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

Reserved on: 26th May, 2026
Pronounced on: 21st September, 2026

\+ RFA 566/2016 & CM APPL. 31913/2022

U E TRADE CORPORATION (INDIA) PVT LTD .....Appellant

Through: Mr. Debesh Panda with Ms. Anauntta Shankar and Mr. Ruchir Joshi, Advocates.
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versus

DR BHUPESH MANGLA .....Respondent

Through: Ms. Manisha Singh, Advocate.
(M): 9811941496
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manishasingh2501@yahoo.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

INTRODUCTION:

1. The present Regular First Appeal **("RFA")** has been filed under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 **("CPC")**, thereby, challenging the judgment and decree dated 30th October, 2015, **("impugned judgment")** passed by the Court of Additional District Judge-06 (West), Tis Hazari Courts, Delhi, in *CS 694/2014 (Old 18/2007)*,

titled as "*Dr. Bhupesh Mangla, through Dr. Vivek Mangla Versus UE Trade Corporation (India) Ltd.*". By way of the impugned judgment, the Trial Court allowed the said suit for possession, recovery of arrears of rent and damages/mesne profits, along with interest and cost of the suit, in respect of the property bearing no. *Flat no. 913, Arunachal Building, Barakhambha Road, New Delhi – 110001* **("subject premises")**.

2. The respondent/plaintiff had initiated the civil suit, seeking the following reliefs:

(a) Rs. 4,74,400/- as mesne profits from 01st June, 2006, till 24th January, 2007;

(b) Rs. 11,17,039/- as arrears of rent from 01st February, 2004, till 02nd November, 2006, @ Rs. 20,125/- per month with interest of 18% p.a.;

(c) Rs. 55,175/- being the loss of rent from 03rd November, 2006, till 24th January, 2007;

(d) mesne profits @ Rs. 2,000/- per day and loss of rent @ Rs. 20,125/- per month till the peaceful and vacant possession of the subject premises is handed over to the respondent/plaintiff by the appellant/defendant;

(e) future interest of 18% p.a. on the amount claimed herein above from the date of filing of suit till the date of realization;

(f) mandatory injunction directing the appellant/defendant to handover the vacant and peaceful possession of the subject premises to the respondent/plaintiff and get the electricity load, in respect thereof, restored to the original load;

(g) and interim injunction in favour of the respondent/plaintiff restraining the appellant/defendant from alienating, parting with possession or subletting the subject premises.

3. The Trial Court *vide* the impugned judgment has awarded the following reliefs in favour of the respondent/plaintiff:

I. Arrears of rent for the period from June, 2005, till 02nd November, 2006 @ Rs. 20,125/- per month along with interest @ 9 % per annum.

II. Damages/mesne profits for the period from 03rd November, 2006, till 31st December, 2006 @ Rs. 51,000/- per month.

III. Damages/mesne profits for the period from 01st January, 2007, till 31st December, 2007 @ Rs. 80,125/- per month.

IV. Damages/mesne profits for the period from 01st January, 2008, till 31st December, 2008 @ Rs. 80,125/- per month.

V. Damages/mesne profits for the period from 01st January, 2009, till 31st December, 2009 @ Rs. 71,875/- per month.

VI. Damages/mesne profits for the period from 01st January, 2010, till 03rd February, 2010 @ Rs. 71,875/- per month.

VII. Interest for the period from date of filing of the suit till future period till its realization, @ 9% p.a.

VIII. Cost of suit in favour of the respondent/plaintiff, @ Rs. 54,897/-.

4. In view thereof, the present appeal has been filed.

FACTUAL MATRIX:

5. The facts relevant for adjudication of the present appeal, as culled out from the record, are as follows:

5.1. The appellant/defendant is the subsidiary of U.E. Trade Corporation Pte Ltd, Singapore.

5.2. The respondent/plaintiff is one of the landlords/joint co-owners of the subject premises, and was appointed as a Receiver in respect of the subject premises *vide* order dated 15th October, 1999, by the Additional District Judge, Delhi, in *CS 46/2006 (Old 146/1995)*. i.e., the partition suit *qua* the subject premises.

5.3. The respondent/plaintiff asserts that the appellant/defendant approached him *vide* letter dated 03rd September, 2003, to seek the subject premises on rent. Thereafter, the parties entered into a lease deed dated 02nd December, 2003.

5.4. The said lease deed was for a term of 03 years, from 03rd November, 2003 to 02nd November, 2006 at the monthly rent of Rs. 20,125/-. The security of Rs. 60,375/- was paid by the appellant/defendant to the respondent/plaintiff, along with advance rent as equivalent to three months' rent, which was deductible in first 12 equal instalments during the period of lease.

