2026:DHC:6131

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on: 6 th May, 2026***
Pronounced on: 31st July, 2026

\+ **RFA 99/2025**

SHRI SUNJAY AGGARWAL
S/o Shri R. K. Aggarwal,
R/o C-7, Suvidha Apartments,
Sector-13, Rohini,
Delhi- 110085 .....Appellant

Through: Mr. Shiv Charan Garg, Mr. Imran Khan, Advocates.

versus

1.RAVI BHUSHAN HUF,
Through its Karta ,
Shri Ravi Bhushan,
S/o Shri Baldev Raj Dhingra,
R/o 63, Edward Line, GTB Nagar,
Kingsway Camp, Delhi-110009

2.Smt. Sapna,
W/o Shri Puneet Chanana,
D/o Shri Baldev Raj Dhingra,
R/o 2069, Outram Lines,
Kingsway Camp,
Delhi-110009 .....Respondents

Through: Mr.Naresh Gupta and Mr. Rachit Gumber, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 *(hereinafter referred to as "CPC")* has been filed on behalf of the Defendant/Appellant against the Judgment and Decree dated 05.11.2024, passed by the learned District Judge, Delhi, *whereby the Suit of the Plaintiffs/Respondents was* ***partly decreed*** *and the Defendant/Appellant was directed to pay* ***damages at the rate of Rs.52,200/- per month for the period commencing from 02.08.2013 till 31.03.2015.***

2. The Plaintiffs/Respondents had instituted the Civil Suit bearing CS DJ No.75770/2016 *for recovery of possession, mesne profits and Mandatory Injunction* in respect of the entire basement and ground floor of property bearing No.2271, admeasuring 160 square yards, situated at Hudson Lines, Kingsway Camp, Delhi-110009*(hereinafter referred to as the "suit property").*

3. ***The facts in brief***, as stated in the Plaint, are that the Defendant had taken the suit property on rent under a duly executed and registered Rent Agreement dated 26.04.2010. The tenancy was created for a period of *three years* commencing from 01.04.2010 and ending on 31.03.2013. The last-paid rent in respect of the Suit Property was Rs.52,200/- per month.

4. The Plaintiffs asserted that the tenancy expired by efflux of time on 31.03.2013, and out of abundant precaution, they served a Legal Notice dated 10.01.2013 upon the Defendant, calling upon him to vacate and hand over the possession of the suit property on or before 31.03.2013.

5. In terms of the Rent Agreement dated 26.04.2010, the Defendant was under an obligation to vacate the suit property and hand over its peaceful possession to the Plaintiffs, upon expiry of the tenancy. However, despite the expiry of the stipulated period and the request made by the Plaintiffs on

01.04.2013, the Defendant failed to vacate the suit property. The occupation of the Defendant with effect from 01.04.2013 was, therefore, illegal and unauthorised, and in the capacity of a trespasser.

6. Since the Defendant continued to remain in unauthorised use and occupation of the suit property after 31.03.2013, he was liable to pay *mesne* profits/use and occupation charges to the Plaintiffs. According to the Plaintiffs, the suit property could have fetched a monthly rent of approximately Rs.1,50,000/- if let out in the open market.

7. It was further averred that in terms of Clause 17 of the Rent Agreement dated 26.04.2010, the Defendant was liable, in the event of his failure to vacate the suit property upon expiry or earlier determination of the tenancy, to pay *twice the monthly rent till delivery of possession.* On the strength of the said Clause, the Plaintiffs claimed *mesne* profits at the rate of Rs.1,04,400/- per month, describing the said amount as the pre-estimated liquidated damages agreed between the parties.

8. It was also stated that under Clause 7 of the Rent Agreement dated 26.04.2010, the Defendant was liable to pay the *conversion charges* in respect of the suit property to the MCD. The Defendant failed to pay the conversion charges for the years 2011-2012 and 2012-2013, despite repeated requests made by the Plaintiffs.

9. The Plaintiffs thus, instituted the Suit seeking recovery of possession of the suit property, *mesne* profits/use and occupation charges with effect from 01.04.2013 till handing over of its vacant possession, and a Decree of Mandatory Injunction directing the Defendant to deposit the conversion charges for the years 2011-2012 and 2012-2013, and thereafter, till vacation of the suit property.

