinate Bench of this Court while calculating damages in case of a tenant overstaying in the premises in <u>M/s M. C. Agarwal HUF v. M/s</u>

Sahara India & Ors., **2011 SCC OnLine Del 3715,** has observed as under:-

> *"**14**. What is now therefore to be determined is that what should be the mesne profits which should be awarded to the landlord in the absence of any evidence having been led by the landlord with respect to the rents prevalent in the area. Though it has not been argued on behalf of the landlord, I would like to give benefit to landlord of various precedents of this Court and the Supreme Court which take judicial notice of increase of rent in the urban areas by applying the provisions of Sections 114 and 57 of the Evidence Act, 1872. In my opinion, considering that the premises are situated in one of the most centrally located commercial localities of Delhi, situated in Connaught Place, an increase of 15% every year should be awarded (and nothing has otherwise been shown to me for the increase to be lesser) during the period for which the tenants have over stayed in the tenanted premises. Putting it differently, for the first year of illegal occupation, the tenant will pay 15% increased rent over the contractual rent. For the second year of illegal occupation, 15% increase will be over the original contractual rent plus the additional 15%. It will be accordingly for all subsequent years of the illegal occupation till the premises were vacated on 3.4.2005. I rely upon and refer to a Division Bench judgment of this Court in the case of S. Kumar v. G.R. Kathpalia, 1999 RLR 114, and in which case the Division Bench has given benefit to the landlord and has taken judicial notice of increase in rent, and has accordingly allowed mesne profits at a rate higher than the contractual rate of rent.*
>
> ***15**. On the issue with respect to whether the landlord is entitled to mesne profits till date*

because as per the landlord the entire premises have not yet been given back to the landlord, I note that the argument of the landlord is that about only 60% of the tenanted premises have been delivered back but 40% has not been delivered back and which aspect has been however very vehemently disputed by the counsel for the tenants. I hold that this is an issue with respect to execution of a decree i.e. whether the possession of the complete premises has been delivered to the landlord or not and if it is found in execution that what was delivered to the landlord on 3.4.2005 was not the complete premises, then, if such a finding is arrived at by the Executing Court the landlord at that stage will be entitled to his remedies. So far as present case is concerned, the issue is only with regard to validity of the decree for possession and I am confirming the decree for possession with respect to the entire suit premises/tenanted premises.

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***19**. In my opinion, there cannot be any estoppel against the statute. A lease can be created for a period of three years, on the right having been exercised for an option of extension of a lease for three years only if there is executed and registered an instrument as the same is legally necessary by virtue of Section 107 of Transfer of Property Act, 1882 read with Section 17(1)(b) and (d) of the Registration Act, 1908. If there is no registered lease deed for a fixed period of three years, then, the tenant continues to stay in the premises, not because of any relationship of landlord and tenant pursuant to a lease of three years but only as an unauthorized occupant after the expiry of lease period by efflux of time.*

> *I therefore do not agree with the argument of the learned counsel for the tenants and I hold that since in this case tenancy expired by efflux of time on 30.11.2000 and the suit was filed on 3.4.2001, clearly, the tenant would become liable to pay mesne profits from 1.12.2000."*

18. The Plaintiff is claiming arrears of rent from 01.01.1996 to 31.05.2004 along with interest for the same. It is an admitted position that the lease deed did expire on 1995 by efflux of time. It is also admitted that the Defendant did show interest to continue in the tenanted premises. It is also an admitted position that negotiations were going on between the parties.

19. Exhibit P-15, is the covering letter dated 22.05.2002 sent by the Defendant to the Plaintiff with the copy of the draft lease deed. The draft lease deed which is marked as PW1/10, which has been sent by the Defendant, does show that the lease deed is being executed for a term of five years from 01.01.2001 to 31.12.2005 and the Defendant had agreed for taking the premises on rent @ Rs. 31/- per sq. ft. per month for the total carpet area of 3,872 sq. ft. amounting to Rs. 1,20,032/- per month.