5.5. The appellant/defendant paid Rs. 1,15,787/- to the Arunachal Apartment Owners Association being outstanding dues for the subject premises, and also Rs. 11,500/- towards the lift replacement charges.

5.6. In 2006, one Sh. Rohit Mangla visited the office of the appellant and claimed himself as one of the co-owners in the subject premises. Around that time, the appellant was informed about the pending suit for partition in respect of the subject premises. The appellant addressed letters dated 28th March, 2006, and 17th April, 2006, to the respondent seeking clarification and information about the said partition suit.

5.7. On 17th April, 2006, the respondent sent a legal notice to the appellant, terminating the tenancy of the appellant/defendant on the ground that the appellant/defendant had deliberately not paid the rent after making the initial payment of Rs. 60,375/-. Further, the appellant/defendant was also called to hand over the vacant and peaceful possession of the subject premises.

5.8. The appellant/defendant replied to the said legal notice *vide* reply dated 25th April, 2006, whereby, the appellant put the respondent to notice that the earlier notice sent by the respondent did not amount to termination of lease, and that the appellant continued to be the contractual tenant in the subject premises. It was further stated in the said reply that the appellant/defendant had made various requests to seek the updated status of the civil suit, whereby, the respondent was appointed as a Receiver. Moreover, the appellant stated that it was ready to deposit the rent in Court or to the respondent, provided he satisfied the appellant *qua* no objections from other co-owners in receiving rent.

5.9. On 02nd September, 2006, the appellant sent a legal notice to the respondent thereby stating that it wanted to handover the peaceful and vacant possession of the subject premises by 02nd November, 2006. Further, *vide* the said letter, the appellant called upon the respondent to settle all accounts and receive the possession of the premises. Upon failure to do the same, the appellant would be constrained to deposit the keys of the subject premises before the Court.

5.10. The appellant moved two applications in the partition suit being *CS 46/2006.* One application was moved under Order I Rule 10 of the CPC, seeking impleadment of the appellant in the said partition suit. The other application was moved under Section 151 of the CPC, seeking permission to handover the possession of the subject premises by depositing the keys of the subject premises in the Court itself, forthwith.

5.11. Thereafter, a legal notice dated 31st October, 2006, was issued by the respondent to the appellant for payment of Rs. 2,000/- per day as damages for the unauthorized use and occupation of the subject premises w.e.f. 01st June, 2006, till the subject premises was vacated and handed over to the respondent.

5.12. In 2007, suit was instituted by the respondent seeking mandatory and interim injunction, possession, recovery of rent with interest, loss of rent along with mesne profits from the appellant.

5.13. The appellant sought to deposit the keys of the subject premises on 10th September, 2008, however, the respondent's counsel sought time to inspect the subject premises on the ground that the respondent resided abroad.

5.14. It was subsequently recorded before the Trial Court *vide* order dated 27th July, 2009, that the appellant had shifted its office to a new address, i.e., *814, Inder Prakash Building, Barakhamba Road, Connaught Place, New Delhi.*

5.15. On 24th November, 2009, the respondent refused to accept the keys of the subject premises on the ground that the appellant had not cleared all dues. During the pendency of the civil suit, as recorded *vide* order dated 03rd February, 2010, the appellant had submitted that he is ready to handover the possession of the subject premises to the respondent, and the keys of the vacant subject premises were handed over to the respondent.

5.16. Sh. Rohit Mangla had also filed an application under Order I Rule 10 of the CPC, seeking impleadment in the civil suit filed by the respondent, thereby, placing material facts on record as to co-ownership of the subject premises and circumstances leading to the filing of the partition suit where the respondent was appointed Receiver. However, the said application was dismissed by the Trial Court *vide* order dated 06th April, 2011.

5.17. The Trial Court *vide* order dated 16th May, 2011, framed issues in the suit, as follows:

> *"xxx xxx xxx*
>
> 1. *Whether the suit has been signed or duly verified by the authorized person? OPD*
> 2. *Whether the suit is bad for non-joinder or mis-joinder of parties? OPD*
> 3. *Whether the relief claimed for possession is not maintainable in the form of Mandatory Injunction? OPD*
> 4. *Whether the plaintiff is entitled for Mandatory Injunction i.e. for recovery as possession, as prayed for? OPP*
> 5. *Whether the plaintiff is entitled for mesne profits w.e.f. 1.6.06 to 24.1.07 to the tune of Rs. 4,74,400/-, as prayed for? OPP*
> 6. *Whether the plaintiff is entitled for arrears of rent w.e.f. 1.2.04 to 2.11.06 @ Rs. 20,125/- per month coming to Rs. 11,17,039/-, as prayed, for? OPP*
> 7. *Whether the plaintiff is entitled for loss of rent to the tune of Rs. 55,175/- w.e.f. 3.11.06 to 24.1.07, as prayed for? OPP*
> 8. *Whether the plaintiff is entitled for mesne profits, as prayed for? OPP*
> 9. *Whether the plaintiff is entitled for any interest, if so, at what time and for what period?*
>
> *xxx xxx xxx"*

