Consep India Pvt. Ltd. Vs. Cepco Industries Pvt. Ltd.

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Court : Delhi

Decided On : Mar-26-2010

Judge : Reva Khetrapal, J.

Acts : Delhi Rent Control Act, 1958 - Sections 4, 6, 6A, 8, 9, 14, 14(1) and 15(1); ;Evidence Act - Sections 17, 56, 57 and 58; ;Transfer of Property Act, 1882 - Sections 106 and 111; ;Code of Civil Procedure (CPC) - Section 2(12) - Order 6, Rule 4 - Order 20, Rule 12 - Order 23, Rules 1 and 1A; ;Constitution of India - Articles 14, 19(1) and 21

Appeal No. : RFA 329/2007 and CM Nos. 16188/2007 and 17682/2007

Appellant : Consep India Pvt. Ltd.

Respondent : Cepco Industries Pvt. Ltd.

Advocate for Def. : B.B. Gupta, Adv.

Advocate for Pet/Ap. : Saurabh Kirpal,; Gauri Subramanian,; Jatin Mongia,;

Disposition : Appeal dismissed

Judgement :

Reva Khetrapal, J.

1. This appeal is directed against the judgment and decree dated 23rd May, 2007 passed by the learned Additional District Judge in a suit for ejectment, recovery of mesne profits and permanent injunction filed by the respondent against the appellant herein.

2. The facts as they emerge from the record are that the appellant was inducted as a tenant under the respondent with respect to one big hall, one office room and one WC, all measuring 900 sq. ft. with a common passage on the second floor of property No. F-14/15, Connaught Place, New Delhi of the respondent. The said premises were let out by the respondent to the appellant by an agreement dated 1st December, 1976, whereunder the appellant had agreed to pay rent to the respondent at the rate of Rs. 2,700/- p.m. for the first three years and at the rate of Rs. 3,240/- p.m. for the next two years and at the rate of Rs. 3,780/- p.m. to the respondent after five years of 01.12.1976, i.e., with effect from 01.12.1981.

3. On or about 29th November, 1983, the appellant instituted a petition in the Court of the Rent Controller, Delhi under Sections 6 and 9 of the Delhi Rent Control Act, 1958 against the respondent, inter alia, for the determination of the standard rent of the suit premises. In the said petition, the appellant in para 11 against the column 'Monthly rent together with details of House-Tax, Electricity, Water and other charges paid by the tenant' stated: 'Rs. 3,780/- P.M. exclusive of water and electricity charges'. The said petition for determination of standard rent filed by the appellant against the respondent remained pending till 1st September, 1997 when the same was dismissed as withdrawn.

4. In the meanwhile, on account of the fact that the appellant had stopped payment of rent in spite of a notice of demand, the respondent herein, in or about the year 1984, instituted a petition for eviction of the appellant from the aforesaid premises under Section 14(1)(a) of the Delhi Rent Control Act, 1958. It was, inter alia, stated in the said petition that the rent of the premises was Rs. 3,780/- p.m. and that initially the premises were let out by the respondent to the appellant by an agreement dated 01.12.1976 as per which the rent was Rs. 2,700/- p.m. for the first three years, Rs. 3,240/- p.m. for the next following two years and Rs. 3,780/- p.m. for the following two years. It was further stated in the petition that the

appellant, who was paying a rent of Rs. 3,780/- p.m. to the respondent with effect from 01.12.1981, had stopped paying the rent with effect from 1st September, 1982.

5. The appellant filed a written statement/reply to the aforesaid petition for eviction filed by the respondent, in which the appellant did not dispute the agreement of 01.12.1976 and the agreement with the respondent to pay rent at Rs. 2,700/-, Rs. 3,240/- and Rs. 3,780/- p.m. as aforesaid, but alleged that there was a prohibition under Section 4 of the Delhi Rent Control Act to the periodical increase of rent in such manner.

6. The aforesaid petition for eviction filed by the respondent against the appellant was decided by the Court of the Additional Rent Controller by order dated 7th March, 1999, in which it was, inter alia, held that the appellant was liable to pay rent at the rate of Rs. 3,780/- p.m. which he had agreed to pay and in fact paid for one year since December, 1981. The learned Additional Rent Controller also held the appellant to be in default of payment of rent and being a case of first default, gave a liberty to the appellant to pay the arrears of rent.

7. The appellant preferred an appeal from the aforesaid order to the Rent Control Tribunal, Delhi, which was decided by the order dated 6th December, 2003. The Tribunal, inter alia, held that on the date of the issuance of the notice of demand by the respondent to the appellant, there was no rent due from the appellant to the respondent and for the aforesaid reason the order of the Additional Rent Controller could not be sustained.

8. Subsequently, on 21st September, 2005, the respondent got issued a legal notice of the said date to the appellant, determining the tenancy of the appellant and informing the appellant that upon its failure to vacate the premises in spite of determination of its tenancy, it shall be liable to pay mesne profits/damages for use and occupation at the prevalent letting value of the premises from time to time, which presently was Rs. 150/- per sq. ft. p.m., together with interest at the rate of 24% p.a. on arrears thereof. In the said legal notice, it was asserted by the respondent that the appellant had been illegally paying rent at the rate of Rs. 2,700/- p.m. only to the respondent and as such Rs. 38,880/- were the arrears of

rent which the appellant was liable to pay. The appellant, it was further stated, was also liable to pay mesne profits/damages for use and occupation for the month of November, 2005 to the respondent at the rate of Rs. 1,35,000/- p.m. and thus, in all, a sum of Rs. 1,73,880/- was due from the appellant to the respondent. The said notice was duly served on the appellant, to which the appellant got sent a reply dated 5th October, 2005.

9. On the appellant's failing to vacate the premises in spite of the determination of its tenancy, the respondent instituted the aforesaid suit, being Suit No. 175 of 2005 for ejectment, recovery of mesne profits and permanent injunction against the appellant.