10. The Defendant, in his ***Written Statement***, took the preliminary objection that the Plaintiffs had suppressed material facts and had not approached the Court with clean hands. It was asserted that at the inception of the tenancy, the Defendant had informed the Plaintiffs that he required the suit property for a minimum period of 15 years, for running an Institute offering Diploma and Degree Courses in Fashion and Interior Design Technology.

11. According to the Defendant, though the Plaintiffs expressed their inability to execute a Lease Deed for 15 years, they represented that a Lease Deed would initially be executed for a period of three years and would thereafter be renewed successively, so as to permit the Defendant to remain in the suit property for the entire period of 15 years. Relying upon the said assurance, the Defendant agreed to take the suit property on rent. *It was thus asserted that an oral understanding had been arrived at between the parties, that the tenancy would continue from the year 2001 till the year 2016.*

12. Pursuant to the said understanding, successive Rent Agreements were executed between the parties for the periods 2001 to 2004, 2004 to 2007, 2007 to 2010 and 2010 to 2013. The *fifth* Rent Agreement was to be executed for the period 2013 to 2016; however, upon expiry of the Rent Agreement dated 26.04.2010, the Plaintiffs declined to execute a fresh Agreement, purportedly to avoid the tax liability arising therefrom, while assuring the Defendant that he could continue to occupy the suit property till the year 2016.

13. It was stated that the Defendant had been regularly paying rent and had never committed any default during the subsistence of the tenancy; that several students were pursuing ongoing courses at the Institute being run from the suit property; and that discontinuation of the tenancy prior to the year 2016, would adversely affect their studies.

14. It was further asserted that the Plaintiffs had continued to accept rent even after 31.03.2013, and that the tenancy had therefore, not been terminated by efflux of time. The receipt of the Legal Notice dated 10.01.2013 was denied, and it was asserted that no valid notice terminating the tenancy had been served upon the Defendant.

15. ***On merits***, the Defendant admitted that he had taken the entire basement and ground floor of the suit property on rent and that the last-paid rent was Rs.52,200/- per month. It was, however, denied that the tenancy had expired on 31.03.2013, and it was asserted that he continued to be a lawful tenant, pursuant to the oral understanding that the tenancy would subsist for 15 years.

16. The Defendant denied that his possession of the suit property with effect from 01.04.2013 was illegal or unauthorised, or that he was liable to pay *mesne* profits at the rate of Rs.1,04,400/- per month, or that the Plaintiffs were entitled to recover any amount over and above the agreed monthly rent, which was being regularly paid and accepted.

17. The Defendant asserted that the conversion charges payable to the MCD, had already been deposited by him from time to time. Accordingly, the Defendant prayed for dismissal of the Suit.

18. The Plaintiffs filed their ***Replication,*** wherein they reiterated the averments made in the Plaint and denied the assertions contained in the Written Statement.

19. During the pendency of the Suit, the ***Plaintiffs filed an Application under Order XII Rule 6 of the CPC,*** which was allowed *vide* Order dated

09.07.2014. The Defendant was directed to hand over the possession of the suit property to the Plaintiffs, and to pay arrears of rent/occupation charges at the rate of Rs.52,200/- per month with effect from 01.04.2013, and was further directed to continue paying the said amount from month to month.

20. In compliance with the said Order, **the Defendant handed over the possession of the suit property to the Plaintiffs on 31.03.2015.** The rent/use and occupation charges at the rate of Rs.52,200/- per month till 31.03.2015 were also paid by the Defendant.

