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

+ **CM(M) 600/2022 & CM No.28488/2022**

ASHOK KUMAR JAIN Petitioner
Through: Mr. Sandeep Aggarwal, Sr.
Adv. with Mr. Abhishek Aggarwal and Ms.
Tanya, Advs.

versus

PREM CHAND GUPTA Respondent
Through: Mr. J.C. Mahindro and Mr.
Gaurav Singh, Advs. for R-IA

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T(O R A L)

12.07.2022

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1. It is gratifying to note that without entering into intricacies of facts and figures, this Court is in a position to dispose of the present petition, by consent between learned Counsel.

2. Given the nature of the order that I am passing today, it is not necessary to enter into the history of the litigation between the parties. Suffice it to state that, by an order dated 1st June, 2019, passed in E.P. M 29527/16, the learned Additional Rent Controller (“the learned ARC”) directed eviction of the petitioner from the property of the respondent, under the Proviso to Section 14(2) read with Clauses 14(1)(a) and (j) of the Delhi Rent Control Act, 1958. The petitioner appealed, against the said order, before the learned Rent Control Tribunal (“the learned RCT”) *vide* RCT 44/2019 (*Ashok Kumar Jain*

& Anr. v. Prem Chand Gupta & Anr.). The impugned order dated 28th May, 2022 directs the petitioner to pay, to the respondent, user and occupation charges in respect of the suit property @ ₹ 41,500/- per month for the period June to December, 2019, ₹ 44,000/ - per month for the period January to December, 2020, ₹ 47,000/ - per month for the period January to December, 2021 and ₹ 50,000/ - per month for the period January to December, 2022. It may be noted, here, that the rent which was agreed between the petitioner and the respondent and which the petitioner had been paying, was ₹ 1,000/- per month, as per the rate fixed in 1983.

3. The direction for payment of user and occupation charges (essentially *mesne* profits) was passed by way of implementation of Conclusion (2) in para 19 of the report in the judgment of the Supreme Court in *Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd.*¹. The Supreme Court, in the said case, held that where an order of eviction stood passed against a tenant and the tenant was liable to pay, to the landlord, *mesne* profits for continued user and occupation of the said premises beyond the date of eviction. The quantum of *mesne* profits which would be required to be paid would be “at the same rate at which the landlord would have been able to let out the premises and earned rent if the tenant would have vacated the premises”. The Supreme Court also clarified that the landlord was not bound by the contractual rate of rent fixed between the tenant and himself. Para 19 of the report in *Atma Ram Properties* on which the learned RCT has placed reliance, may be reproduced thus:

¹ (2015) 1 SCC 705

"19. To sum up, our conclusions are:-

(1) while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;

(2) in case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (I) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. *With effect from that date, 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 and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;*

(3) the doctrine of merger does not have the 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 latter date."

4. The learned RCT called upon both parties to lead evidence regarding the quantum of *mesne* profits, payable as per ***Atma Ram Properties***. Lease deeds were placed on record by both parties. Regarding these lease deeds, the learned RCT holds, in paras 14 to 16 of the impugned order thus:

“14. The respondents/landlords also filed on record photocopy of the registered lease deed dated 23.02.2018 of the adjacent plot of the subject property i.e. Plot bearing No. 51, Rama Road, Najafgarh Road Industrial Area, New Delhi with built up area of 774 Sq. yards fetching monthly rent of Rs. 2,93,812/- in the year 2019; Rs. 3,12,910/- in the year 2020; Rs. 3,33,249/- in the year 2021; Rs. 3,54,910/- in the year 2022; and Rs. 3,77,979/- in the year 2023. The respondents/landlords have also filed an application under Section 151 CPC submitting the market rate of rent prevalent in the area of the adjacent property, which is as under :-

YEAR	AVERAGE MARKET RATE OF RENT PER MONTH ON PER SQ.FT.	TOTAL RENT FOR 1010 SQ.FT.(PER MONTH)
1 st Jan, 2019 to 31 st Dec., 2019	Rs. 41.23 per Sq. Ft.	Rs.41 ,642.30
1 st Jan, 2020 to 31 st Dec., 2020	Rs. 43.91 per Sq. Ft.	Rs. 44, 349/-
1 st Jan, 2021 to 31 st Dec., 2021	Rs. 46.76 per Sq. Ft.	Rs. 47,227.60
1 st Jan, 2022 to 31 st Dec., 2022	Rs. 49.80 per Sq. Ft.	Rs. 50,298/-

15. I have gone through the rent agreement and the lease deeds filed by the parties. The appellants filed the lease deeds, one of which is pertaining to the year September, 2015, which has no relevance. It is pertinent to mention here that photocopies of two rent agreement dated 24.05.2022 are neither signed by the parties nor by the witnesses and also not registered. Similarly, lease deeds dated 03.05.2022 are not registered. Therefore, these documents does not inspire confidence and appears to be not genuine. On the other hand, the respondents/landlords filed registered lease deed pertaining to the year 2019. The lease deed relied by the respondents/landlords reflected the relevant market rent value in the year 2019 and subsequent years.

