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

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*Reserved on: 1<sup>st</sup> November, 2023*

*Date of Decision: 22<sup>nd</sup> December, 2023*

+ **RSA 122/2023**

**SUBODH KUMAR WADHWA**

..... Appellant:

Through: Mr. Gaurav Duggal and Mr. Gursimar Singh, Advocates

Versus

**MANISH TANWAR**

..... Respondent

Through: Mr. C. Parkash, Mr. T. Parth and Mr. Abhishek Rana, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **JUDGMENT**

#### **MANMEET PRITAM SINGH ARORA, J:**

1. This regular second appeal filed under Section 100 of Code of Civil Procedure, 1908 ('CPC'), impugns the judgment dated 25.03.2023 passed by Principal District and Sessions Judge, Patiala House Courts, New Delhi ('First Appellate Court') in RCA No. 16/2022, titled as '**Manish Tanwar v. Subodh Kumar Wadhwa**', whereby the First Appellate Court partly allowed the appeal filed by the Respondent herein and set aside the judgment dated 04.06.2022 passed by the Civil Judge-01, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS SCJ No. 99100/2016.



1.1. The Trial Court vide judgment dated 04.06.2022 dismissed the suit holding that the same is barred by Section 50 of the Delhi Rent Control Act, 1958 ('DRC Act') on the finding that the rate of rent which was initially Rs. 4,200/- per month was reduced to Rs. 1,400/- per month.

1.2. The First Appellate Court, however, vide the impugned judgment reversed the said findings of the Trial Court. The First Appellate Court has returned a finding that the admitted rate of rent for the suit premises was Rs. 4,200/- per month and rejected the defense set up by the Appellant i.e., the defendant, that the rate of rent was reduced verbally from Rs. 4,200/- to Rs. 1,400/- per month. The said Court held that the lease had been validly terminated with the service (on 29.04.2008) of the notice dated 24.04.2008 and consequently, granted the relief of possession, recovery of arrears of rent Rs. 33,600/- with interest at 18% p.a., and awarded mesne profits at Rs. 10,000/- per month w.e.f. 01.06.2008 till the recovery of the possession.

1.3. The Appellant herein is the defendant and the Respondent is the plaintiff. For ease of reference, the parties are being referred to by their original rank and status as was before the Trial Court.

***Pleadings of the Respondent/Plaintiff***

2. Brief facts leading to filing of this appeal are as under:

2.1. The plaintiff had filed the civil suit on 04.06.2008 in his capacity as the owner/landlord of the property bearing Room No. 202, second floor, C-1, Ring Road, Naraina, New Delhi – 110020 ('suit premises'). In the plaint it is stated that the suit premises was let out to the defendant in December, 2001, for a period of three (3) years, subject to payment of monthly license fee of Rs. 4,200/-.



2.2. It is stated that the agreement expired in December, 2004, i.e., after three (3) years, due to efflux of time, however, the defendant continued to occupy and use the suit property. It is stated that the plaintiff continued to accept Rs. 4,200/- per month, without acknowledging any right of the defendant in the suit property. It is stated that the defendant last paid rent of Rs. 4,200/- per month for month ending in July, 2007 and thereafter, willfully defaulted in payment of rent from August, 2007.

2.3. It is stated that in view of the default, the tenancy was terminated by the plaintiff effective 31.05.2008, vide termination notice dated 24.04.2008 and plaintiff called upon the defendant to pay (rent) for the period August 2007 to May, 2008 (10 months) the outstanding sum of Rs. 42,000/- calculated at Rs. 4,200/- per month.

2.4. It is stated that subsequent to the due service of notice of termination dated 24.04.2008, the defendant, unilaterally and without communication to the plaintiff, deposited a sum of Rs. 8,400/- on 23.05.2008 in the plaintiff's bank account. The plaintiff thereafter, promptly issued a letter dated 02.06.2008 to the defendant putting him to the notice that the aforesaid unilateral deposit made after issuance of the termination notice has been appropriated towards the arrears.

