Delhi High Court
M/S. Sahara India & Ors. vs M/S. M.C. Agrawal Huf on 2 September, 2011
Author: Valmiki J. Mehta

*  IN THE HIGH COURT OF DELHI AT NEW DELHI

\+  RFA Nos. 458/2011 & 457/2011

%  2nd September, 2011

1.  RFA No.458/2011

M/S. M.C. AGRAWAL HUF  .....Appellant
Through:  Mr. P.K. Aggarwal, Advocate with Ms. Mercy Hussain, Advocate.

VERSUS

M/S. SAHARA INDIA & ORS.  ..... Respondents
Through:  Mr. Vivek Kohli, Advocate with Mr. Abhishek Swaroop, Advocate.

2.  RFA No.457/2011

M/S. SAHARA INDIA & ORS.  ..... Appellants
Through:  Mr. Vivek Kohli, Advocate with Mr. Abhishek Swaroop, Advocate.

VERSUS

M/S. M.C. AGRAWAL HUF  .....Respondent
Through:  Mr. P.K. Aggarwal, Advocate with Ms. Mercy Hussain, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1.  Whether the Reporters of local papers may be



allowed to see the judgment?

2.  To be referred to the Reporter or not?  Yes

3.  Whether the judgment should be reported in the Digest?  Yes

VALMIKI J. MEHTA, J (ORAL)

1. These are two cross appeals, one filed by the landlord (RFA No.458/2011) and the other filed by tenants (RFA No.457/2011) against the impugned judgment and decree of the trial Court dated 16.5.2011 whereby the suit of the landlord for possession and mesne profits with respect to the premises being a flat bearing No.817A, 8th Floor, Ambadeep Building No.24, Kasturba Gandhi Marg, New Delhi, was decreed. The grievance of the landlord is with respect to denial of claim by the trial Court with respect to executive class tickets in addition to the mesne profits, whereas the grievance of the tenants is with respect to awarding mesne profits at double the market rent without any evidence being led by the landlord and which decree is argued to be violative of Section 74 of the Contract Act, 1872. The tenants also question the grant of the high rate of interest at 20%. A minor issue with regard to liability towards the mesne profits is also raised that the same are payable only till 31.12.2004 and not 3.4.2005 as granted by the trial Court. I may finally add that the landlord has argued that the liability for mesne profits



continues till date because the entire possession of the tenanted premises has not been given. The main argument as advanced by the landlord, who appeared in person, and who was karta of the landlord HUF however was that since as per the lease deed the tenants were in addition to the payment of rent liable to give a certain number of executive class air tickets, it was argued that the value of these air tickets have to be included in the mesne profits to be awarded. Assistance is sought in this behalf by the landlord of the order of the

Supreme Court dated 28.4.2008 and which is an order which had allowed an amendment application filed by the landlord with respect to claim of mesne profits to include the claim towards the executive class air tickets.

2. The fact that there is a relationship of landlord and tenant is not disputed. It is also admitted that premises are outside the protection of Delhi Rent Control Act, 1958 and the tenancy was terminated by a legal notice. The tenants have also in the meanwhile delivered possession of the suit premises by depositing the keys in the Court on 3.4.2005. The main issue which is therefore required to be adjudicated is as to what should be rate of mesne profits which should be allowed to the landlord till 3.4.2005 when the keys of the property were deposited in the Court alongwith the issue as to whether the tenants continue to be liable



to pay the mesne profits as the landlord alleges that the complete possession of the property has not yet been given.

3. On the aspect of the date till which mesne profits are payable, there is no doubt that mesne profits will be payable till the keys were deposited by the tenants in the Court on 3.4.2005 inasmuch as there are admissions noted in the impugned judgment that the tenants had removed the walls of the tenanted premises and the original position of the tenanted premises was restored only on 31.12.2004 and whereafter on 3.4.2005 the possession was handed over by depositing the keys in the Court on 3.4.2005. Learned counsel for the tenants had only weakly disputed the payment of mesne profits from 31.12.2004 till 3.4.2005 and has not disputed the liability to pay mesne profits till 31.12.2004. I therefore hold that mesne profits shall be payable till

3.4.2005.

4. The entitlement of a landlord to claim mesne profits from a tenant who is in illegal possession of the premises after the tenancy is terminated, is governed by Section 2 (12) of Code of Civil Procedure, 1908 (CPC) and which defies mesne profits 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."



The above provision has been interpreted in various judgments that ordinarily the mesne profits which a landlord is entitled against a tenant who continues to stay in the tenanted premises after the termination of the tenancy is the amount which the premises can fetch if let out on rent during the period of its illegal occupation by the tenant.