10. In the written statement filed by the appellant to the suit instituted by the respondent, the appellant raised a number of preliminary objections to the maintainability of the suit, inter alia, being that the suit was ill-conceived and had been filed with malafide intentions and ulterior motives - all as a counter-blast to the dismissal by the Rent Control Tribunal, vide its order dated 6th December, 2003, of the original petition for eviction filed by the respondent-landlord in or around 30th November, 1983; that the plaint was a repetition of, if not identical to, the case made out by the appellant before the Rent Control Tribunal on which orders had already been passed by the Tribunal on 6th December, 2003; that the suit was not maintainable and was liable to be dismissed as the contents of the alleged notice dated 21st September, 2005 were at variance with what was stated by the respondent before the learned Rent Control Tribunal; that the suit was instituted without any cause of action and was mischievous in nature; that the suit had been signed and filed by CEPCO Industries Pvt. Ltd. whereas the lease agreement dated 1st December, 1976 was executed with CYCLE Equipment Pvt. Ltd. - and not with CEPCO Industries Pvt. Ltd.; that the suit was untenable and non-maintainable as the relief sought for fell within the ambit of the Delhi Rent Control Act and not within the jurisdiction of Civil Courts; that the respondent was protected against eviction under the provisions of Section 14 of the Delhi Rent Control Act and there was an express bar on the jurisdiction of the Civil Court laid down by Section 14(1) of the said Act.

11. On merits, it was stated that the appellant was a tenant under CYCLE Equipment Pvt. Ltd. and not under CEPCO Industries Pvt. Ltd.; the petition for determination of the standard rent was withdrawn by the respondent only due to limitation and keeping in mind that the respondent was bound to pay not more than the initial agreed rent of Rs. 2,700/- p.m., which was upheld by order dated 8th May, 1986 by the Additional Rent Controller. It was denied that a new contractual tenancy had come into force between the respondent and M/s. CYCLE Equipment Pvt. Ltd. or that there existed any contractual tenancy between the respondent and CEPCO Industries Pvt. Ltd. as purportedly implied in the plaint. It was contended that the suit was an abuse of the due process of law and totally mischievous, the eviction petition of the respondent on the ground of non-payment of 12 months outstanding rent at the rate of Rs. 3,780/- p.m. with effect from 1st September, 1981 having been dismissed by the learned Rent Control Tribunal. It was emphatically denied that the appellant had ever increased the rent, as alleged, from Rs. 2,700/- to Rs. 3,240/- or to Rs. 3,780/-, and stated that if payments by cheques in excess of Rs. 2,700/- had been made it was only out of duress and ignorance of the law. It was also stated that no rent was outstanding as 'on the date of the issuance of the notice of demand' and that the respondent-landlord, by his own written admission, had himself admitted that his earlier statement, vide notice of demand dated 22nd September, 1983, of 12 months outstanding rent being due was not correct and that he in fact had received rent for the period between 27.09.1982 and 12.08.1983 by way of 12 cheques amounting to Rs. 45,360/-. It was submitted that that the eviction petition filed by the respondent-landlord had been rightly dismissed by the learned Rent Control Tribunal by its order dated 6th December, 2003 in RCA No. 206/1999. It was denied that the appellant-tenant was subsisting on a month-to-month tenancy and that the tenancy of the appellant-tenant stood determined after 15 days of the notice dated 21st September, 2005 (received on 26th September, 2005). It was submitted that the suit was untenable and non-maintainable and had been filed as all earlier attempts by the respondent-landlord to force the appellant-tenant to pay an enhanced monthly sum of Rs. 3,780/- had failed. The notice dated 21st September, 2005 was invalid and not in accordance with law while the suit instituted by the respondent-plaintiff was misconceived and liable to be rejected.

12. In replication, the respondent-landlord reiterated and reaffirmed the averments made in the plaint while controverting and denying the averments made in the written statement. On 19.12.2006, from the pleadings of the parties, the learned trial court culled out nine issues for the adjudication of the suit.

13. Arguments were advanced by Mr. Saurabh Kirpal, the learned Counsel for the appellant and Mr. B.B. Gupta, the learned Counsel for the respondent on the findings given by the learned trial court on the nine issues framed for the trial of the suit, to which I now propose to advert.

14. Issues No. 1 and 2

Issues No. 1 and 2 were dealt with together by the learned trial court. The said issues read as under:

Issue No. 1: Whether the suit is barred by the provisions of DRC Act as alleged in the written statement? OPD.

Issue No. 2: Whether the rent is Rs. 2, 700/- as claimed by the defendant in the written statement or the rent is Rs. 3, 780/- as claimed by the plaintiff? OP Parties.

15. At the outset, it may be noted that the onus of proving Issue No. 1 was placed upon the appellant whereas the onus of proving Issue No. 2 was upon both the parties. The relevant provision of law is Section 3(c) of the Delhi Rent Control Act, 1958 (as amended with effect from 01.12.1988), which provides that the said Act would not apply to any premises whose monthly rent exceeds Rs. 3,500/- per month.

16. On the behalf of the appellant-tenant, it was argued that the relationship between the appellant and the respondent was governed by the Delhi Rent Control Act because the initial agreed rate of rent was Rs. 2,700/-. The suit was barred by the provisions of the Act as after the order of the learned Rent Control Tribunal the appellant was required to pay rent at the rate of Rs. 2,700/- p.m. and as such the premises is not taken out of the purview of the Act. It was submitted that the appellant had been compelled to pay rent at Rs. 3,780/- p.m. with effect from 01.12.1981 under pressure and the increase of rent was illegal and arbitrary.

17. Mr. B.B. Gupta, the learned Counsel for the respondent-landlord, on the other hand, argued that the onus of proving the rate of rent was upon both the parties, and not upon the respondent alone. He submitted that the respondent had discharged the onus placed upon him, but the appellant had miserably failed to discharge its onus. In support of this contention, Mr. Gupta placed reliance upon the admissions, expressly and impliedly made by the appellant admitting that he had made payment of rent at the rate of Rs. 3,780/- p.m. till November, 1983, as contained in the following documents:

(i) The lease agreement dated 01.12.1976 (Exhibit RW-1/1).

(ii) The petition under Sections 6 and 9 of the Delhi Rent Control Act filed by the appellant on 29.11.1983 (Exhibit PW- 1/3).

(iii) The order dated 1st September, 1997 (Exhibit PW-1/4) passed by the learned Additional Rent Controller regarding the unconditional withdrawal of the aforesaid petition.

(iv) Notice of demand dated 22nd September, 1983 sent to the appellant by the respondent.

(v) Petition under Section 14(1)(a) of the Delhi Rent Control Act filed by the respondent against the appellant (Exhibit PW- 1/5).

(vi) Written statement filed by the appellant to the aforesaid petition (Exhibit PW-1/6).

(vii) The statement made by the appellant RW- 1 Shri M.K. Bhagwagar (Exhibit PW-1/7).

(viii) The judgment of the learned Additional Rent Controller dated 07.03.1999 (Exhibit PW-1/8).