2.5. Accordingly, in the suit filed on 04.06.2008, the plaintiff after accounting for the said receipt of Rs. 8,400/- sought recovery of the remaining sum of Rs. 33,600/- as arrears for the period ending May, 2008.

***Pleadings of the Appellant/Defendant***

2.6. The defendant filed his written statement, stating that he was inducted as a tenant in the suit property on the basis of a verbal lease agreement, on 01.06.2000, at monthly rent of Rs. 4,000/-. It is stated that



after one year of tenancy i.e., w.e.f. June, 2001, the rent was increased to a sum of Rs. 4,200/- on the basis of oral agreement between the parties. It is stated that the suit property was let out for commercial purposes and the lease was never cancelled. It is stated that rent at Rs. 4,200/- per month was paid until July 2007.

2.7. It is stated that however, the lease amount was verbally reduced to Rs. 1,400/- w.e.f. 01.08.2007; as the user of the property was changed from commercial to residential purposes on account of the sealing action initiated by the Municipal Corporation of Delhi ('MCD') in the contemporaneous period and there was a threat of sealing to the suit premises.

2.8. It is stated that since then, the monthly rent stood reduced to Rs.1,400/- per month and therefore, the jurisdiction of the Civil Court is barred by Section 50 of the DRC Act.

***Concurrent findings of the Courts below***

2.9. The Courts below have returned the following concurrent findings:

- (i) there exists a relationship of landlord and tenant between the parties;
- (ii) the notice of termination dated 24.04.2008 was duly served on the defendant on 29.04.2008; and
- (iii) the rate of rent was Rs. 4,200/- per month, which was regularly paid by defendant from June, 2001 until July, 2007 through cheque.

***Aspect of conflict***

2.10. However, the sole aspect of conflict in the finding of the Courts below is with respect to the rate of monthly rent from August, 2007, onwards.



2.11. The Trial Court accepted the defense of the defendant that the rate of rent was reduced verbally from Rs. 4,200/- to Rs. 1,400/- w.e.f. 01.08.2007. However, this finding of the Trial Court has been reversed by the First Appellate Court to hold that there is no proof or reasonable basis for holding that the plaintiff agreed to reduce the rate of rent from Rs. 4,200/- to Rs. 1,400/- per month. The First Appellate Court while reversing the finding of the Trial Court on this issue held that it was perverse as it was contrary to the admitted documents filed on record.

*Arguments of the Appellant/Defendant*

3. Mr. Gaurav Duggal, learned counsel for the defendant states that the First Appellate Court erred in reversing the finding of the Trial Court on the issue of reduction of monthly rent to Rs. 1,400/- w.e.f. 01.08.2007. He states that the rent for the period of August, 2007 to May, 2008 was paid to the landlord at Rs. 1,400/- per month. He states that the payments were made through cheques for this period. He relies upon the ledger statement maintained by the defendant which was confronted to the PW-1, Sh. Manish Tanwar, and marked as Ex.PW1/DA (referred to as PW-1/D-1 by the First Appellate Court).

3.1. He relies upon copies of cheque nos. 448075 and 448076 both dated 20.05.2008, which were given Mark X to contend that the rent for the month of May, 2008 and June, 2008 was paid at Rs. 1,400/- per month through these cheques.

3.2. He further relies upon a photocopy of cheque no. 116100 dated 29.03.2008 drawn for a sum of Rs. 4,200/- to contend that payment of rent for the months of January, 2008 to March, 2008 was paid at Rs. 1,400/- per month through this single cheque. He relies upon letter dated 09.06.2008



issued by the defendant's banker confirming that the said cheque was debited from the defendant's account on 23.05.2008.

3.3. He states that the aforesaid three (3) cheques evidence that the rate of rent was mutually agreed to be reduced to Rs. 1,400/- per month. He states that the facts evidencing the sealing drive conducted by MCD in the year 2007 has been duly proved on record and in this regard, he relied upon the affidavit filed by the defendant before MCD undertaking to use the premises for residential purpose to substantiate the basis for reduction in rate of monthly rent.