5.18. *Vide* order dated 16th November, 2011, the Trial Court, upon an application filed by the respondent under Order XIV Rule 5 of the CPC read with Section 151 of the CPC, deleted the issues in respect of the claim of possession of the subject premises, i.e., issue nos. 3 and 4. It was done in view of the fact that the appellant had already handed over the possession of the subject premises to the respondent.

5.19. The Trial Court *vide* the impugned judgment and decree, granted the respondent, arrears of rent, damages/mesne profits in respect of the subject premises.

SUBMISSIONS BY THE APPELLANT/DEFENDANT:

6. Before this Court, the appellant/defendant has raised the following contentions:

6.1. The lease deed dated 02nd December, 2003, between the parties, reflects that the respondent executed it on behalf of himself and all co-owners.

6.2. The respondent never disclosed the fact that he was appointed Receiver of the suit premises.

6.3. The respondent failed to produce any document proving his assertion of him being appointed Receiver. He conceded that Smt. Usha Mangla, Sh. Rohit Mangla, Sh. Vivek Mangla and Sh. Gaurav Mangla, were co-owners in the subject premises.

6.4. The respondent first stated that Sh. Rohit Mangla was not the plaintiff in earlier suit for partition, but later contradicted his statement that Sh. Rohit Mangla had filed the suit for partition. He conceded that he was directed by the Court, as a Receiver, to deposit the amounts received towards rent in a separate bank account, however, nowhere has it been stated that he actually did that.

6.5. The respondent conceded that a new Receiver had been appointed by the Court, however, in the same breath, he voluntarily stated that the said order was under challenge. He accepted that in the earlier order passed appointing him as Receiver, it was stated that once another Receiver was appointed, his Receivership would come to an end.

6.6. The appellant's witness deposed, *inter-alia,* that the respondent never disclosed that Sh. Rohit Mangla was one of the co-owners of the subject premises, or that the suit for partition of the subject premises was pending. Further, there was no electricity connection for 03 months, when the property was initially let out to the appellant, and no rent was payable till the facility of electricity was made available.

6.7. The appellant had addressed two legal notices dated 28th March, 2006, and 17th April, 2006, the conjoint reading of which proves that the respondent was aware that, firstly, the appellant was accosted by Sh. Rohit Mangla, and secondly, Sh. Rohit Mangla brought to light the order dated 15th October, 1999, as per which, the receivership of the respondent was temporary.

6.8. It is evident that as a counterblast to the said notices, the respondent issued the notice dated 17th April, 2006, whereby, he sought to terminate the lease. Further, the said notice remains silent on receivership of the respondent, and therefore, the respondent only terminated the lease in his capacity as a co-owner.

6.9. The appellant, in the correspondences prior to 2006, had made it clear that it wanted to continue as a tenant and pay rent, provided it got discharge of liability from the other co-owners. In September, 2006, the appellant finally elected to surrender the lease and put the same to notice of the respondent. The appellant also made it clear that it wanted to hand over the keys on expiry of the lease, albeit to the correct person.

6.10. Nowhere in the correspondence exchanged before 24th January, 2007, has Sh. Rohit Mangla wanted the tenancy to be terminated, but was only asking that the rent should be paid to him. In contrast, the respondent wanted to terminate the lease, *vide* Notice dated 17th April, 2006. In response, the appellant replied *vide* notice dated 25th April, 2006, wherein, he had taken a clear stand that the respondent's notice did not terminate the tenancy and the respondent had no right to terminate the same.

6.11. The other co-owners of the subject premises were put to notice by way of two applications filed in the suit for partition. However, not a single co-owner sent a notice under Section 106 of the Transfer of Property Act, 1882 **("TPA")** for termination of the lease. The other co-owners did not even seek to participate in the suit filed by the respondent, except Sh. Rohit Mangla, who filed an impleadment application.