5. A clause in a lease deed that if a tenant stays in the premises after the expiry of the lease period or termination of the tenancy, then, the penalty/damages at double the market rate are payable would be ex facie violative of provision of Section 74 of the Contract Act, 1872 being a clause interrorem. Right from the Constitution Bench decision of the Supreme Court in the case of Fateh Chand vs. Balkishan Das AIR 1963 Supreme Court 1405 it has been held that where on account of breach of contract damages can be proved, then, there cannot be any validity of a clause which gives liquidated damages. What is 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 proved in a suit for possession and mesne profits against the tenants by leading evidence with respect to rents of similar premises within the locality. The Court, on considering such evidence, with respect to rent of similar premises



thereafter awards mesne profits to the landlord. It is only in cases where the damages/mesne profits cannot be proved in a Court of law, and one of which contract was the subject matter of the decision of the Supreme Court in the case of O.N.G.C. Vs. Saw Pipes Ltd., 2003 (5) SCC 705, then, in such cases liquidated damages as fixed by the contract would become payable. The Supreme Court in the case of O.N.G.C. (supra) has referred to a classic case of delays in construction of a road being built and the consequent loss being caused on account of non collection of toll. Since it is nearly impossible to calculate the loss on account of breach of contract because the number of users of the road and hence what would be the toll tax that could not have been collected cannot be calculated consequently in such circumstances, the clause with respect to liquidated damages becomes applicable and reasonable damages not exceeding the figure of liquidated damages are awarded. However, in cases where a landlord sues an erstwhile tenant for mesne profits this would not be the position because mesne profits can surely be calculated being the rent which will be payable with respect to the premises during the period of illegal occupation by the erstwhile tenant and which is a modality applicable by virtue of the language of Section 2(12) CPC. I have had an occasion to recently consider this aspect of the ratio of the decisions of the Supreme Court under Section 74 of the Contract Act in

the case of Dilip Kumar Bhargava Vs. Urmila Devi Sharma & Ors. in

RFA No.129/2011 decided on 31.3.2011 and paras 3 to 7 of this judgment

dealing with this issue read as under:-

"3. Learned counsel for the appellant relies upon the Constitution Bench decision of the Supreme Court in the case of Fateh Chand Vs Balkishan Dass, (1964) 1 SCR 515; AIR 1963 SC 1405 and more particularly its paras 8,10,15 and 16 which read as under:-

8. The claim made by the plaintiff to forfeit the amount of Rs 24,000 may be adjusted in the light of Section 74 of the Indian Contract Act, which in its material part provides:-

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or as the case may be, the penalty stipulated for."

The section is clearly an attempt to eliminate the sometime elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties: a stipulation in a contract in terrorem is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty.

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.

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. (Underlining added)

4. To the same effect are the observations in Maula Bux Vs. UOI, 1969 (2) SCC 554, and para 4 of which reads as under:-



"4. Under the terms of the agreements the amounts deposited by the plaintiff as security for due performance of the contracts were to stand forfeited in case the plaintiff neglected to perform his part of the contract. The High Court observed that the deposits so made may be regarded as earnest money. But that view cannot be accepted. According to Earl Jowitt in "The Dictionary of English Law" at p. 689 : "Giving an earnest or earnest-money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum (e.g. a shilling) as a token that the parties are in earnest or have made up their minds." As observed by the Judicial Committee in Kunwar Chiranjit Singh v. Har Swarup A.I.R.1926 P.C.1

Earnest money is part of the purchase price when the transaction goes forward : it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee.

In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part payment of

> the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money.
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> 5. Section 74 of the Contract Act provides :
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> When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
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> ...

There is authority, no doubt coloured by the view which was taken in English cases, that Section 74 of the Contract Act has no application to cases of deposit for due performance of a contract which is stipulated to be forfeited for breach : Natesa Aiyar v. Appavu Padayachi I.L.R. [1913] Mad. 178 Singer Manufacturing Company v. Raja Prosad I.L.R.[1909] Cal. 960 Manian Patter v. The Madras Railway Company I.L.R.[1906] Mad.188 But this view is no longer good law in view of the judgment of this Court in Fat eh Chand's case MANU/SC/0258/1963 : [1964]1SCR515 : [1964]1SCR515 . This Court observed at p. 526 :

"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.... 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."

The Court also observed :

"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 whereupon 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.", and that, "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."