(ix) The judgment of the learned Additional Rent Control Tribunal dated 06.12.2003 (Exhibit PW-1/9).

18. Before I advert to the admissions allegedly contained in the aforesaid documents, it may be noted that the learned Counsel for the respondent placed reliance upon the provisions of Sections 17 and 58 of the Indian Evidence Act and the following judgments rendered by this Court and by the Supreme Court to contend that judicial admissions by themselves can be made the foundation of the rights of the parties and an admission made by a party to the lis is admissible against him proprio vigore:

(i) Draegerwerk Aktiengesellschaft v. Usha Drager Pvt. Ltd. and Anr. : 136 (2007) DLT 355.

(ii) Sangramsinh P. Gaekwad and Ors. v. Shanta Devi P. Gaekwad (Dead) Through LRs and Ors. : (2005) 11 SCC 314.

(iii) Gautam Sarup v. Leela Jetly and Ors. : (2008) 7 SCC 85.

(iv) Steel Authority of India Ltd. v. Union of India and Ors. (2006) 12 SCC 233.

(v) Uttam Singh Duggal & Co. Ltd. v. United Bank of India and Ors. : (2000) 7 SCC 120.

(vi) Claridges Hotel Pvt. Ltd. v. M.M. Bhagat & Company : 2001 IV AD (DELHI) 790.

19. Having considered and weighed the rival submissions of the parties and gone through the records and the aforesaid decisions, I am of the view that the respondent has discharged the onus placed upon it of proving that the rent of the premises was Rs. 3,780/- p.m. I say so for the following reasons.

20. The lease agreement dated 01.12.1976 (Exhibit RW- 1/1) is an admitted document, the legality and validity whereof are not in dispute. The appellant itself has filed this document and placed reliance upon it. A bare perusal of Clause 1 and Clause 10 thereof make it abundantly clear that the monthly agreed rate of rent at the time of the determination of the tenancy of the appellant was above Rs. 3,500/- p.m., i.e., Rs. 3,780/- p.m. Clause 1 of the lease agreement provides as under:

That the Lessor hereby demised to the lessee all that of portion of second floor adjacent to the office of Brady & Company having an area of 900 square feet with a facility to use the bathroom and service room and fixtures for a period of three years paying therefor during the said term the monthly rent of Rs. 2,700/- per month only excluding water and electricity charges payable in advance by the 10th day of every English Calender month. The tenancy month shall commence from the 1st day of every such month.

21. The provisions with regard to the increase of rent are mentioned in Clause 10 of the Lease Deed, which reads as under:

The Lease is hereby granted for the three years fixed lease. Further extension of two years will be on the terms and conditions as stipulated in this agreement with increase of rent by 20% of the existing rent. All further extension will also be on the same terms and conditions with increase of rent by 20% after every two years period of Lease Agreement hence onwards.

22. From the above undisputed document, it stands clearly proved that the rate of rent at the time of determination of the tenancy was Rs. 3,780/- p.m. as alleged by the respondent. I am fortified in coming to this conclusion from the standard rent petition filed by the appellant, bearing No. SR-52/83 (Exhibit PW-1/3), wherein the appellant had specifically stated in para 11 that the rate of rent was Rs. 3,780/- p.m., exclusive of water and electricity charges. Again, in para 18(a), it was stated that the contractual tenancy came into force on 01.12.1981 at the rate of Rs. 3,780/- p.m., exclusive of water and electricity charges. It was further stated:

This agreed rate of rent is exorbitant, excessive, unreasonable and out of all the proportion to the reasonable cost of construction including the cost of land on which the whole building is constructed.

23. The aforesaid petition filed by the appellant under Sections 6 and 9 of the Delhi Rent Control Act was unconditionally withdrawn by the appellant on 01.09.1987 (Exhibit PW-1/4). The necessary inference, to my mind, is that the appellant abandoned its claim for determination of standard rent (Order XXIII Rules 1 and 1A CPC). The plea of the appellant that the said petition was

withdrawn as it was barred by limitation appears to me to be clearly untenable as the same is unsupported by any such evidence on the record. Even assuming it to be so, it does not now lie in the mouth of the appellant to contend that the rate of rent was not Rs. 3,780/- p.m. as admitted by him in the petition itself.

24. Next, reference may be made to the notice of demand dated 22nd September, 1983 sent by the respondent to the appellant demanding the arrears of rent at Rs. 3,780/- p.m. Based upon the said notice, as stated above, a petition under the provisions of Section 14(1)(a) of the Delhi Rent Control Act was filed by the respondent (Exhibit PW- 1/5), stating therein that the tenant had stopped paying the rent with effect from 01.09.1982. The appellant-tenant filed a written statement (Exhibit PW- 1/6) to the said petition, wherein in paragraph 5 of the preliminary objections, it was admitted that the rent was increased to Rs. 3,780/- p.m., but asserted that there was a prohibition under Section 4 of the Delhi Rent Control Act to such increase. In reply to para 11 of the eviction petition also, wherein the rate of rent was again stated to be Rs. 3,780/- p.m., the increase was stated to be illegal and it was submitted that the appellant was not liable to pay more than Rs. 2,700/- p.m. Similarly, in para 18(a) of the written statement, the payment was admitted and again it was submitted that the rate of Rs. 3,780/- p.m. was violative of the standard rent.

25. The admissions made in the statement of the appellant-tenant as RW-1 before the learned ARC, Delhi on 09.07.1987 (Exhibit PW-1/7) are also significant which read as follows:

As per the lease, the respondent company was to abide by the same terms and conditions of perpetual lease as entered into between the parties and L&DO.; Again said: The petitioner and respondent. As per after the initial period of three years the rent was to be increased by 20% and, thereafter, after every two years rent was increased by 20%. Therefore, after three years the rent was increased from Rs. 2, 700/- to Rs. 3,240/- and then after a further period of two years the rent was increased from Rs. 3,240/- to Rs. 3, 780/-. This increase in rent was and is illegal and the same cannot be increased from Rs. 2, 700/- to Rs. 3,240/- or Rs. 3, 780/-.... The monthly rent used to be paid by cheques but the landlord was

invariably reluctant in issuing stamped receipts for the same. Over a period of 82 months from 1.12.1976, I have with me only 10 receipts which the landlord would give with great reluctance and would cover 3/4 months in one receipt. In respect of monthly rentals I have paid 12 Nos. cheques amounting to Rs. 3, 780/- each or the details of cheques Nos. details of the cheques dates and the amount are available on record. In 1986/96 and petitioner has issued a overall statement which is totally false.

