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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgement reserved on : 29.05.2023
% Judgement pronounced on : 10.08.2023+ **RC.REV. No. 500/2019 & CM Appl.38094/2019****JUGLAL RAM CHANDER** Petitioner

versus

SH. SURINDER PAL JAIN Respondent**Advocates who appeared in this case:**For the Petitioner : Mr. P.K. Rawal, Mr. Tarun Agarwal
& Mr. Rishabh Sharma, Advs.For the Respondent : Mr. S.S. Jain and Mr. Nikesh Jain,
Advs.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.:****CM Appl.12463/2023[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., a big Shop bearing no. 4332 (area admeasuring about 100 sq. mts.) situated on the ground floor, Gali Bahuji, Bahadurgarh Road, Sadar Bazar, Delhi-110006 [hereinafter referred to as the "demised Shop"] from the date of the Eviction Order dated 19.02.2019 [hereinafter referred to as "Eviction Order"] till the Revision Petition is finally decided by this



Court/date of vacation of the demised Shop.

Contentions on behalf of the learned Counsel for the Respondent/landlord are as follows:

2. Learned Counsel appearing on behalf of the Respondent/landlord submits that:

(i) The predecessor-in-interest of Petitioner/tenant has been a tenant and in occupation of the demised Shop since 1935, and upon inheriting the tenancy rights of the demised Shop, the Petitioner/tenant was paying rent at the rate of Rs.22 and 13 Anna. The last rent paid was Rs. 33/- per month on 23.12.2017, as deposited before the Trial Court.

(ii) The execution of the Eviction Order was stayed by this Court on 26.08.2019.

(iii) It is contended that the demised Shop is a very large shop, having a covered area of about 100 sq. mts. on the ground floor, situated in a commercial area at Sadar Bazar, Delhi-110006. The demised Shop is in wholesale market area and on a wide road with ample space for parking for commercial loading and unloading by trucks and tempos. Reliance is placed on the photographs of the demised Shop as well as on shops in the vicinity which are annexed at Annexure R5 with the present Application [at page nos. 46 and 47].

(iv) The Respondent/landlord is regularly paying property tax on the Unit Area Method of property tax levied/collected by MCD in terms of which, the rental for the demised Shop should be more than Rs. 1,00,000. The Petitioner/tenant cannot be allowed to enjoy the demised Shop without the payment of any user and occupation charges.

(v) Learned counsel for the Respondent/landlord, with this Application



has placed on record two registered lease deeds of the “*like premises*” with the following details:

(a) Lease Deed – 13.02.2018

Nature	Ground Floor
Use	Commercial
Area	23.5 Sq. Mts.
Rent	Rs. 10,000 /- + GST (per month)
Description/ details	The tenant in this property is running a shop for sale of ladies pears and artificial jewellery.
Address	Property Bearing No. 2488-89 situated at Bahadurgarh Road/Teliwara Road, Delhi - 110006

(b) Lease Deed – 04.01.2018

Nature	First Floor
Use	Commercial
Area	58.52 Sq. Mts.
Rent	Rs. 45,000/- (per month)
Description/ Details	Not Mentioned
Address	Property bearing No. 53, situated at New Qutab Road, Sadar Bazaar Delhi - 110006

(vi) Since the demised Shop is on the ground floor of the demised Premises, it would not earn less than Rs.1,00,000/- per month.

Contentions on behalf of the learned Counsel for the Petitioner/tenant are as follows:

3. Learned Counsel appearing on behalf of the Petitioner/tenant submits that the Eviction Order was obtained by playing a fraud on the Trial Court.

3.1 Learned Counsel for the Petitioner/tenant further submits that the construction of the demised Shop is more than 85 years old; building is in a dilapidated condition; there is heavy seepage problem from the first floor as



well; property is situated in a very narrow lane of width of approximately 10 to 15 ft. due to which heavy commercial vehicles are permanently restricted and only light commercial vehicles can use the said lane and property is situated not on any main road but in a narrow road which is not easily accessible to the public.

3.2 Learned Counsel for the Petitioner/tenant avers that so far as concerns the lease deeds filed by the Respondent/landlord, the demised Shop is situated in the main road of Sadar Bazar, New Delhi at a prime location of 1.5 kilometres away, and hence not applicable.

3.3 Learned Counsel for the Petitioner/tenant further submits that the fact that the demised Premises is very old, the user charges cannot be more than Rs.10,000/- per month.

4. A perusal of the record shows that Notice in the present Application was issued on 15.03.2023 on the Petitioner/tenant and thereafter, the matter was listed on 10.04.2023 before a Coordinate bench of this Court. For the sake of convenience, paragraph 4 of the order dated 10.04.2023 passed by the Coordinate bench of this Court is extracted hereafter:

“4. It is made clear that, if the Petitioner does not appear on the next date of hearing to address arguments, the interim order dated 26.08.2019 shall stand automatically vacated.”

5. On 29.05.2023, further time was sought on behalf of the Petitioner/tenant to file a Reply to the present Application.

5.1 Learned Counsel for the Respondent/landlord 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.

6. Arguments were thereafter heard by this Court and Judgment was reserved in the matter. Both the parties were granted time to file their respective written synopsis in the matter.

7. Written submissions have been filed by both the parties.

8. The Supreme Court in a recent Judgment titled *Martin and Harris Private Limited and Another v. Rajendra Mehta and Others*¹, has upheld the law laid down in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*² 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.

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

10. The Respondent/landlord has relied on two lease deeds, the details are set forth in paragraph 2 hereinabove.

11. In the circumstances of the case, the lease deed dated 13.02.2018 at (a) in paragraph 2 (v) above i.e., property admeasuring 23.5 Sq. Mts @ Rs.10,000/- (plus GST) per month seems to be most apt for a comparison. The demised Shop is on the ground floor portion situated at a prime commercial area, and is almost four times larger. The fact that the

¹ (2022) 8 SCC 527

²(2005) 1 SCC 705



Petitioner/tenant is using the demised Shop for commercial purposes is to be kept in mind. However, since admittedly, the demised Shop is in an old and dilapidated building, the rate is to be discounted.

11.1 Therefore, user charges at the rate of Rs. 25,000/- per month is fixed.

12. 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 upto the date of passing of the Eviction Order shall be paid by the Petitioner/tenant to the Respondent/landlord by 30.08.2023;

(ii) Use and occupation charges from 19.08.2019 to 31.07.2023 shall be paid by the Petitioner/tenant at the rate of Rs.20,000/- per month in three equal instalments i.e., on 30.09.2023, 30.11.2023 and 31.01.2024;

(iii) Use and occupation charges from August, 2023 at the rate of Rs.25,000/- per month onwards, shall be paid to the Respondent/landlord, on or before 7th day of each calendar month during the pendency of the Revision Petition.

(iv) Use and occupation charges for the period of August, 2023 shall be paid latest by 18.08.2023.

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. Accordingly, CM APPL. 12463/2023, shall stand closed.

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16. Subject to the timely payment/deposit of the arrears of rent and the use and occupation charges as aforesaid, the Interim Order dated 26.08.2019, shall continue till the pendency of the Petition.

16.1 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.

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

18. List the matter on the date already fixed i.e., 14.09.2023.

**(TARA VITASTA GANJU)
JUDGE**

AUGUST 10, 2023/r