5. In Union of India Vs. Raman Iron Foundry (1974) 2 SCC 231 there are similar conclusions. Para 11 of this judgment reads as under:-

> "11. Having discussed the proper interpretation of Clause 18, we may now turn to consider what is the real nature of the claim for recovery of which the appellant is seeking to appropriate the sums due to the respondent under other contracts. The claim is admittedly one for damages for breach of the contract between the parties. Now, it is true that the damages which are claimed are liquidated damages under Clause 14, but so far as the law in India is concerned, there is no qualitative difference in the nature of the claim whether it be for liquidated damages or for unliquidated damages. Section 74 of the Indian Contract Act eliminates the somewhat elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties : a stipulation in a contract in terrorem is a penalty and the Court refuses to enforce it, awarding to aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty, and according to this principle, even if there is a stipulation by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit. It, therefore makes no difference in the present case that the claim of the appellant is for liquidated damages. It stands on the same footing as a claim for unliquidated damages. Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a Court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not eo instanti incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due From the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages.....The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant." (Underlining added)

6. A contract pertaining to breach of an Agreement to Sell is a contract where loss can be calculated, the loss ordinarily being the lesser value of the immovable property on the date of the contract. Such contracts of Agreements to Sell, being contracts where damages can be calculated, even if, there is a provision of forfeiture of a huge amount of Rs.5 lacs, the same would be a Clause in terrorem. The Clause being in the nature of a penalty or in terrorem, such forfeiture of a huge amount cannot be allowed unless damages are actually proved, the law being that Section 74 only provides the outer limit of damages which can be awarded. The court always awards reasonable compensation depending upon the outer limit of compensation/damages which are prescribed under the contract, and which are in the nature of liquidated damages under Section 74 of the Contract Act. The present case, and other similar cases of breaches of Agreements to Sell, must be distinguished from those class of cases where loss cannot be proved and which contracts were the subject matter before the Supreme Court in the cases reported as O.N.G.C. Vs. Saw Pipes Ltd., 2003 (5) SCC 705 and Sir Chunilal V. Mehta & Sons Ltd. Vs. Century Spinning and Manufacturing Co. Ltd. AIR 1962 SC 1314 (1).

7. On reading of the aforesaid decisions of the Supreme Court it becomes clear that there cannot be forfeiture of an amount which is paid by a buyer under an Agreement to Sell to the respondents, even if, the buyer is guilty of breach of contract because the seller who has received monies, cannot forfeit the monies unless he has suffered loss in the bargain. A seller ordinarily suffers loss under an Agreement to Sell only if value of the property decreases as per the breach committed by the buyer/plaintiff/appellant and in the present case no loss has been pleaded or proved by the respondents. Even assuming therefore that the appellant/plaintiff is guilty of breach of contract, the respondent no.1, at best, can forfeit only a reasonable amount and not an amount of Rs.10 lacs out of the total sale consideration of Rs.55 lacs. It could not be argued with any conviction by the learned counsel for the respondent no.1/defendant no.1 that there are any pleadings in the trial court that the respondent no.1/defendant no.1 has been caused loss in any manner including by the value of the property having gone down. It is because of lack of any pleadings in this behalf that the respondent no.1/defendant no.1 led no evidence as to any fall in the value of the property by a specific amount of Rs.10 lacs so as to entitle him to forfeit the amount of Rs.10 lacs received as advance price."

6. I therefore hold that the trial Court erred in awarding mesne profits at double the admitted rate of rent and set aside the impugned judgment to the extent that it directs that the landlord will be entitled to double the contractual rate of rent as mesne profits inasmuch as the landlord could well have but has not led any evidence with respect to rent of similar premises in the locality during the relevant period or any other evidence to show that what would be the rent which would be payable for the subject premises every month during the period of illegal occupation by the tenant.

7. Now to the argument on behalf of the landlord that the mesne profits must also include the charges of the executive class air tickets and which should be an amount which should be factored in to calculate the mesne profits which should be payable for the subject premises. What is argued that in addition to the market rent which would be payable for the premises as mesne profits, in addition thereto, the value of the air tickets which was a contractual liability will have to be added.