26. The above deposition, to my mind, affirms that the rate of rent as per the lease deed was Rs. 3,780/- p.m., which was being paid by the appellant by cheques. The only grievance of the appellant before the learned ARC, Delhi was that the rent so increased was arbitrary and illegal and in violation of the provisions of Section 4 of the Rent Control Act. The learned ARC, by her judgment dated 7th March, 1999 (Exhibit PW-1/8), adjudicating upon the dispute between the parties as to whether standard rent was liable to be paid by the tenant or as to whether the landlord was entitled to recover the agreed rent in accordance with the Lease Deed, in paragraphs 12 and 16 held as under:

Paragraph 12

12. I, therefore, hold that the respondent was liable to pay the rent @ Rs. 3, 780/- per month which he had agreed to pay and in fact paid for one year since December 1981 as admitted by him as RW1.Paragraph 1616. However, the present case is one of first default. Having come to the conclusion that the rate of rent was Rs. 3, 780/- per month and not Rs. 2, 700/- per month, the order Under Section 15(1) of the DRC Act has to be modified and in order that the respondent be entitled to the protection of Section 14(2) of the DRC Act, it is directed that the respondent shall pay or deposit the entire arrears of rent @ Rs. 3, 780/- w.e.f. 1.9.1982 upto the month preceding the month in which the deposit is made within one month of the date of this order. The respondent shall be entitled to adjust the amounts already deposited vide orders Under Section 15(1) of the DRC Act passed on 14.3.1986 and 8.5.1986.

27. Aggrieved and dissatisfied by the judgment of the learned Additional Rent Controller, the appellant-tenant preferred an appeal to the Additional Rent Control

Tribunal. It would be apposite at this juncture to note that in the appeal itself (Ground 21), it is again stated by the appellant that the last paid rent was Rs. 3,780/- p.m., which was not the initially agreed rent. This, by itself, is sufficient to show that the appellant was paying rent at the rate of Rs. 3,780/- p.m.

28. Adjudicating upon the appeal filed by the appellant-tenant, the Additional Rent Control Tribunal in paragraph 10 of his judgment dated 06.12.2003 (Exhibit PW-1/9) held as follows:

10. The demand in the notice is of Rs. 45,360/-. This demand has been met by the 12 cheques which were mentioned in the reply notice. There was no else demand for which the respondent can prefer the petition Under Section 14(1)(a) of the DRC Act (sic.). Assuming for the sake of arguments respondent had made any demand of any previous rent due which was not depicted in the notice then it was the duty of the respondent to make a demand of the said rent. When a specific demand is made and the specific demand is met then for any other dues if such payments are adjusted then the demand as expressed in the notice cannot be said to be demand within the meaning of Section 14(1)(a) of the DRC Act. Therefore, ingredient of demand of previous dues was missing and once the ingredient of demand was missing there cannot be any cause of action to the respondent to prefer the petition Under Section 14(1)(a) of the DRC Act. The court below while passing the impugned order has not looked into this vital aspect of the matter. The court below went with the alleged adjustment. Respondent was to prove by standard evidence that what was adjusted was also due. The standard evidence is lacking. Respondent has simply submitted a statement of account which is no evidence in the eye of law. In this view of the matter the court below was not justified even considering the statement of account as have been submitted. (sic.) I need not refer to the other evidence as on the face of the demand, petition of the respondent cannot stand.

11. In view of the foregoing discussion the order of the court below cannot be sustained. The averments have been set out with regard to the rate of rent. This Court has nothing to do with the same as what has been demanded same has been met and cause of action as was required Under Section 14(1)(a) of the DRC

Act was not there. Therefore, I need not refer the arguments with regard to the locus standi of the respondent since the petition is being dismissed.

12. Accordingly, appeal is allowed. The impugned order is set aside. The petition of the respondent is dismissed.

29. From the above findings of the learned Additional Rent Control Tribunal, Delhi, it is clear that the Tribunal did not at all touch the aspect of the rate of rent nor altered the same from Rs. 3,780/- to Rs. 2,700/- as prayed for by the appellant and the prayer for modification of the rate of rent was not granted.

30. Thus, significantly, in the instant case, the notice of demand was raised at the rate of Rs. 3,780/- p.m. and the rent paid in consequence thereof was at the rate of Rs. 3,780/- p.m. This is crystal clear from the order of the learned Additional Rent Control Tribunal (Exhibit PW-1/9), wherein it is recorded that payment of arrears of rent was sought by notice dated 22.09.1983 from 01.09.1982 to 31.08.1983, i.e., for a period of 12 months and a total payment of 12 number of cheques at the rate of Rs. 3,780/-, totalling Rs. 45,360/- had been paid (Rs. 3,780/- x 12 = Rs. 45,360/-) and as such there was no cause of action. It was on that ground that the eviction proceedings were dismissed and the appeal allowed.

31. A perusal of the record also shows that the plea that the payment was being made by the appellant 'under pressure' was raised for the first time in the eviction proceedings. It was however not elaborated either in the pleadings in the eviction proceedings or in the course of evidence, as to what was the nature of the pressure being exerted upon the appellant and as a matter of fact nothing has been placed on the record by the appellant to show that any amount was paid by him under protest. The same remains a bald allegation. It is settled law that where an averment is made that payment was made under pressure or protest, all the particulars thereof are required to be pleaded (Order VI Rule 4 CPC) and duly proved in the course of evidence. In the absence of pleadings and proof, the plea of pressure is, therefore, of no avail to the appellant.

32. Mr. Saurabh Kirpal, the learned Counsel for the appellant also contended that the trial court has based its judgment on some form of res judicata, in that, the trial

court has held that the finding of the Additional Rent Controller (ARC) that the rent of premises was Rs. 3,780/- has become final between the parties. He further contended that this is on the basis that the Tribunal which was hearing an appeal from the decision of the ARC has not disturbed this finding of the ARC. Hence, as per the learned trial court the decision of the ARC has become final and binding and cannot be challenged. Mr. Kirpal submitted that this finding ignores the fact that the appeal was allowed by the Tribunal and as such there was no question or occasion for the appellant to file an appeal from the order of the Tribunal. The observations of the Supreme Court in the case of Deva Ram v. Ishwar Chand : (1995) 6 SCC 733, which are extracted herein below, were relied upon by the counsel for the appellant in support of his contention that the judgment of the trial court was untenable:

27. Thus, an appeal does not lie against mere 'findings' recorded by a court unless the findings amount to a 'decree' or 'order'. Where a suit is dismissed, the defendant against whom an adverse finding might have come to be recorded on some issue has no right of appeal and he cannot question those findings before the appellate court. (See Ganga Bai v. Vijay Kumar).