20. The Defendant was in occupation of the premises from 1995 till 2004. As per the terms of the contract, the Defendant was to handover the vacant possession but the Defendant has not handed over the vacant possession of the premises in question. Negotiations were going on between the parties. Exhibit P-9, which is a letter dated 20.08.2002 was issued by the Senior Manager of the Defendant Bank indicating the amount due and payable by the Defendant, which was sent after the letter dated 22.05.2002 by which draft lease deed was exchanged between the parties. Material on record also indicates that a sum of Rs.49 lakhs was due to the Plaintiff on account of

rent @ Rs.1,20,032/- by the Defendant Bank as on 20.08.2002. This letter has been admitted by the Defendant.

21. The Senior Manager is an employee of the Defendant Bank. There is admission on the part of the Senior Manager of an amount due and payable to the Plaintiff. Even though DW-1 and DW-2 have stated that the decision on rent had yet not been taken but looking at the draft lease deed which had been sent by the Defendant to the Plaintiff showing the figure of rent coupled with the certificate of the Senior Manager of the Bank does give an indication that the Bank had accepted the rent @ Rs.1,20,032/- per month at the relevant point of time. A feeble attempt has been made by the learned Counsel for the Defendant to state that the Branch Manager did not have any authority to give such a certificate and that the said certificate was given at the instance of the Plaintiff who wanted a certificate for his son's admission but that argument does not cut ice. The negotiations were going on between the parties from 1995 to 2002, which is a period of seven years. The Bank has admitted that it is continuing in possession even after the letter dated 22.05.2002 by which draft lease deed was exchanged between the parties which means the Defendant Bank was accepting its liability to pay rent. Therefore, the Bank has to compensate the Plaintiff for the occupation of the premises in question. The Plaintiff has not given any evidence to show what was the rent which was prevalent in the area from 1995 to 2002. The only material that is before this Court is the draft lease deed.

22. In view of the certificate and in view of the draft lease deed, this Court is of the opinion that the Plaintiff is definitely entitled to rent @ Rs.1,20,032/- p.m. at least from 01.01.2001 till 31.01.2004 which comes to about Rs.44,41,184/-. The figure given in the certificate letter dated

20.08.2002 is 49,00,000.

23. The plea of the Defendant that the claim is time barred cannot be accepted. The fact that the certificate letter dated 20.08.2002 does amount to acknowledgement of liability by the Defendant Bank coupled with the fact that the Bank was in the process of negotiating with the Plaintiff shows that the Bank itself has acknowledged that it has liability which gets extended by its admission.

24. In light of the above, the Plaintiff is entitled to rent from the date of termination of tenancy on 01.01.1996 upto 31.12.2000 as well. The fact that the lease deed came to an end does not mean that the tenancy will come to an end. The Defendant will become a month-to-month tenant liable to pay rent on the tenanted premises. The rent from 01.01.1996 up to 31.01.2004 would, therefore, come to Rs.1,16,43,104/-.

25. The contention of the Defendant that since there was a dispute as to whom the rent was to be paid, and therefore the rent was not paid to the Plaintiff cannot be accepted. The rent was to be paid as per the agreement. In any event, the Plaintiff was entitled to receive rent on his behalf and on behalf of other owners of the property. This issue need not be considered by the Court as by the end of 2002, all other co-owners have relinquished their shares in favour of the Plaintiff. This Court is only directing the Defendant to pay rent which is a measure of mesne profit for user and occupation charges from 01.01.1996 till the vacation of the suit property which they are obliged to pay and the Plaintiff is entitled to under law. Over and above, the said amount, the Plaintiff would also be entitled to various other amounts as prayed for in the plaint being outstanding water charges @ Rs. 51,902/- and electricity charges @ Rs.15,739/-.

26. This Court is, therefore, inclined to pass a decree in favour of the Plaintiff for the sum of Rs.1,17,10,745/- rent towards the user and occupation charges of the premises on 01.01.1996 till 31.01.2004 plus other amounts as prayed for. The Plaintiff will be entitled to interest @ 9% p.a. from the date of filing of the suit till the date of payment.

27. Let the decree sheet be drawn up accordingly.

28. The suit is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 20, 2025
RJ/hsk