21. Consequently, the Suit survived only in respect of the ***claim for mesne profits/damages and the relief of Mandatory Injunction pertaining to the conversion charges.***

22. The Issues were initially framed *vide* Order dated 13.12.2023, and thereafter Issue No.1 was subsequently reframed *vide* Order dated 21.08.2024. For the sake of convenience, the ***Issues*** were renumbered by the learned District Judge, as under:

> *"1. Whether the plaintiff is entitled to the decree of mesne profits for the period 01.04.2013 till 31.03.2015? OPP*
> *2. Whether the plaintiff is entitled to recovery of interest on that amount? If so, at what rate? OPP*
> *3. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP*
> *4. Whether the lease was orally extended for another three years between the parties w.e.f. 01.04.2013 till 31.03.2015? OPD*
> *5. Relief."*

23. In support of their case, the Plaintiffs examined **PW-1**Sh. Ravi Bhushan,(Plaintiff No.1)who tendered his evidence by way of affidavit

Ex.PW1/A. He proved the original Rent Agreement dated 26.04.2010 as Ex.PW1/1; Legal Notice dated 10.01.2013; postal receipts; certified copies of Lease Deeds dated 23.10.2015, 29.01.2014 and 22.07.2011 as Ex.PW1/1 to PW1/7.

24. In defence, the Defendant examined himself as **DW-1** and tendered his evidence by way of affidavit Ex.DW1/A, on the lines of the case set up in the Written Statement.DW-1 relied upon the Google Maps printouts depicting the location of two plots, along with the supporting Affidavit under Section 63 of the BSA, 2023, collectively exhibited as Ex.DW1/1.

25. The ***learned District Judge***, upon considering the pleadings and evidence led by the parties, held that the Defendant had failed to prove that the tenancy had been orally extended till the year 2016. It was observed that no evidence, except his own testimony, had been led in support of the alleged oral arrangement and, even in his Affidavit Ex.DW1/A, no specific plea of oral extension had been taken.

26. Though the Defendant had denied receipt of the Legal Notice dated 10.01.2013, the learned District Judge held that service of summons in the Suit was sufficient notice for termination of the tenancy under Section 106 of the Transfer of Property Act, 1882. *Since the summons had been served on 18.07.2013, the tenancy was held to have stood terminated on 02.08.2013.*

27. As regards the claim for *mesne* profits, the learned District Judge held that Clause 17 of the registered Rent Agreement, provided for payment of twice the monthly rent in the event of failure to vacate the suit property, was enforceable under Section 74 of the Indian Contract Act, 1872.

28. Since the Defendant had already paid Rs.52,200/- per month till handing over of possession on 31.03.2015, he was directed to pay an additional sum of Rs.52,200/- per month as damages for the period from 02.08.2013 till 31.03.2015. *The claim for interest on the said amount was, however, declined.*

29. The ***relief of Mandatory Injunction in respect of the conversion charges was also declined,*** as PW-1 had not deposed in respect thereof in his Affidavit Ex.PW1/A. The production of the receipts during the cross-examination of DW-1, was held insufficient to prove the said claim.

30. Consequently, ***the Suit was partly decreed, and the Defendant was directed to pay damages at the rate of Rs.52,200/- per month for the period commencing from 02.08.2013 till 31.03.2015.***

31. Aggrieved by the impugned Judgment and Decree dated 05.11.2024, the Defendant/Appellant has preferred the present ***Regular First Appeal,principally assailing the award of damages*** *at the rate of Rs.52,200/- per month for the period from 02.08.2013 till 31.03.2015.*

32. The ***grounds of challenge*** are that the learned District Judge has erroneously applied Section 74 of the Indian Contract Act, 1872, to hold that the Plaintiffs were entitled to recover the amount stipulated under Clause 17 of the Rent Agreement, without proving the actual loss suffered by them or the prevailing market rent of the suit property.

33. Section 74 of the Indian Contract Act does not entitle a party to automatically recover the entire amount stipulated by way of penalty, but only reasonable compensation not exceeding the amount so stipulated. The Court was, therefore, required to determine reasonable compensation on the basis of the pleadings and evidence led by the parties. Reliance has been placed upon <u>*M.C. Aggarwal, HUF v. Sahara India*</u>, 2011 SCC OnLine Del 3715, to contend that compensation must be assessed having regard to the circumstances existing on the date of the breach.

34. It is further contended that the learned District Judge failed to consider the definition of "mesne profits" under Section 2(12) of the CPC, which contemplates the profits actually received, or which might with ordinary diligence have been received, by a person in wrongful possession. According to the Appellant, the amount payable towards *mesne* profits could not have been determined merely on the basis of the penal stipulation contained in Clause 17 of the Rent Agreement.