16. On the basis of above observations and discussions, the present application is allowed and the appellants/tenants are directed to pay the user and occupation charges as under:-

PERIOD	AMOUNT
June, 2019 to December, 2019	Rs. 41,500/- per month
January, 2020 to December, 2020	Rs. 44,000/ per month
January, 2021 to December, 2021	Rs. 47,000/- per month
January, 2022 to December, 2022	Rs. 50,000/- per month

The arrears qua use and occupation charges w.e.f. June, 2019 till date i.e. May, 2022 be paid within a period of three months from today and the appellants/tenants shall continue to pay the abovesaid rent every month on or before 15th day of each month from June, 2022 onwards till disposal of the present appeal. The aforesaid order does not tantamount to decision on the merits and the same is only an interim measure.”

5. A bare reading of the afore-extracted passages from the impugned order reveals that, though reasons were adduced, howsoever minimal, by the learned RCT, for rejecting the lease deeds provided by the petitioner, the learned RCT has not provided any cogent reason for accepting the lease deed dated 23rd February, 2018 filed by the respondent and pertaining to the plot adjacent to the plot in occupation by the petitioner. Mr. Sandeep Aggarwal, learned Senior Counsel for the petitioner submits that the condition of the two plots were completely different. He also submits that the area in occupation by his client was *inter alia* around 100 sq.yds, whereas the area of plot no. 51, Rama Road, Najafgarh, to which the lease deed dated 23rd February, 2018, on which the learned RCT placed reliance, pertained, was, even as per the impugned order, 774 sq.yds. Mr. Aggarwal’s contention is that, while fixing the quantum of *mesne* profits to be directed to be paid as per Conclusion (2) in *Atma Ram Properties*, the learned ARC/RCT is required to satisfy himself regarding the nature

of the lease in respect of the two properties as well as the conditions of the properties and the circumstances in which the quantum of rent was fixed in respect thereof.

6. The learned RCT has also relied upon a tabular statement purportedly depicting the market rent in respect of premises such as those with which we are concerned in the present case, separately for the period 1st January to December, 2019, 1st January to 31st December, 2020, 1st January to 31st December, 2021 and 1st January to 31st December, 2022. This tabular statement appears to have been taken directly from an application filed by the respondent which also sets out the aforesaid tabular statement as representing the market rent that constructed plots in the area commanded during the aforesaid period.

7. It is not necessary to discuss, further, the rival stands of the parties before the learned RCT in this regard, as the learned RCT has not provided any reason for treating the lease deed dated 23rd December, 2018, filed by the respondent, as representative of the market rate of rent in the area during the periods in question. All that is said is that the lease deed pertained to an adjacent plot.

8. In my considered opinion, the mere fact that the lease deed pertained to an adjacent plot would not be sufficient for the learned RCT to adopt the rent reflected in the said lease deed as representative of the market rate of rent in the area in which the premises in question were located. Something more is necessary. A reading of the

impugned order indicates that the learned RCT has almost proceeded on the basis of its own *ipse dixit* in accepting the lease deed dated 23rd February, 2018 as representative of the market rate of rent in the said area.

9. Mr. Mahendru, after some argument, agreed to the matter being remanded to the learned RCT for a *de novo* consideration and for passing of an order with reasons specifically explaining why the learned RCT was accepting the lease rent as canvassed before it by either side as representing the market rate of rent in the area during the relevant period.

10. In that view of the matter, without expressing any opinion regarding the market rate of rent which could be directed to be paid in accordance with conclusion (2) in *Atma Ram Properties*, I deem it appropriate to dispose of this petition by setting aside the impugned order and remanding the matter to the learned RCT for a *de novo* consideration regarding the *mesne* profits which could legitimately be directed to be paid by the petitioner, for remaining in continued operation of the subject premises beyond 1st June, 2019, when the eviction order was passed by the learned ARC. The decision would be taken after granting of sufficient opportunity to both sides and in accordance with the principles of natural justice and fair play. I do not express any opinion regarding the material which the learned ARC would deem appropriate to take into consideration while arriving at the *de novo* decision. Entire discretion in that regard shall remain vested in the RCT, to be exercised in accordance with law and as per

the principles which stand settled in such matters.

11. For the aforesaid purpose, both sides would appear before the learned RCT on 27th July, 2022, on which date the learned RCT may proceed with the matter or fix a date as per the convenience of the learned RCT to hear the parties and arrive at his *de novo* decision.

12. All other questions which stand agitated in the present proceedings remain open. This Court has not expressed any view on any of the said issues.

13. The petition stands disposed of in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

JULY 12, 2022/kr

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