28. In Midnapur Zamindari Co. Ltd. v. Naresh Narayan Roy, it was observed as under:Their Lordships do not consider that this will be found an actual plea of res judicata, for the defendants, having succeeded on the other plea, had no occasion to go further as to the finding against them: but it is the finding of a court which was dealing with facts nearer to their ken than the facts are to the Board now, and it certainly creates a paramount duty on the appellants to displace the finding, a duty which they have now been able to perform.

33. The aforesaid contention of the learned Counsel for the appellant, in my opinion, is devoid of merit though undoubtedly the proposition of law laid down in Deva Ram's case (supra) cannot be undisputed. In the instant case, the findings of the learned trial court as is clear from a perusal of the judgment are not based on the principle of res judicata. Reference has been made by the learned trial court to the judgment of the Tribunal only with a view to show that the appeal was allowed by the Tribunal for the reason that there were no arrears of rent payable on the

date of the institution of the eviction petition and thus no ground for the preferment of the petition under Section 14(1)(a) of the Delhi Rent Control Act existed and thus the contention of the appellant that his prayer for reduction of the rent to Rs. 2,700/- p.m. from Rs. 3,780/- p.m. was granted by the Tribunal, was misconceived.

34. With regard to plea of the suit being barred by the provisions of the Delhi Rent Control Act, a Division Bench of this Court in Shalimar Paints Ltd. v. Bani Jagtiani Trust and Ors. : 107 (2003) DLT 58, while holding that the landlord was competent to increase the rent legally as per the provisions of Section 6A and Section 8 of the DRC Act, has laid down that there is no legal bar in the landlord availing the remedy of filing a suit once the rent stood increased to more than Rs. 3,500/- p.m. Paragraph 22 of the said judgment, which is apposite, is being reproduced hereunder:

22. In view of the aforesaid position of law, we do not find any merit in the submission of the learned Counsel for the appellant that the respondent cannot avail two remedies for a single cause of action. Even according to Ambalal's case (supra) there is no legal bar even in availing of two remedies but it will not be right for the landlord to continue two proceedings. In the instant case the 1st proceeding was initiated when the rent was less than Rs. 3500/- and the second proceedings were initiated when the rent was more than Rs. 3500/- and the tenancy fell outside the purview of the Rent Control Act. The respondent was wholly justified in initiating two proceedings in the facts and circumstances of this case.

35. It also deserves to be noticed that the plea of fixation of standard rent under Section 4 of the Delhi Rent Control Act is not available to the appellant, inasmuch as a Division Bench of this Court in the case of Raghunandan Saran Ashok Saran (HUF) v. Union of India and Ors. : 2002 (61) DRJ 457 (DB), after delineating the entire history of rent legislation and examining the various provisions of the Rent Control Act has taken the view that Sections 4, 6 and 9 of the Delhi Rent Control Act, which deal with the determination and fixation of standard rent, have not taken into account the huge difference between the cost of living in the past and the present times and thus do not pass the test of reasonableness. The said provisions have thus been adjudged to be 'archaic' in nature in that they contain

no mechanism to compensate the landlords and to offset inflation. These provisions relating to standard rent, therefore, have been held to offend Articles 14, 19(1)(g) and 21 of the Constitution and ultra vires the Constitution.

36. Another submission made by Mr. Kirpal on behalf of the appellant was that even assuming that the respondent-landlord was entitled to enhance the rent in terms of the lease agreement, the Act requires a notice to be sent for such an increase. No such notice has been given in this case. Therefore, even assuming that the increased rent has been paid, the same has not been enhanced in a manner known to law. The enhancement is thus contrary to Section 8 of the Delhi Rent Control Act and hence any increase is void.

37. Mr. B.B. Gupta, the learned Counsel for the respondent relying upon the judgments rendered in Ram Prakash (Prof.) v. D.N. Shrivastava : 162 (2009) DLT 419, Crack Detectives Pvt. Ltd. v. P.S. Malhotra : 129 (2006) DLT 584, Standard Pharmaceuticals Ltd. v. Gyan Chand Jain and Anr. : 2002 (62) DRJ 733, National Cooperative Consumer Federation of India Ltd. v. Jwala Pershad Ashok Kumar Chopra and Ors. : 74 (1998) DLT 842 and Nopany Investments (P) Ltd. v. Santokh Singh (HUF) : 2008 (2) SCC 728 contended that the provisions of Section 8 are not applicable to the instant case.

38. A look at Section 6A and Section 8 of the Act, in my opinion, clearly shows that the said Section has no application to the instant case where the Lease Deed itself provided for the increase of the rent from time to time. Section 6A and Section 8 reads as under:

6A. Revision of rent.- Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.'

8. Notice of increase of rent.- (1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty

days from the date on which the notice is given.

(2) Every notice under Sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1982 (4 of 1882).

39. Clearly, Section 6A envisages and permits revision of rent by 10% every three years. Such increase, the Section envisages, shall be made upon the standard rent or where no standard rent is fixed under the provisions of the Act in respect of any premises, the rent agreed upon between the landlord and the tenant. As such, it is only the rent agreed upon between the landlord and the tenant which is subject to revision by 10% every three years. This provision clearly can have no application in a case where in Lease Deed itself provision is made for the increase of rent and the rent is agreed upon between the landlord and the tenant by consensus.

40. In view of the aforesaid, I am of the view that the learned Additional Trial Judge was justified in holding that there was sufficient evidence on record to prove that the rent of the tenanted premises was Rs. 3,780/- p.m. w.e.f. 01.12.1981 as claimed in the plaint and the appellant/defendant had failed to prove that the suit was barred by the provisions of the DRC Act. Issues No. 1 and 2, in my considered opinion, were correctly decided in favour of the respondent and against the appellant.

41. Issue No. 3

Issue No. 3 reads as under:Issue No. 3: Whether the name of M/s. Cycle Equipment Pvt. Ltd. has been changed to M/s. CEPCO Industries Pvt. Ltd., if so, its effect? OPP.

42. The onus of proving this issue was upon the respondent, who discharged the aforesaid onus by deposing that the respondent Company was earlier known as 'CYCLE Equipment Pvt. Ltd.'. The name 'CYCLE Equipment Pvt. Ltd.' had been changed to 'CEPCO Industries Pvt. Ltd.' and the certificate of incorporation as well as the certificate of the change of the name were incorporated in the

Memorandum and Articles of Association of the respondent Company, which were Exhibit PW- 1/1. The appellant was well aware of the change of the name of 'CYCLE Equipment Pvt. Ltd.' to 'CEPCO Industries Pvt. Ltd.'.