35. It is asserted that a contractual stipulation providing for payment of twice the agreed rent, could not have been enforced without examining whether the stipulated amount constituted a genuine pre-estimate of the loss likely to be suffered or *was merely in the nature of a penalty*. Reliance has been placed upon <u>*Maya Devi v. Lalta Prasad*</u>, (2015) 5 SCC 588, to contend that the party claiming liquidated damages was required to plead and prove that the stipulated amount represented a fair and reasonable pre-estimate of damages.

36. The Appellant further contends that the Plaintiffs had failed to prove that the suit property could have fetched rent at the rate claimed by them. The Lease Deeds Ex.PW1/4 to Ex.PW1/7, relied upon to establish the prevailing rent of comparable properties, were neither proved through their executants nor shown to relate to properties similarly situated and comparable to the suit property.

37. It is also asserted that the suit property was an old and dilapidated residential property, comprising, *inter alia*, of a basement. No independent witness or other cogent evidence had been produced to establish that a similarly situated property could command rent of Rs.1,04,400/- per month.

38. The Appellant thus, claims that the award of damages was based solely upon Clause 17 of the Rent Agreement, without any determination of reasonable compensation or prevailing market rent and was, therefore, contrary to Section 74 of the Indian Contract Act, 1872 and Section 2(12) of the CPC.

39. Accordingly the Appellant seeks setting aside of the impugned Judgment and Decree dated 05.11.2024.

Submissions heard and record perused.

40. The Suit of the Plaintiffs/Respondents having been partly decreed and possession having already been restored to them, during the pendency of the Suit, ***the present Appeal is confined to a singular challenge***,*namely*, whether the learned District Judge was justified in awarding damages at the rate of Rs.52,200/- per month for the period from 02.08.2013 till 31.03.2015, *in addition to the sum of Rs.52,200/- per month already paid*, for the said period, solely on the strength of *Clause 17 of the Rent Agreement dated 26.04.2010*, without independently assessing reasonable compensation under Section 74 of the Indian Contract Act, 1872, or *mesne profits* within the meaning of Section 2(12) of the CPC.

<u>I.Whether Clause 17 was automatically enforceable under Section 74 of the Indian Contract Act, 1872:</u>

41. Section 74 of the Indian Contract Act, 1872 reads as under:

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

42. A plain reading of Section 74 makes it evident that the sum stipulated in the contract does not become automatically recoverable merely upon proof of breach. The aggrieved party is entitled only *to* ***"reasonable compensation not exceeding"*** the sum named or the penalty stipulated. The contractual amount, therefore, constitutes the outer limit of compensation, while the determination of what would constitute reasonable compensation, remains an exercise to be undertaken upon consideration of the facts and material on record.

43. The learned District Judge has, however, treated Clause 17 of the Rent Agreement as being automatically enforceable upon breach, *"whether or not actual damage or loss is proved"*, and has held that the Plaintiffs were entitled to receive the amount stipulated therein, whether or not actual damage or loss was proved.

44. Such a reading of Section 74 was negatived by the Constitution Bench of the Supreme Court in *Fateh Chand v. Balkishan Das*, (1964) 1 SCR 515, wherein it was held ***that these words merely dispense with proof of the precise quantum of loss, and do not dispense with the existence of legal***

injury. It was, in terms, observed that Section 74 *"does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted"*.

45. The Constitution Bench further held that although the Court's jurisdiction to award compensation, is unqualified up to the stipulated ceiling, *"compensation has to be reasonable, and that imposes upon the Court a duty to award compensation according to settled principles"*.The Constitution Bench, in the facts before it, held that although a stipulation for forfeiture of Rs. 25,000/- had been included in the Agreement, and although the defendant had committed breach, *the plaintiff was entitled only to forfeit the earnest money of Rs.1,000/- as reasonable compensation, and could not retain the balance sum, no evidence having been led of any loss or damage to justify a larger figure.*

46. In the case of *Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.,* (2003) 5 SCC 705, the Supreme Court recognised that where the loss arising from breach is difficult or impossible to quantify and the amount stipulated represents a genuine pre-estimate which is neither unreasonable nor penal, the stipulated amount may be awarded ,without independent proof of the precise quantum of loss. *The principle, however, does not dispense with proof where the loss is capable of being established by evidence.*

47. The principles enunciated in *Fateh Chand* (supra) and *Saw Pipes Ltd.* (supra) were thereafter comprehensively restated by the Supreme Court in *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136.

