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

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*Date of Decision: 21.06.2023*+ **RC.REV. 174/2019 & CM APPL. 13057/2019 and CM APPL. 40082/2019**

MURARI CHAUHAN &amp; ANR

.....Petitioner

versus

KAILASH NARAIN MALHOTRA

.....Respondent

**Advocates who appeared in this case:**For the Petitioner : Mr. Anant Gupta, Adv. along with  
Petitioner-in-person.

For the Respondent : Mr. Rajiv Mehra, Adv.

**CORAM:****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Hearing/Hybrid Hearing (as per request)]****TARA VITASTA GANJU, J.:****CM Appl. 40082/2019***[Application seeking directions to pay use and occupation charges]*

1. This is an Application filed by the Respondent/landlord seeking directions to the Petitioner/tenant to pay use and occupation charges of the premises i.e., shop on the front side at the ground floor of property bearing no. 22F, Kamla Nagar, Delhi- 110007, ad-measuring area 140 sq. ft. [hereinafter referred to as the "demised premises"] from the date of the Eviction order dated 20.09.2018 [hereinafter referred to as "Eviction Order"]



till the Revision Petition is finally decided by this Court.

1.1 Learned Counsel appearing on behalf of the Respondent/landlord submits that the Petitioner/tenant is in occupation of the demised premises for many years.

2. The execution of the Eviction Order was stayed by this Court on 19.03.2019.

3. The present Application was filed on 03.08.2019 and the Notice in the Application was issued on 13.03.2020. On 13.03.2020, learned Counsel appearing on behalf of the Petitioner/tenant had sought time to file a Reply to the present Application. The Reply has not been filed despite the last opportunity granted by this Court on 25.01.2023.

4. On 01.05.2023, learned Counsel appearing on behalf of the Petitioner/tenant, sought more time to file a Reply to the present Application.

4.1 Learned Counsel appearing on behalf of the Respondent/landlord has opposed the grant of any further time to file the Reply, as no Reply has been filed for almost 4 years. He further submits that the Petitioner/tenant has obtained Interim Orders from this Court and thereafter no use and occupation charges are being paid by the Petitioner/tenant.

4.2 A perusal of the record shows that the Petitioner/tenant had sought time to file a Reply on several occasions including 13.03.2020 and 25.01.2023. In these circumstances, the Orders in this Application were reserved, and the Parties were given leave to file their respective written submissions.

5. Both Parties have since filed their written submissions.

6. I have heard the learned Counsels for the Parties and have perused the



record.

7. The Supreme Court in a recent Judgment titled *Martin and Harris Private Limited and Another v. Rajendra Mehta and Others*<sup>1</sup>, has upheld the law laid down in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*<sup>2</sup> case that once an Eviction Order has been passed, the tenant is required to pay the use and occupation charges at market rate of like premises till the final disposal of the Petition. It has been held however that, the direction to pay mesne profits or compensation will depend on the facts and circumstances of each case including on location of the property whether it is in a village, city, or metropolitan area as well as its nature whether it is a commercial or residential area and the standard rate of rent serving as guiding factors in the facts of each case.

8. Learned Counsel for the Respondent/landlord, with this Application has placed on record three registered lease deeds of the “like premises” with the following details:

(i) Lease Deed – 07.02.2019

Nature	Basement
Use	Residential
Area	Not specified
Rent	69,458- 72,930/- (per month)
Description/ details	The tenant in this property is running a paying guest facility

(ii) Lease Deed – 04.12.2018

Nature	Basement
Use	Commercial
Area	258 sq. yds. (approx.)

<sup>1</sup> (2022) 8 SCC 527

<sup>2</sup>(2005) 1 SCC 705



Rent	Rs,72,000/- (+ GST)(per month )
Description/ Details	This property is used as a godown

(iii) Lease Deed - 29.11.2018

Nature	Whole property
Use	Commercial
Area	650 sq fts (carpet area) having frontage of approx. 9 ft.
Rent	3,75,000/- (per month)
Description/ Details	This property is used as a factory/ store for a Brand, selling their products

8.1 Learned Counsel for the Respondent/landlord submits that similarly situated shops/properties in the vicinity of the demised premises are being let out at a monthly rent which ranges between Rs. 60,000/- to Rs.70,000/- in similar locations in Kamla Nagar, Delhi.

9. Learned Counsel for the Petitioner/tenant submits that the tenant since pandemic, earns only Rs.15,000/- to Rs.20,000/- per month. It is further submitted that the building is very old and is in a dilapidated condition.