43. In cross-examination, the testimony of the aforesaid witness (PW- 1) remained unshaken. From the deposition of PW- 1 and from the cross-examination of DW-1, in my view, the learned trial court rightly decided this issue in favour of the respondent and against the appellant. In any case, the findings on this issue were not seriously challenged by the appellant in the course of arguments.

44. Issue No. 4

Issue No. 4 reads as under:

Issue No. 4: whether the tenancy stands terminated vide notice dated 21.9.2005, if so, its effect? OPP.

45. The findings of the learned trial court on this issue as set out in paragraph 24 of the judgment are as follows:

The onus of this issue was upon the plaintiff. The plaintiff has proved the notice dated 21.9.2005 as Ex P W1/1 0 wherein the lease of the defendant was determined. The service of the said notice is not denied. As the notice was duly replied vide reply Ex PW1/14 dated 5.10.2005, it was alleged in the reply that the defendant was liable to pay rent @ Rs. 2,700/- per month which he has paid upto date and the rate of rent determined @ Rs. 3,780/- by the Ld. ARC, Delhi has already been set aside by the Ld. Additional Rent Control Tribunal, Delhi and as such the legal notice determining the tenancy was not maintainable. Admittedly the tenancy is a month to month tenancy which is terminable by a 15 days notice. As per the provisions of Section 111 Sub-section (h) of The Transfer of Property Act, 1882, the said tenancy is determined on the expiration of a notice to determine the lease. In the light of my findings on the issue No. 1 and 2, it is held that the rate of rent of the tenanted premises was Rs. 3, 780/- on the date of service of the notice and the lease of the defendant qua tenanted premises stands determined after 15 day of service of notice dated 21.9.2005 Ex PW1/10. As per

the reply Ex PW1/14, the said notice was received on 26.9.2005 by the defendant. The plaintiff has, therefore, succeeded in proving that the lease stands determined by notice dated 21.9.2005 and the tenancy stands terminated. The issue No. 4 is decided accordingly in favour of the plaintiff and against the defendant.

46. The above findings on Issue No. 4 were also not seriously assailed by the appellant in the course of arguments and, therefore, I do not propose to dwell any longer on this issue.

47. Issues No. 5, 6 and 8

Issues No. 5, 6 and 8 pertain to the prayer for mesne profits made in the suit and read as under:

Issue No. 5: Whether the plaintiff is entitled to the recovery of Rs. 1, 73,880/- as arrears of rent? OPP.

Issue No. 6: Whether the plaintiff is entitled to the mesne profits, if so, at what rate and for what period? OPP.

Issue No. 8: Whether the plaintiff is entitled to the interest on the mesne profits as claimed for? OPP.

48. The onus of proving the aforesaid issues was upon the respondent. In prayer Clause (ii), the respondent has prayed for recovery of Rs. 1,73,880/- with interest at the rate of 24% p.a. from the date of the institution of the suit till the date of realisation, i.e., Rs. 3 8,880 towards short fall in the rent for the last three years before the determination of the lease and mesne profits at the rate of Rs. 1,35,000/- p.m. (i.e. Rs. 150/- per sq. ft. per month) till the institution of the suit, i.e., for the month of November, 2005. In prayer Clause (iii), the plaintiff has claimed future mesne profits/damages at the rate of Rs. 150/- per sq. ft. per month, i.e., at the rate of Rs. 1,35,000/- p.m. along with interest at the rate of 24% p.a.

49. In view of the findings of the learned trial court on Issues No. 1 and 2 which have been affirmed by this Court, the learned trial court, in my view, has rightly

held the respondent to be entitled to the aforesaid amount of Rs. 38,880/- calculated @ Rs. 3,780/- per month as arrears of rent along with interest at the rate of 12% p.a.

50. With regard to the claim of Rs. 1,35,000/- as mesne profits, the learned trial court awarded mesne profits at the rate of Rs. 50/- per sq. ft. The contention of the learned Counsel for the appellant is that the determination of mesne profits at the rate of Rs. 50/- per sq. ft. per month by the learned Court was based on no evidence or material whatsoever, but was simply the ipse-dixit of the respondent. The Court could at best have passed a decree directing an inquiry into the rate of mesne profits as contemplated by the provisions of Order XX Rule 12(c) of the CPC. Rather than directing an inquiry, the trial court simply passed a decree, which was not permissible in law.

51. Mr. Gupta, the learned Counsel for the respondent, on the other hand, contended that under Order XX Rule 12 CPC, it is the absolute discretion of the Court either to determine the mesne profits of its own or to order for an inquiry. In the present case, the Court after considering the evidence on record and taking into account the entirety of the facts and circumstances of the case and the background of the lis between the parties has exercised its lawful discretion to determine the mesne profits of its own. Such exercise of discretion by the learned Court, Mr. Gupta contended, has not been challenged before this Court except in the course of arguments. It was also contended by Mr. Gupta that the respondent had discharged the onus placed upon it with regard to proving the rate of damages/mesne profits by leading oral evidence and also by cross-examining the appellant. The appellant, on the other hand, had not led any evidence to prove the market rate at the relevant time.

52. The learned Counsel for the respondent also relied upon a catena of decisions in support of his contention that while determining mesne profits the Court is entitled to take judicial notice of the increase of rentals in Delhi under Sections 56 and 57 of the Indian Evidence Act, 1872, including the decisions of this Court in M.R. Sahni v. Doris Randhawa : 2008 (104) DRJ 246, National Radio & Electronic Co. Ltd. v. Motion Pictures Association : 122 (2005) DLT 629 (DB), State Bank of

Bikaner and Jaipur v. I.S. Ratta and Ors. : 120 (2005) DLT 407 (DB), Anant Raj Agencies Properties v. State Bank of Patiala : 2002 IV AD (Delhi) 733 (DB), Motor & General Finance Ltd. v. Nirulas and Ors. : 92 (2001) DLT 97, Vinod Khanna and Ors. v. Bakshi Sachdev (Deceased) Through LRs and Ors. : AIR 1996 (Delhi) 32 (DB) and Bakshi Sachdev (D) by LRs v. Concord (I) 1993 (1) Raj LR 563.