48. Upon a review of the earlier authorities, the Supreme Court summarised the *law governing compensation under Section 74* in paragraph 43,as under:

*"43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated**. In both cases, the liquidated amount or penalty is the upper limit beyond which the Court cannot grant reasonable compensation.***

43.2. Reasonable compensation will be fixed on wellknown principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

*43.3. **Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.***

…

*43.6. **The expression 'whether or not actual damage or loss is proved to have been caused thereby' means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded**."*

49. It was thus, held that where a sum is named in a contract as liquidated damages, the party complaining of breach, may receive the stipulated amount as reasonable compensation *only where it represents a genuine pre-estimate of damages agreed between the parties and is found by the Court to be such.* In all other cases, whether the amount stipulated is described as liquidated damages or is in the nature of a penalty, *only reasonable compensation may be awarded, not exceeding the amount so stipulated,* *which constitutes the upper limit beyond which compensation cannot be granted.*

50. It was further held that damage or loss caused by the breach is a *sine qua non* for the applicability of Section 74; and that where it is possible to prove actual damage or loss, such proof is not dispensed with, and it is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount, if a genuine pre-estimate, may be awarded.

51. Thus, *two features of Section 74 have consistently been emphasised:* ***first,*** that the stipulated amount operates as the outer limit, not the automatic measure, of compensation; and ***second,*** that the dispensation with proof of *"actual damage or loss"* does not amount to a dispensation with the requirement of legal injury.Even where proof of the precise quantum of loss may be dispensed with because such loss is difficult or impossible to assess, *the Court is not relieved of its obligation to apply its mind to what would constitute reasonable compensation, in the facts of the given case.*

52. In the present case, Clause 17 of the Rent Agreement dated 26.04.2010, provided that in the event of continued occupation, the Defendant *"shall be liable to pay two times of the rent per month payable at that time"*.

53. In terms of Section 74 read with the enunciation in *Fateh Chand* (supra) and *Kailash Nath Associates* (supra),insofar as the claim of the Plaintiffs was founded upon Clause 17, the amount stipulated therein could operate only as the maximum contractual limit of compensation and not as its automatic measure.

54. The learned District Judge was required to ascertain reasonable compensation on the material placed on record, subject to the ceiling of

Rs.1,04,400/- per month prescribed by Clause 17, and could not have decreed the said figure mechanically.

<u>II. The meaning and measure of mesne profits under Section 2(12) of the CPC</u>

55. Section 2(12) of the CPC defines *"mesne profits"* as under:

> *"'mesne profits' of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."*

56. The very definition of *mesne profits* means the profits which the person has derived from the wrongful possession of the property. It is, therefore, evident that the calculation of *mesne profits* is not of the profits which the Plaintiff may have derived from sale or otherwise of the property, but is the wrongful benefit derived by the tenant, who has continued in unlawful possession.

57. The Supreme Court in *<u>Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.</u>*, (2005) 1 SCC 705, held that once a tenancy governed by the Transfer of Property Act, 1882 comes to an end, the erstwhile tenant becomes liable, for the period during which he continues in occupation, *"to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant"*. It was further held that the landlord is not confined, for such period, to the contractual rate of rent payable during the subsistence of the tenancy.

58. In <u>*Bureau of Indian Standards v. Goodwill Theatres Pvt. Ltd.*</u>, 2018 (1) RCR (Civil) 400, while referring to the definition of *mesne* profits under Section 2(12) of the CPC, *mesne* profits do not include profits due to improvements made by the person in wrongful possession, and represent the value of the usage of the land to the person in wrongful possession. The reference point for the assessment is, therefore, the value which the person in wrongful possession has enjoyed by continuing in occupation, which is ordinarily measured by the rent at which similarly situated premises could have been let out in the open market during the period of such occupation.