9.1 It is averred that so far as concerns the lease deeds at:

- (i) It is a newly constructed building, hence, cannot be applicable;
- (ii) It is a property admeasuring 2600 sq. ft. at a rent of Rs. 72,000/- hence, at this rate the user charges for this premises can be approx. Rs. 27.70 per sq. ft.;
- (iii) It is situated at a distance from the demised premises in a more expensive locality.

9.2 Learned Counsel for the Petitioner/tenant further submits that these properties with respect to the lease deeds are much larger in area (i.e., 2600 sq. ft) and are newly constructed. Therefore, he submits that as per the *pro-*



*rata* basis, the use and occupation charges of the demised premises should be fixed at Rs.3,800/- per month and hence, Rs. 2,000/- should be fixed as user charges.

10. The Petitioner/tenant has not placed any lease deeds on record.

11. In the circumstances of the case, the lease deed at serial no. (ii), above i.e., property of 258 sq. yds. @ Rs.72,000/- seem to be most apt for a comparison, keeping in mind that the demised premises is a shop on the ground floor. Further, since the location of the demised premises being in a prime commercial area and the fact that the Petitioner/tenant is using the demised premises for a commercial purposes in as much as he is involved in the business of selling footwear for daily use, is also required to be kept in mind. However, since admittedly, the demised premises is in an old and dilapidated building, the rate is to be discounted.

11.1 It would, therefore, be appropriate to direct the Petitioner/tenant to pay the use and occupation charges at the rate of Rs. 20,000/-per month from July, 2023 onwards.

11.2 However, the user charges for the period from six months after passing of the Eviction Order till 30.06.2023 shall be paid at the rate of Rs. 12,000/- per month as set out below.

12. Therefore, without prejudice to the rights and contentions of the parties, the Petitioner/tenant shall pay to the Respondent/landlord use and occupation charges in the following manner during the pendency of the Revision Petition:

(i) The arrears of rental payment, if any, upto the date of passing of the Eviction Order shall be paid at the rate of Rs.120/- per month, to the Respondent by 30.06.2023;



(ii) Use and occupation charges from 20.03.2019 to 30.06.2023 shall be paid at the rate of Rs.12,000/- per month in three equal instalments on 31.07.2023; 15.10.2023; 31.01.2024;

(iii) Use and occupation charges from July, 2023 onwards shall be paid to the Respondent at the rate of Rs. 20,000/- per month, on or before 7<sup>th</sup> day of each calendar month during the pendency of the Revision Petition; and

13. All payments shall be made into the bank account of the Respondent/Landlord. The details of the bank account shall be provided by the learned Counsel for the Respondent/landlord to the learned Counsel for the Petitioner/tenant on his email address within one week.

14. It is clarified that the use and occupation charges as affixed hereinabove are tentative and subject to the final outcome of the present petition.

15. All rights and contentions of both the parties in the main Petition are kept open.

16. Accordingly, CM APPL. 40082/2019, shall stand closed.

**RC.REV. 174/2019&CM APPL. 13057/2019 [Application seeking interim directions]**

17. Subject to the deposit of the arrears of rent and the use and occupation charges as aforesaid, the Interim Order dated 19.03.2019, shall continue till the pendency of the Petition.

17.1 In the event that there is any default in the payment of use and occupation charges on behalf of the Petitioner/tenant, interim protection as granted by this Court shall automatically stand dissolved.

18. Parties will act based on the digitally signed copy of the order.

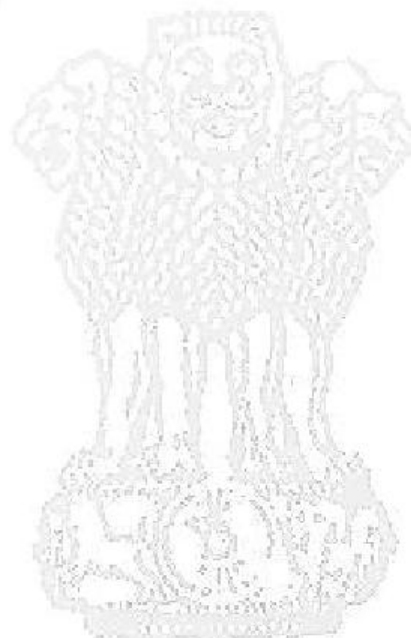


19. List the matter on 31.10.2023.

**(TARA VITASTA GANJU)  
JUDGE**

**June 21, 2023 /SA**

HIGH COURT OF DELHI



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