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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 327/2018, CM APPL. 28461/2018, CM APPL.**
40696/2022 & CM APPL. 2253/2025

SARADA UKIL SCHOOL OF ARTPetitioner

Through: Mr. Raunak Jain, Advocate.

versus

M/S REGAL TOWERS (P) LTDRespondent

Through: Mr. Sidharth Yadav, Sr. Advocate
with Mr. Wasim Ashraj & Mr.
Pushpak Panchal, Advocates.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER
% **15.01.2025**

CM APPL. 2253/2025 [for condonation of delay]

1. This is an Application filed on behalf of Respondent seeking condonation of delay of 31 and 213 days in filing the short note and Reply to CM APPL. 40696/2022 respectively.
2. Issue Notice.
- 2.1 Learned Counsel for the Petitioner submit that they have no objection if the prayers in the present Application are allowed.
3. The present Application is allowed and the Reply to CM APPL. 40696/2022 and short note are taken on record.
4. The Application is disposed of accordingly.



RC.REV. 327/2018, CM APPL. 28461/2018 [for stay] & CM APPL. 40696/2022 [for additional documents]

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***¹ while relying on the ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.***² 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

¹ (2022) 8 SCC 527

² (2005) 1 SCC 705



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.*³; *Sumer Corp. v. Vijay Anant Gagan & Ors.*⁴ and *Heera Traders v. Kamla Jain*⁵. 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.

³ (2009) 9 SCC 772.

⁴ 2022 SCC Online SC 1548.

⁵ 2022 SCC Online SC 220.



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.

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

26.1 All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

27. List the matter on 11.02.2025.

28. Let the Respondent and the senior official of the Petitioner be present physically on the next date of hearing.

29. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 15, 2025/ ha

Click here to check corrigendum, if any