59. Applying the aforesaid principles, the measure of *mesne* profits in the present case,*was the rent which the suit property could reasonably have commanded in the open market during the period from 02.08.2013 till 31.03.2015.* The last-paid contractual rent of Rs.52,200/- per month and the amount stipulated under Clause 17 could constitute relevant circumstances, but neither could, by itself, conclusively determine the market letting value of the suit property.

60. It is also pertinent to note that Rs.52,200/- per month was not a static rent agreed between the parties, but represented the rent payable only during the final year of the tenancy. Under the Rent Agreement dated 26.04.2010, the monthly rent was fixed at Rs.47,000/- for the year 2010–2011, Rs.49,600/- for the year 2011–2012 and Rs.52,200/- for the year 2012–2013. The contractual arrangement itself, therefore, *contemplated an annual escalation of approximately 5% in the rent of the suit property, which constitutes a relevant indicator while assessing its rental value for the period immediately following the expiry of the tenancy.*

61. The loss occasioned to a landlord on account of continued occupation of tenanted premises by an erstwhile tenant, is not a loss incapable of ascertainment; it is a loss which is ordinarily capable of being demonstrated through evidence of prevailing rentals of comparable premises in the same locality. The present case, therefore, does not fall within the class of cases contemplated in *Saw Pipes* (supra), where the nature of the transaction rendered the loss difficult or impossible to quantify. *The Plaintiffs were, therefore, required to establish the said loss on evidence, and could not have anchored their claim upon Clause 17 alone.*

62. The question whether a clause providing for payment of double the contractual rent in the event of continued occupation post-termination, can be enforced under Section 74 of the Indian Contract Act, 1872 without proof of the loss actually suffered by the landlord, had come up for consideration before this Court in *M/s Sahara India v. M.C. Agrawal HUF*, 2011 SCC OnLine Del 3715, in the context of a lease of commercial premises which contained a clause similar to Clause 17 of the present Rent Agreement.

63. It was held that such a clause providing for payment of double the contractual rent during the period of unauthorised occupation, is *ex facie*in the nature of a ***clause in terrorem*** and cannot be mechanically enforced under Section 74 of the Indian Contract Act, 1872. It was further observed that *"what is the rent which the premises can fetch during the period of the illegal occupation by the erstwhile tenant is a fact which can be easily proved in a suit for possession and mesne profits against the tenants by leading evidence with respect to rents of similar premises within the locality"*. **The award of *mesne* profits at double the contractual rate was, accordingly, set aside.**

64. Since the landlord in that case, had not led any evidence regarding the rent fetched by similar premises in the locality during the relevant period, the Court took judicial notice of the escalation in rentals in urban Delhi and assessed *mesne* profits by applying an annual compounded enhancement of 15% over the last contractual rent. The said method was thus, adopted as a *substitute in the absence of reliable evidence of the prevailing market rent, and not as an inflexible rule applicable, irrespective of the evidence available in a given case.*

65. The question was again considered by this Court in *State Bank of India v. Dr. Meera Luthra & Ors.*, 2017 SCC OnLine Del 9513, wherein it was held that the assessment of *mesne* profits is essentially a question of fact, dependent upon either party proving the rate of rent for the relevant period, and that Lease Deeds pertaining to years removed from the said period, cannot be relied upon to establish the prevailing market rent.

66. A Division Bench of this Court, *in M/s Mehra Jewel Palace Pvt. Ltd. v. Miniso Lifestyle Pvt. Ltd. &Anr.*, 2025 DHC 8351-DB, decided on 22.09.2025, upon a consideration of *Fateh Chand* (supra) and *Kailash Nath Associates* (supra), held that the stipulated sum in a clause providing for double the rent in the event of continued occupation, could operate only as the outer limit, and that damage or loss caused by the breach was the *sine qua non* for the applicability of Section 74. It was further held that in the absence of any pleading or proof by the lessor that the market rent had increased, or that any loss had been suffered, no recovery over and above the contractual rent could be granted.