53. Specific reference was made to a Division Bench judgment of this Court in Anant Raj Agencies Properties v. State Bank of Patiala : 2002 IV AD (Delhi) 733, wherein this Court in respect of premises situated in Connaught Place, New Delhi had, on the basis of the evidence on record, allowed the payment of mesne profits at the rate of Rs. 50/- per sq. ft. per month for the property in the possession of the Bank, and further held that since the suit had been kept pending from 15.04.199 1 till 08.01.1999, the trial court ought to have taken into consideration the manifold increase of rent in the area in question and also taken judicial notice of the same. In doing so, the Division Bench relied upon the judgment of the Supreme Court in D.C. Oswal v. V.K. Subbiah and Ors. : AIR 1992 SC 184, where the rent of the premises was enhanced by the Supreme Court from Rs. 275/- p.m. to Rs. 400/- p.m. taking judicial notice of the escalation of rents everywhere.

54. In Vinod Khanna and Ors. v. Bakshi Sachdev (Deceased) Through LRs and Ors. : AIR 1996 (Delhi) 32, a Division Bench of this Court relying upon the D.C. Oswal's case held as under:

21. The learned Counsel for the appellants also urged before us that the learned trial Court was not justified in taking a judicial notice of the fact of increase of rents like the suit property and also in providing Rupees 10,000/- per month as fair amount towards damages/mesne profits in favor of the plaintiffs. It is true that no substantial evidence has been led by the plaintiffs in respect of the increase of rent in the properties like that of the suit property. However, it is a well known fact that the amount of rent for various properties in and around Delhi has been rising staggeringly and we cannot see why such judicial notice could not be taken of the fact about such increase of rents in the premises in and around Delhi which is a city of growing importance being the capital of the country which is a matter of public history. At this stage we may appropriately refer to the Court taking judicial

notice of the increase of price of land rapidly in the urban areas in connection with the land acquisition matters. Even the Apex Court has taken judicial notice of the fact of universal escalation of rent and even raised rent of disputed premises by taking such judicial in case of D.C. Oswal v. V.K. Subbiah reported in AIR 992 SC 184.

22. In that view of the matter we have no hesitation in our mind in holding that the trial Court did not commit any illegality in taking judicial notice of the fact of increase of rents and determining the compensation in respect of the suit premises at Rs. 10,000/- per month w.e.f. 19- 1-1989, in view of the fact that the rent fixed for the said premises was at Rs. 6,000/- per month as far back as in the year 1974. We may, however, note here that the learned Counsel for the appellants did not seriously challenge the findings of the learned Judge that Rs. 10,000/- per month would be the fair market rent of the suit premises. Accordingly, in view of the aforesaid findings arrived at by us the submissions of the learned Counsel for the appellants in our view have no substance at all.

55. In another Division Bench judgment of this Court titled as S. Kumar v. G.K. Kathpalia 1991 (1) RCR 431, where the respondent landlord had not led any documentary evidence on the prevalent market rates of other premises in the vicinity, it was held by the Division Bench that keeping in mind the prime location of the suit premises, its proximity to the community centre and commercial activity, a sum of Rs. 25,000/- p.m. would be a just and fair amount by way of damages/mesne profits from the date of the institution of the suit till the date of the delivery of the possession of the premises.

56. In Motor & General Finance Ltd. v. Nirulas and Ors. : 92 (2001) DLT 97, it was held that where the defendants are prima facie unauthorised occupants, they cannot be allowed to remain in possession of the premises without paying any amount. The Court can take judicial notice of the location of the premises, its area, etc. for the purpose of awarding mesne profits to the landlord thereof.

57. In International Pvt. Ltd. v. Saraswati Industrial Sundictes Ltd. 1992 (2) RCR 6, this Court held that a certain amount of guess work in the calculation of mesne profits was inevitable.

58. In Shri M.R. Sahni v. Mrs. Doris Randhawa : 2008 (104) DRJ 246, while reiterating that the steep increase in the rentals in Delhi is a matter of fact of which judicial notice can be taken of by the Courts, this Court again emphasized:

44. I note that in relation to determination of mesne profits there is always some element of guesswork. What has to be ensured is that the finding has not to be the conjecture of the Court. As long as there is some evidence to sustain the same, the finding cannot be faulted.

59. In the instant case, on an examination of the records, it transpires that on behalf of the respondent PW- 1 Shri R.N. Aggarwal has tendered in evidence his affidavit by way of evidence wherein he deposed that the tenancy of the appellant was determined vide notice dated 21.09.2005 and thereafter the occupation/possession of the appellant became unauthorised and the appellant was liable to pay mesne profits/damages for the use and occupation of the premises. He further stated on oath that the then letting value of the premises was at the rate of Rs. 150/- per sq. ft. per month; that there had been a tremendous increase in the letting value of the premises, and that ever since the sealing of unauthorised commercial premises in residential areas had started, i.e., since the beginning of the year 2006, the rate of letting value of authorised commercial and/or office premises had increased manifold. He also deposed that as at present, the letting value of the premises was Rs. 800/- per sq. ft. per month and that the respondent was also entitled to interest thereon at the rate of 24% p.a. till the date of payment. The testimony of this witness remained unshaken in cross-examination and barring a few suggestions put to the witness there was no effective cross-examination on the issue.

60. In the cross-examination of the appellant (Shri M.K. Bhagwagar, who appeared in the witness box as RW-1), there was no denial by the appellant that the ground floor of the premises in question, which were tenanted, had been let at the rate of Rs. 800/- per sq. ft. per month, where the Pantaloon Showroom was being run. The appellant also did not choose to lead any evidence in rebuttal to prove the market rate at the relevant time. Thus, it is on the record and is not denied by the appellant that the ground floor of the very same premises is at

present leased out for the purpose of running the Pantaloon Showroom at the rate of Rs. 800/- per sq. ft. per month.

61. As regards the contention of the learned Counsel for the appellant that it was incumbent upon the Court to have ordered an inquiry into the mesne profits, the provisions of Rule 12 of Order XX CPC are apposite, which read as under:

12. Decree for possession and mesne profits.- (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree:

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mense profits;

(c) directing an inquiry as to rent or mense profits from the institution of the suit until,-

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under Clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

62. The learned trial Judge has held, and in my view rightly so, that in view of the provisions of Order XX Rule 12(ba) of the CPC in a suit for recovery of possession of immovable property and for rent or mesne profits, the Court while passing decree for possession of the property may pass a decree for mesne profits or

direct an inquiry as to such mesne profits. The Court has discretion to award future mesne profits if sufficient evidence is found available on the record by the Court for determination of the claim of mesne profits and if the Court finds that the evidence brought on record by the landlord is not sufficient for such determination, the Court may direct an inquiry as to such mesne profits.