3.4. He states that for the months of August to December, 2007 (5 months), there is no evidence led by defendant before the Trial Court to prove the payment into the bank account of the plaintiff. He states that however, since PW-1 admitted to the ledger statement i.e., Ex.PW-1/DA, the said payments as well stand proved.

3.5. He states that the First Appellate Court while deciding issue no.5 has awarded mesne profits at Rs. 10,000/- per month with effect from 01.06.2008. He states that the plaintiff led no documentary evidence to prove that the prevalent rent in the neighborhood was Rs. 10,000/- and therefore, the award of mesne profits at Rs. 10,000/- per month is without any evidence. He further states that the First Appellate Court has awarded the mesne profits from the date of termination of tenancy i.e., from 01.06.2008, whereas mesne profits should have been awarded from the date of the judgment i.e., 25.03.2023 as the eviction order is deemed to have been passed on the said date. He relies upon the judgment of Supreme Court in ***Atma Ram Properties Pvt. Ltd. v. Federal Motors Pvt. Ltd.***,



**(2005) 1 SCC 705**, and more specifically, paragraph 18(2) therein in support of this last contention.

***Arguments of the Respondent/plaintiff***

4. Mr. C. Prakash, learned counsel for the plaintiff states that the defense set up by the defendant alleging reduction of monthly rent from Rs. 4,200/- to Rs. 1,400/- per month is false and incorrect.

4.1. He states that after the legal notice dated 24.04.2008 was served on the defendant; the said tenant thereafter, wrongfully made unilateral deposits to the extent of Rs. 8,400/- in the bank account of the plaintiff. He states that the plaintiff learnt about the said deposits on 30.05.2008 and immediately issued a notice dated 02.06.2008 to the defendant putting him to notice that the said deposit of Rs. 8,400/- has been adjusted towards the arrears. He states that the plaintiff immediately filed the suit for possession, mesne profit, arrears of rent and prohibitory mandatory injunction on 04.06.2008 duly accounting for the aforesaid receipt of Rs. 8,400/-.

4.2. He states that three (3) cheque nos. 448075, 448076 and 116100 relied upon by the defendant were all deposited in the account of the plaintiff in May, 2008, unilaterally after receipt of the termination notice to create a false defense. He also relies upon the notice dated 30.08.2008; and legal notices dated 16.10.2008 and 24.10.2009 issued by the plaintiff objecting to the tender of money orders of Rs. 1,400/- each for creating a false defense.

4.3. He states that though the civil suit stood filed on 04.06.2008, the defendant made an attempt to tender Rs. 1,400/- for the month of July and August, 2008, which was duly objected to by issuing the protest letter dated 30.08.2008 and legal notice dated 16.10.2008.



4.4. He states that during the pendency of the suit, the defendant sent money orders on 29.09.2009 and 13.10.2009 purportedly towards the rent for months of July, 2009 to October, 2009 at Rs. 1,400/- per month. He states that the plaintiff herein immediately objected to the said attempt to create false evidence by issuing legal notice dated 24.10.2009.

4.5. He states that the defendant's contention that the rate of rent was reduced from Rs. 4,200 to Rs. 1,400/- per month w.e.f. August, 2007 and the same was accepted by the plaintiff is false and not borne out from the record. He states that the said false defense has been raised on the basis of documentation all dated 23.05.2008, which is after the service of the notice of termination dated 24.04.2008

4.6. He states that with respect to mesne profits awarded at Rs. 10,000/- per month, with effect from 01.06.2008 (date of termination); the same is in consonance with the law laid down by the Supreme Court in *Atma Ram Properties* (supra) and more specifically paragraph 10 therein as well as the judgment of the Supreme Court in *Indian Oil Corporation Ltd. v. Sudera Realty Pvt. Ltd., 2022 SCC OnLine SC 1161*. He states that PW-1's testimony has been rightly relied upon by the First Appellate Court. He states that there was no cross examination of PW-1 on his testimony that the prevalent rate of rent in the neighborhood is Rs. 10,000/- per month.