III. Appreciation of the material placed on record by the Plaintiffs:

67. The measure of *mesne* profits being the rent which the suit property could have commanded in the open market during the relevant period, it becomes necessary to consider the material which the Plaintiffs placed on record in that regard. The Plaintiffs, in paragraph 6 of the Plaint, had averred that the suit property was capable of fetching approximately Rs.1,50,000/- per month if let out in the open market, and, in support thereof, had exhibited four Lease Deeds Ex.PW1/4 to Ex.PW1/7.

68. The learned District Judge, at paragraph 30 of the impugned Judgment, has recorded that *"the plaintiff proved on record certain rent agreements Ex.PW1/4 to Ex.PW1/7 to prove on record the contemporary rate of rent which could be fetched by similar properties*", but has thereafter declined to consider the same, on the *twin grounds* that these facts were not pleaded in the Plaint, and that the Plaintiffs had already been awarded penalty in view of Clause 17 of the Rent Agreement.

69. *Neither of these grounds can be sustained.* The averment as to the prevailing market rent,was specifically contained in paragraph 6 of the Plaint itself. As regards the second ground, Clause 17 could not, in view of the discussion above, could have been mechanically enforced under Section 74, and the evidence regarding market rent could not, therefore, have been rendered superfluous on that account.

70. The registered Lease Deed dated 23.10.2015Ex.PW1/4, commencing from 01.11.2015, was executed by the Plaintiffs in respect of the Ground Floor of the same property bearing No.2271, Hudson Lines, in favour of Sh. Gopal Goel, at a monthly rent of Rs.75,000/- with an annual escalation of 5%. Though it relates only to the Ground Floor and not to the entire suit property comprising the basement and Ground Floor, it commenced within seven months after possession was recovered from the Defendant. *It is, therefore, the most direct evidence on record of the subsequent renting value of the Ground Floor of the suit property.*

71. The registered Lease DeedsEx.PW1/5 and Ex.PW1/6are in respect of the basement and Ground Floor, respectively, of the neighbouring property bearing No.2510, Hudson Lines. **Ex.PW1/6** was executed on 22.07.2011 for a term of five years commencing from 01.08.2011, and **Ex.PW1/5** was executed on 29.01.2014 for a term of five years commencing from 10.02.2014, both with an annual escalation of 5%.

72. Under registered Lease Deed **Ex.PW1/6**, the rent for the Ground Floor was *Rs.1,10,250/- per month from 01.08.2013 till 31.07.2014 and Rs.1,15,763/- per month from 01.08.2014 till 31.07.2015.*As per registered Lease Deed **Ex.PW1/5,** the rent for the basement was Rs.55,000/- per month from 10.02.2014 and Rs.57,750/- per month from 10.02.2015.

73. Taken together, they demonstrate that during the overlapping period from 02.08.2013 to 31.03.2015, the combined market rent for the basement and Ground Floor of property No. 2510,ranged from approximately Rs.1,65,250/- to Rs.1,73,513/- per month,which is materially higher than the sum of Rs.1,04,400/- per month, stipulated by Clause 17.

74. The Appellant has, however, contended that property No. 2510 is not comparable to the suit property, on account of differences in location and characteristics.

75. PW-1, Ravi Bhushan, in his cross-examination dated 28.02.2024, has admitted that DTC buses ply on the road on which property No. 2510 is situated, and that the suit property is situated on a 30-feet-wide road with a nala in front. PW-1 has, however, voluntarily stated that *"the status of road on which the property No. 2510 is situated is the same as of my property"*, and has denied the suggestion that property No. 2510 cannot be compared with the suit property for the purposes of damages and rent.

76. It is also pertinent to observe that DW-1, Sunjay Aggarwal, in his cross-examination, has himself admitted that *"the property no. 2510 and the suit property i.e. 2271 fall in Hudson Line area"*, and that *"the distance between the aforesaid two properties is 200 meters"*. The comparability of the two properties, so far as location and neighbourhood are concerned, is therefore not open to dispute by the Appellant.