63. In Gopalakrishna Pillai and Ors. v. Meenakshi Ayal and Ors. : AIR 1967 SC 155, it has been held that Order XX Rule 12 of the CPC enables the Court to pass a decree both for past and future mesne profits. It was further held that as regards the past mesne profits, the plaintiff has existing cause of action at the time of institution of the suit while for future mesne profits though he has no cause of action as on date of institution of the suit but he can claim such relief of future mesne profits under Order XX Rule 12 CPC and the Court may award such relief even if the same is not specifically asked for in the plaint.

64. As regards the claim for interest on mesne profits, in I.S. Ratta (supra), relying upon the judgment of the Supreme Court in Mahant Narayana Dasjee Varu and Ors. v. The Board of Trustees, the Tirumalai Tirupathi Devasthanam : AIR 1965 SC 1231, it was held that interest is an integral part of the mesne profits and, therefore, the same has to be allowed in the computation of mesne profits itself. Paragraphs 16 to 18 of the said judgment are apposite and are reproduced hereunder:

16. Having decided the aforesaid question in the aforesaid manner, we proceed to deal with the next contention of Counsel appearing for the appellant that the interest awarded by the learned Trial Court for the damages is unknown in law. We have given our anxious consideration to the aforesaid contention of Counsel appearing for the appellant. The said contention is however, liable to be rejected straightaway in view of the settled position of law in that regard in the decision of the Supreme Court in Mahant Narayana Dasjee Varu and Ors. v. The Board of Trustees, the Tirumalai Tirupathi Devasthanam reported in : AIR 1965 SC 1231. The Supreme Court in the said decision held that Section 2(12) of the CPC has defined what 'mesne profits' is. It was also held in the said judgment that interest is an integral part of the mesne profits and, therefore, the same has to be allowed in

the computation of mesne profits itself. The following paragraph from the judgment is relevant to be extracted which accordingly stands quoted herein:

The last of the points urged was that the learned Judges erred in allowing interest up to the date of realisation on the aggregate sum made up of the principal and interest up to the date of the decree, instead of only on the principal sum ascertained as mesne profits. For the purpose of understanding this point it is necessary to explain how interest has been calculated by the learned Judges. Under Section 2(12) of the Civil Procedure Code which contains the definition of 'mesne profits', interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. That proceeds on the theory that the person in wrong possession appropriating income from the property himself gets the benefit of the interest on such income. In the present case the Devasthanam was entitled to possession from and after June 7, 1933 i.e., when the Act came into force and the Devasthanam Committee was appointed. The Mahant having wrongfully resisted the claim of the Devasthanam to possession without surrendering the property, was admittedly bound to pay mesne profits. This, it may be stated, is not disputed. The question raised are, however, two: (1) when is the aggregation of the principal amount of the mesne profits and the interest thereon to be made for the purpose of the total carrying further interest? (2) What is the rate of interest to be charged. The learned trial Judge allowed interest at 6 per cent for the calculation of interest which is part of mesne profits. Having calculated mesne profits on this basis he aggregated the amount of mesne profits, i.e., income from the several items of property plus the interest on it up to the date of the plaint i.e., January 10, 1946. On the total sum so ascertained he decreed interest at 6 per cent till the date of his decree i.e., March 28, 1952. He passed a decree for this sum with further interest at 6 per cent till the date of realisation.17. The aforesaid issue is no longer res integra that interest on mesne profits could be paid. The next question, therefore, would be as to what would be the appropriate rate of interest. The learned Trial Court has awarded 16.5% p.a., interest on the rent. In the aforesaid case decided by the Supreme Court 6% interest was held to be a reasonable interest. In the said case it was held that:

In any event, if the Trial Court in its discretion awarded interest at 6 per cent, and that is admittedly not per se an unreasonable rate, there was no compelling equity in the Mahant to justify interference with that discretion.18. Considering the facts and circumstances of the case we consider that direction to pay interest @ 16.5% p.a was on the higher side. We, in the facts and circumstances of the case, deem it proper to fix the rate of interest payable by the appellant to the respondents towards the arrears of mesne profits from the date of decree till the date of possession at 12% p.a. Ordered accordingly. The amount paid in excess shall be returned by the respondents to the appellant, failing which security furnished for restitution shall be enforced and the amount which is lying with the Trial Court amounting to Rs. 40 lakhs and TDS amount of Rs. 5 lakhs shall be returned to the appellant.

The appeal stands disposed of in terms of the aforesaid order.

65. In the facts and circumstances, the learned trial court, in my view, has rightly held that the respondent is entitled to mesne profits at the rate of Rs. 50/- per sq. ft. per month, i.e., Rs. 45,000/- per month with effect from the month of November, 2005 till the vacation of the tenanted premises. As held by the Division Bench in the I.S. Ratta's case (supra), interest is liable to be awarded on mesne profits. The only question, therefore, which remains to be considered is what would be the appropriate rate of interest on the mesne profits awarded by the learned trial court. The learned trial court has awarded 12% p.a. interest on the rent. Considering the facts and circumstances of the case, it is deemed appropriate to fix the rate of interest payable by the appellant to the respondent towards the arrears of rent and mesne profits @ 9% p.a. throughout.

66. In view of the aforesaid, the findings of the learned trial court on Issues No. 5, 6 and 8 are upheld with the aforesaid modification in the rate of interest.

67. Issues No. 7 and 9

Issues No. 7 and 9 read as under:

Issue No. 7: Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? OPP.

Issue No. 9: Relief.

68. In view of the findings of this Court on Issues No. 1 to 6 and 8, there does not appear to be any reason to interfere with the findings rendered on Issues No. 7 and 9, which are a natural corollary to the findings on the earlier issues and flow from the same. The rate of interest awarded by the learned trial court, however, is modified to the extent of 9% throughout.

69. Before parting with the case, it may be noticed that the learned Counsel for the appellant vehemently pressed for a remand of the case to the trial court. This Court is unable to see any justification for the same as the findings of the learned trial court appear to be passed on a correct appreciation of the facts and the evidence adduced before the trial court in the light of the law laid down by this Court and by the Supreme Court.

70. The judgment of the learned trial court is, therefore, upheld and the appeal is dismissed with costs. RFA 329/2007 and CM Nos. 16188/2007 and 17682/2007 stand disposed of accordingly.