#### ***Findings and analysis***

5. This Court has heard the learned counsel for the parties and perused the record.



6. As noted earlier, the substratum of the challenge raised by the Appellant i.e., the defendant, in this second appeal is to the finding on the rate of monthly rent, returned by the First Appellate Court.

7. The Trial Court returned a finding that the monthly rate of rent was Rs. 4,200/- per month until July, 2007; and further accepted the contention of the defendant that there was a verbal agreement between the parties and the monthly rate of rent was reduced to Rs. 1,400/- per month w.e.f. August, 2007.

8. On the other hand, the First Appellate Court after evaluating the pleadings and evidence before it, was of the opinion that the defendant had failed to prove that there was any verbal agreement between the parties for reduction of rent to Rs. 1,400/- w.e.f. August, 2007 and returned a finding that the rent remained unchanged at the rate of Rs. 4,200/- per month. The First Appellate Court while arriving at such conclusion duly considered the ledger statement relied upon by the defendant (Ex. PW-1/D1), the statutory termination legal notice dated 24.04.2008 issued by the plaintiff, the protest letters dated 02.06.2008 (Ex. DW-1/P-1), 30.08.2008 (Ex. DW-1/P-2), 16.10.2008 (Ex. DW-1/P-3) issued by the plaintiff after learning about the unilateral deposits made in his bank account by the defendant in May, 2008 and thereafter.

8.1. The First Appellate Court held that in fact the ledger statement produced by the defendant (Ex. PW-1/D1) shows that the rent was admittedly, always paid by cheque and it had been paid at Rs. 4,200/- per month from June, 2001 to July, 2007.

8.2. The First Appellate Court held that the unilateral deposit of Rs. 8,400/- made by the defendant in May, 2008, was without knowledge of the



plaintiff as is evident from the protest letters (issued by the plaintiff). The said Court noted that the said payment of Rs. 8,400/- was unaccompanied by any letter or intimation (by defendant) to the plaintiff.

8.3. The First Appellate Court after appraising the testimony of PW-1, held that PW-1 has withstood a grueling cross examination and has not accepted the suggestion of the defendant that the rent was reduced to Rs. 1,400/- per month. With respect to the explanation offered by the defendant that the monthly rent was agreed to be reduced to Rs. 1,400/- per month on account of threat of sealing from MCD, as the defendant agreed to change the user from commercial to residential; the First Appellate Court held that there is no evidence led on record that the defendant actually changed the user of the suit property from commercial to residential in August, 2007.

9. The facts set out hereinabove show that the findings of the First Appellate Court rejecting the defense that the rate of rent was reduced to Rs. 1,400/- per month with effect from August, 2007; which are sought to be impugned by the defendant are a pure finding of fact and do not give rise to any substantial question of law. The defendant during the course of its arguments before this Court has primarily relied upon the ledger statement (Ex.PW-1/D-1) and the three cheques i.e., 448075, 778076 and 116100 to contend that the payment of rent for the six (6) months of January, 2008 to June, 2008 was paid at Rs. 1,400/- per month. And that the finding of the First Appellate Court is contrary to the said documents.

9.1. This Court has perused the said documents. The defendant relies upon the three (3) cheques to prove payment of rent at Rs. 1,400/- per month for the months of January, February, March, May and June, 2008 (5 months). Each of the said cheques were admittedly, credited into the bank



account of the plaintiff on or after 23.05.2008. Pertinently, the plaintiff had issued a legal notice dated 24.04.2008 terminating the tenancy and claiming arrears of rent of Rs. 42,000/- for the period August 2007 to May, 2008 (10 months). Thus, the aforesaid three (3) cheques deposited after the service of the said notice do not prove the defense of Rs. 1,400/- raised by the defendant. In fact, as rightly noted by the First Appellate Court, when the plaintiff learnt of the said deposits on 30.05.2008; he immediately wrote a protest letter to the defendant dated 02.06.2008 (Ex. DW-1/P-1).