77. The rentals reflected in Ex.PW1/5 and Ex.PW1/6 are, therefore, relevant indicators of the prevailing market rent in the locality, during the period in question. Since the said Lease Deeds relate to the basement and Ground Floor of a property situated in the same locality and approximately 200 metres from the suit property, *they constitute substantial comparative material for assessing the market rental value of the suit property.*

78. Though the two properties are situated in the same locality at a distance of 200 meters from each other, the differences concerning frontage, accessibility and immediate surroundings do affect the weight to be assigned to Ex.PW1/5 and Ex.PW1/6, and warrant *a reasonable downward adjustment while applying the rentals reflected therein to the suit property*. Even after such adjustment, the market rent for the basement and Ground Floor of the suit property, taken together, during the period 02.08.2013 to 31.03.2015, *would remain materially in excess of Rs.1,04,400/- per month.*

79. DW-1, Sunjay Aggarwal in his cross-examination dated 21.08.2024, has also admitted that *"I had agreed to pay double of the rent amount as* *penalty charges in terms of Para 17 of Ex. PW1/1, if I do not vacate the tenant premises despite determination and termination of my tenancy".* While the said admission does not render Clause 17 automatically enforceable in view of the discussion above, it does establish that a doubling of the rent as the anticipated consequence of continued occupation, was consciously agreed to by the Defendant, and was within the contemplation of both parties.

80. On a conspectus of the aforesaid material, the market rental value of the suit property, comprising the basement and Ground Floor of property No.2271, Hudson Lines, during the period from 02.08.2013 till 31.03.2015, may reasonably be assessed at an amount exceeding Rs.1,04,400/- per month.

81. Even after making an appropriate downward adjustment for the differences between the suit property and property No.2510, the figure of Rs.1,04,400/- per month represents a reasonable and conservative assessment of its rental value.

IV. The effect of Section 74 of the Indian Contract Act, 1872 on the compensation recoverable:

82. The evidence appreciated above, establishes that the market rent for the basement and Ground Floor of the suit property, taken together, during the period 02.08.2013 to 31.03.2015, was in excess of Rs.1,04,400/- per month.However, in terms of Clause 17 of the Rent Agreement dated 26.04.2010, the parties themselves had fixed the sum payable in the event of continued occupation at twice the monthly rent, that is, Rs.1,04,400/- per month. As held in *Fateh Chand* (supra) and *Kailash Nath Associates* (supra), *the said sum operates as the* ***outer limit*** *of the compensation recoverable* by the Plaintiffs under Section 74 of the Indian Contract Act, 1872.

83. The reasonable compensation payable to the Plaintiffs for the wrongful use and occupation of the suit property by the Defendant during the said period is, accordingly, held at Rs.1,04,400/- per month, that being the figure at which the market evidence on record stands checked by the ceiling prescribed by Section 74. The said figure is arrived at not by mechanical enforcement of Clause 17 of the Rent Agreement, but upon an independent appreciation of the material on record, which discloses a market rent in excess thereof, and by application of the statutory ceiling to the compensation so assessed. The Defendant having already paid a sum of Rs.52,200/- per month for the said period, ***the additional sum payable to the Plaintiffs works out to Rs.52,200/- per month.***

Conclusion

84. The learned District Judge, in the impugned Judgment, proceeded on the reasoning that Clause 17 of the Rent Agreement was automatically enforceable upon breach under Section 74 of the Indian Contract Act, 1872, and on that footing, declined to appreciate the material placed on record by the Plaintiffs, i.e. leases Deeds Ex.PW1/4 to Ex.PW1/7. For the reasons set out above, the said reasoning is not sustainable in law.

85. However, on a proper appreciation of the material on record, the additional sum of Rs.52,200/- per month awarded by the learned District Judge for the period 02.08.2013 to 31.03.2015 *is sustainable as mesne profits under Section 2(12) of the CPC and reasonable compensation, being* *within the ceiling prescribed by Clause 17 of the Rent Agreement, in terms of Section 74.*

86. ***In the light of above reasoning, the impugned Judgment and the Decree awarding the said amount is affirmed.***

87. ***The Regular First Appeal is accordingly, dismissed.***Pending Application(s), if any, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 31, 2026
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