I am completely unable to accede to the argument as raised on behalf of the landlord because this argument flies in the face of Section 2(12) CPC. If the argument as advanced by the landlord is accepted, then the same would mean that in addition to the market rent of premises the tenant in addition will also be contractually liable to pay cost of executive class air tickets. This is not the intendment of the Legislature while enacting Section 2(12) CPC. The observations of the Supreme Court made in its order dated 28.4.2008 should be seen in the context where the application of the landlord for amendment of the plaint was rejected by the High Court and by which amendment the landlord had prayed for entitlement of mesne profits to include the claim of executive air tickets, and which application for amendment was allowed by the Supreme Court vide its order dated 28.4.2008. It is trite that while disposing of an amendment application, the Court does not decide the merits of the matter. Allowing of an amendment to include a claim for mesne profits to include the claim of executive class air tickets would not mean that by mere allowing of the amendment the Supreme Court had held that such claim also has to be decreed. This can very well be understood from the example that if the actual market rate of rent of the premises falls down considerably during the illegal occupation of the premises by the erstwhile tenant, then, the landlord is not entitled to the contractual rate of rent which may be a higher rate of rent but landlord would only be entitled to a lower rate of rent during the period of illegal occupation of the tenanted premises by the tenant. I therefore reject the argument as raised on behalf of the landlord that the tenants in addition to payment of normal mesne profits i.e. ordinary rent which would be obtained from the suit premises during the illegal period of stay is also liable to pay cost of executive class air tickets. I may note, in this regard, that the trial Court has rightly observed that the benefit of this contractual clause of the claim of executive class air tickets will naturally have expired with the expiry of the period of the lease and which is a valid rationale. In the present case, we are concerned with mesne profits/damages not during the period of lease but post the expiry of the lease.

8. 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 Vs. 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.

9. 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.

10. The penultimate issue remaining is with respect to the argument of the counsel for the tenants that an exorbitant rate of interest of 20% per annum has been granted by the impugned judgment on the arrears of mesne profits and which thus be set aside. The impugned judgment is not very clear as to for what period and from when this interest of 20% per annum simple is payable, though there are observations that the same would be payable for the period during which landlord was deprived of the possession of the tenanted premises. The judgment is not clear whether the interest will be payable on the accumulated amount due on the date of the suit or at the end of each year of illegal occupation or at the end of expiry of tenancy month of illegal occupation.

In my opinion, the interest granted at the rate of 20% per month besides being wholly vague is clearly exorbitant in the present economic scenario where the rates of interest on fixed deposit vary between 6% to 10% per annum. The Supreme Court also in its recent chain of judgments reported as Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700, Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra, 2007 (2) SCC 720 & State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC) has held that Courts are mandated to reduce high rates of interest which are granted. Accordingly, in the facts and circumstances of this case, I reduce the interest granted by the trial Court from 20% to 12% per simple. The interest liability will come into existence at the end of each month of illegal occupation of the tenants on the amount due at the end of the month and till payment thereof. To clarify further, so far as the month of January, 2005 is concerned, interest will be payable for the said month from 1.2.2005. For the month of February, 2005 interest will be payable from 1.3.2005 and similarly with respect to earlier months, the interest will be payable at the end of the month of illegal occupation by the tenants. I may note that the Supreme Court has also awarded interest on arrears of mesne profits and one such judgment of the Supreme Court is the case of Indian Oil Corporation Vs. Saroj Baweja 2005 (12) SCC 298.

11. Finally, the learned counsel for the tenants very vehemently sought to argue that the mesne profits would only be payable from 1.12.2003 and not from 1.12.2000 when the tenancy expired by efflux of time. This argument is raised on the ground that the tenant had a right to seek a further extension of tenancy and it had duly informed the landlord and exercised this option. It is argued that negotiations were going on for grant of a fresh tenancy, however, no registered lease deed could be executed. Learned counsel for the tenants also relies upon the findings in his favour given by the

trial Court which holds that in fact a notice was given in time for extension of three years and also that negotiations were in fact going on for grant of a lease of three years.

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.

12. In view of the above, both the appeals are partially allowed by granting the following reliefs to the respective parties:-

(i) The impugned judgment granting mesne profits at double the market rent is set aside and the landlord is granted mesne profits @ 15% compounded increase every year from the contractual rate of rent which was due and payable on 1.11.2000 as elaborated above in the judgment

(ii) In addition to mesne profits with annual increase of 15% per annum compounded, the landlord is also entitled to interest on arrears of mesne profits @ 12% per annum simple from the end of each illegal month of occupation and till payment of the arrears alongwith interest to the landlord.

(iii) The mesne profits will become payable from 1.12.2000 till 3.4.2005 by virtue of the fact of the tenant continuing in illegal possession of the suit premises although the lease had expired by efflux of time.

(iv) The impugned judgment is sustained and the argument of landlord is rejected on the aspect that in addition to the mesne profits as granted above the landlord is entitled to the executive class air tickets for the period of illegal occupation of the tenants.

13. Both the appeals are disposed of with the aforesaid observations. In case, any amount has already been paid for the aforesaid period by the tenants to the landlord, the tenants will be entitled on proof thereof to adjustment qua the money decree passed. Decree sheet be prepared. Trial Court record be sent back.

SEPTEMBER 02, 2011 VALMIKI J. MEHTA, J.
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