9.2. Further, the plaintiff made a full disclosure of the receipt of the said amount in the plaint and gave a set off of Rs. 8,400/- while claiming the arrears of rent for the period August, 2007 to May, 2008. In the plaint, claim for arrears was raised for Rs. 33,600/- (i.e., 42,000 - 8,400).

9.3. Pertinently, the defendant led no evidence to prove his defense of tender of rent at Rs. 1,400/- per month for the months of August, September, October, November and December 2007 (5 months) amounting to Rs. 7,000 ( $1400 \times 5$ ). The said payment has not been proved and therefore, not accepted by the First Appellate Court.

And, therefore, consequentially no adjustment of this alleged amount has been granted by the First Appellate Court while awarding the recovery of arrears of Rs. 33,600/-.

9.4. In the considered opinion of this Court, the defendant has failed to prove the tender of rent at Rs. 1,400/- per month with effect from August, 2007. The record shows that the defendant made unilateral deposits of Rs. 8,400/- in May, 2008, after receipt of notice of termination dated 24.04.2008. Thus, the defense of the defendant that it tendered rent at Rs.



1,400/- per month w.e.f. August, 2007, has not been proved and therefore, rightly rejected by the First Appellate Court.

9.5. This Court therefore, finds no error in the findings of the First Appellate Court that the ledger statement (Ex. PW-1/D-1) filed by the defendant wrongly shows that the rent was paid at Rs. 1,400/- for every month from August, 2007 to July, 2008 in a timely manner. As noted above, no proof of alleged payment for the months of August, 2007 to December, 2007 has been placed on record and the proof of payment for the months of January, 2008 to May, 2008 are all dated post 23.05.2008 (which is a date after the service of the statutory legal notice of termination dated 24.04.2008).

9.6. The Trial Court has relied upon the ledger statement filed by the defendant (Ex. PW-1/D-1) to hold that the rent at Rs. 1,400/- was paid from August, 2007 to August, 2008. However, as noted above the said entries in the ledger statement for the months of August, 2007 to December, 2007 were not proved by corroborating evidence; and entries for the month of January, 2008 to August, 2008 are all post issuance of the statutory legal notice of termination dated 24.04.2008. The suit itself was instituted on 04.06.2008 and therefore, the payments made for the months of June, 2008 to August, 2008 could also not have been taken into consideration by the Trial Court. The Trial Court also failed to consider the protest letters issued by the plaintiff on 02.06.2008, 30.08.2008, 16.10.2008 and 24.10.2009.

9.7. In the considered opinion of this Court, the findings of the First Appellate Court are well reasoned and have been made after correct appreciation of the record. The relevant portion of findings reads as under:



"14. Much mileage is sought to be drawn from the Statement Ex. PW-1/D-1, which is the own document of the respondent-defendant, to substantiate the fact that rent was paid @ of Rs. 1400/- in August – 2007 but it does not specify whether it was by cheque or cash but does show that the payment of Rs. 1400/- was made in September-2007 by cash. Indeed, PW-1 admitted the suggestions about the correctness of the statement Ex. PW-1/D-1, but that alone is not decisive since as for the subsequent period, it is brought out that rent was paid by cheques viz., four cheques in one go viz., three each in the sum of Rs. 1,400/- and one for Rs. 4,200/- Ex. DW-1/8, which were encashed on 23.05.2008 and accordingly credited in the account of the appellant-plaintiff on 23.05.2008. The statement Ex. PW-1/D-1 rather wrongly shows as if the rent was paid for every month from July, 2007 to August, 2008 in a timely monthly manner. It goes without saying that there was entered into neither any written agreement nor any letter or intimation was sent to the appellant-plaintiff that such cheques had been deposited towards rent @ Rs. 1400/- per month. In my opinion, the testimony of PW-1 that he came to know about such deposits on 30.05.2008 seems absolutely plausible and believable.

15. The reasons are not far to seek. At the cost of repetition, the respondent-defendant knew the bank details of the appellant-plaintiff as the rent was being paid by cheques either by depositing directly in his account or otherwise by handing over to PW-1 or his father prior to July-2007; and this pattern is exemplified from the fact that after August, 2007 rent amounting Rs. 8,400/- was also directly deposited in the bank account of the appellant/plaintiff which were encashed on 23.05.2008 and it is common case that no written intimation about the deposit was made to the appellant-plaintiff. All said and done, it is also borne out from the record that the appellant-plaintiff on coming to know about deposit of such amount in his bank account on 30th May, 2008, addressed a letter dated 02.06.2008 Ex. DW-1/D-1 to the respondent/defendant, which fact was acknowledged by DW-1 in his cross-examination, whereby a protest was lodged that the respondent-defendant had made the deposit of Rs. 8400/- on his own which did not amount to affecting the validity and legality of termination notice dated 24.04.2008. It is further brought out from the evidence led on the record that the respondent-defendant for the month of July and August 2008 tendered the rent @ Rs. 1,400/- per month by Money Order totaling Rs. 2800/- and this was protested too by the appellant-plaintiff vide letter dated 30.08.2008 DW-1/P-2, the receipt of which DW-1 acknowledged in this cross-examination, also informing that the tender would be appropriated towards arrears of rent legally recoverable from him and then notice dated 16.10.2008 Ex.DW-1/P-3, again admitted by

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*DW-1 to have been received, was sent whereby it was protested that the tender and deposit of rent @ Rs.1400/- per month by Money Order for the months of July and August- 2008 was malicious, illegal and motivated.*

*16. The long and short of the above discussion is that till July-2007 the rent was being paid @ 4200/- and a sum of Rs. 8400/- was deposited in the bank account of the appellant-plaintiff during the period August 2007 to June-2008, without knowledge and intimation to the appellant plaintiff and the appellant-plaintiff, therefore, gave a plausible explanation that on coming to know of such deposits on 30.05.2008, he immediately wrote a letter to the respondent-defendant dated 02.06.2008 Ex.DW-1/P-1 protesting about the same. The observation of the learned trial Court in this regard that such letter was written much after filing of the suit on 04.06.2008 is shocking and unconscionable. It cannot be overlooked that the notice Ex.PW-1/1 was sent on 24.04.2008 whereas amount of Rs. 8,400 vide document Ex.DW-1/3 were deposited on 23.05.2008 in the bank account of appellant-plaintiff. Hence, the observation by the learned trial Court that the factum of payment of Rs. 1400/- was not indicated in the legal notice dated 24.04.2008 is absolutely perverse.*

*17. Much mileage was sought to be drawn by the Id counsel for respondent/ defendant from the testimony of DW-2 and DW-3, who were witnesses from MCD that holds no water either. At the cost of repetition there is no material on the record that there was any threat about the sealing of the suit premises in May to August, 2007 and the threatened action took place in or around January- February, 2009. Mere testimony of DW-3 that the respondent-defendant had given an affidavit at the time of inspection on that he was using the aforesaid premises for residential purposes since 01.04.2007 is hardly of any avail. There is no such affidavit or acknowledgment by the appellant/plaintiff. It may be that adjoining premises were sealed and even some portion in the same building had been sealed but that then there is led no cogent evidence that the rent was reduced to Rs. 1,400/- per month. The aforesaid discussion leave no scope for doubt that the respondent/defendant made a successful attempt to give a new twist to the entire tale by creating a false evidence in his favour.*

*18. In view of the foregoing discussion, I find that case of the respondent-defendant-tenant that the rental of the suit premises had been reduced to Rs. 1,400/- per month from Rs. 4,000/- per month w.e.f. from July-August, 2007 on account of preventing sealing of the suit premises is a 'cock and bull story' which is not substantiated from the evidence on the record, and therefore, the suit premise fetching rent at such rate is beyond the purview of the DRC Act. Thus, the impugned*



*Judgment dated 04.06.2022 in so far as decision on issue No.1 is concerned, cannot be sustained in law, and therefore, it is held that suit of the appellant-plaintiff was not barred by Section 50 of the DRC Act as the suit premises was fetching rent above Rs. 3,500/- per month in terms of Section 3 of the DRC Act.*

(Emphasis Supplied)

10. The finding of the First Appellate Court that the defendant has not led any evidence to show that he in fact changed the user of suit property from commercial to residential in August, 2007 has not been challenged. Thus, since the explanation offered by defendant for reducing the rate of rent to Rs. 1,400/- was never proved, this Court for this additional reason finds no infirmity in the findings of the First Appellate Court.

11. The second contention raised by the defendant in the present appeal is that the mesne profits of Rs. 10,000/- per month awarded by the First Appellate Court is without any evidence. In this regard, it is noted that the plaintiff who examined himself as PW-1 categorically stated that the prevailing rate of rent in the neighborhood is Rs. 10,000/- per month. The said testimony of PW-1 has remained unrebutted. PW-1 was not cross examined on the said statement of fact and therefore, the reliance placed on the said testimony is correct (Re: *Muddasani Venkata Narsaiah (Dead) Thr. LRs. v. Muddasani Sarojana, (2016) 12 SCC 288*). This Court therefore, finds no infirmity in the finding of the First Appellate Court awarding mesne profits at the said admitted rate of Rs. 10,000/- per month.

11.1. In this regard, it is noted that the plaintiff had sought mesne profits at Rs. 10,000/- per month w.e.f. 01.06.2008 in the suit filed on 04.06.2008. The decree of possession and mesne profits has been passed on 25.03.2023 (15 years later) and the First Appellate Court has granted a uniform rate of mesne profits of Rs. 10,000/- per month for the entire duration from



01.06.2008 till the recovery of possession of suit property. Thus, looking at the effect of inflation, the rate of rent awarded by the First Appellate Court is reasonable and does not merit any interference in the second appeal.

11.2. The contention of the defendant that the mesne profits should have been awarded from the date of decree and not the date of expiry of notice period as per the statutory notice dated 24.04.2008; is without any merits. In this regard, it would be instructive to refer to the judgment in **Indian Oil Corporation Ltd.** (supra) wherein the Supreme Court has held as under

*"64. A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits."*

(Emphasis Supplied)

12. This Court is of the opinion that no substantial question of law has arisen for consideration in the present appeal. The findings of the First Appellate Court that the rate of rent remained unchanged at Rs. 4,200/- per month is correct and so also the award of mesne profits from the date of termination of the tenancy i.e., 01.06.2008. The arguments raised by the defendant do not raise any question of law much less a substantial question of law and the grounds merely challenge the finding of facts.

13. In this regard, it would be appropriate to refer to the case of **Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57**, wherein the Supreme Court observed that second appeal only lies on a substantial question of law and the party cannot agitate facts or call upon the High Court to re-



appreciate the evidence in a second appeal. The operative portion to this aspect reads as under:

“22. A second appeal, or for that matter, any appeal is not a matter of right. the right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal. It was not open to the respondent-plaintiff to reagitate facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.

23. Section 100 CPC, as amended, restricts the right of second appeal, to Only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 Cr.

29. *To be a question of law "involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case."*

(Emphasis supplied)

14. This second appeal is accordingly dismissed and the order of the First Appellate Court is upheld.
15. Pending applications, if any, stands disposed of.

## **MANMEET PRITAM SINGH ARORA (JUDGE)**

DECEMBER 22, 2023/aa