6.12. It is a settled principle that when there are *inter se* disputes between the co-owners, one co-owner cannot be presumed to have agency on behalf of the others, and it has to be proved. The respondent conceded about the existence of the other co-owners, viz. Smt. Usha Mangla, Sh. Rohit Mangla, Dr. Vivek Mangla and Sh. Gaurav Mangla. He also conceded that he had let out the subject premises on behalf of all the co-owners though he has no authority specifically for the subject premises, and had GPAs from Dr. Vivek Mangla, Sh. Gaurav Mangla and Smt. Usha Mangla to act on their behalf.

6.13. The actions of Sh. Rohit Mangla directly struck at Clause 12 of the lease deed dated 02nd December, 2003, by way of which the respondent was bound to ensure to the appellant a peaceful and uninterrupted use and enjoyment of the subject premises during the term of the lease.

6.14. The respondent in his own plaint had relied upon the appellant's legal notice dated 17th April, 2006, his own notice dated 17th April, 2006, and the response of the appellant dated 25th April, 2006, and 02nd September, 2006. Once these facts were undisputed, the respondent had the burden to establish: (i) the suit was validly instituted, and (ii) the legal notice dated 17th April, 2006, validly terminated the lease deed.

6.15. The Trial Court, on the first aspect of valid institution of suit had the benefit of the independent stand of Sh. Rohit Mangla, who had demonstrated in his impleadment application that in the suit filed against the previous tenant, he had been arrayed as a party, and that the respondent's receivership was only temporary. None of these facts were disputed by the respondent. Additionally, the appellant had also pleaded non-joinder of necessary parties.

6.16. Thus, the Trial Court was bound to decide them strictly as per the evidence on record, and applicable law. The Trial Court could not have proceeded on the basis that the respondent had agency on behalf of all co-owners. The said contention goes to the heart of this case because unless proven that the lease was validly terminated *vide* notice dated 17th April, 2006, no relief could be granted. Additionally, in view of the *inter-se* disputes, the said question could not be decided behind the back of the other co-owners.

6.17. Once the respondent failed to prove in the suit that he validly terminated the lease, his act of issuance of the notice dated 17th April, 2006, constituted breach, and therefore, no relief could be granted to the respondent. The Trial Court failed to consider that the respondent was in knowledge at the time of letting out the subject premises that Sh. Rohit

Mangla was the co-owner. Furthermore, the respondent had no authority from Sh. Rohit Mangla to act on his behalf.

6.18. The Trial Court has failed to consider that without hearing the other co-owners, the suit itself was not maintainable. The law on non-joinder of parties is clear, and the same renders a suit bad in law. One co-owner/co-landlord is not entitled on his own, to terminate the tenancy in face of disputes with other co-owners. Once disputes exist, agency cannot be presumed and all the co-owners must be joined in a suit against the tenant for recovery of possession and mesne profits.

6.19. The Trial Court has overlooked the fact that the respondent conceded in the cross-examination that Sh. Rohit Mangla did not give any attorney to Dr. Vivek Mangla, who lodged the plaint. The respondent was also unable to prove that authorization was given by Smt. Usha Mangla and Sh. Gaurav Mangla to Dr. Vivek Mangla, as he did not produce the GPAs given by them.

6.20. The contents of the notice dated 17th April, 2006, cannot be improved upon *post facto* and it is matter of record that it does not even whisper as to receivership of the respondent. Thus, the respondent's later submission about validly terminating the lease in capacity of being the Receiver, which vested him agency on behalf of the other co-owners, cannot be accepted.

6.21. The Trial Court was bound to decide the question regarding the receivership status of the respondent, as per law. The receivership was not admitted by the appellant and even the respondent did not set up a case in the plaint and there are no pleadings to this effect. Therefore, no question of looking at any evidence, much less entertaining the multifarious submissions of the respondent even arise.

6.22. In an order dated 04th September, 2013, passed by this Court in *FAO 347/2010*, relied upon by the respondent during final arguments, nowhere has it been mentioned that the respondent shall be taken as the Receiver, as of 17th April, 2006, with retrospective effect.

6.23. It is undisputed that the said order was passed when the cross-examination of the respondent was still underway. However, the contents of the said order were not even sought to be introduced in re-examination as per Section 138 of the Indian Evidence Act, 1872 **("Evidence Act")**. No reliance can be placed on the said order dated 04th September, 2013, which the respondent sought to slip in after conclusion of final arguments before the Trial Court. Even the Trial Court has not relied on it, and no application for taking the same on record or for leading additional evidence has been filed.

6.24. The Trial Court completely failed to consider the facts that the appellant had elected as of 02nd September, 2006, to surrender the lease on its expiry by handing over the keys, which attracted Section 108(q) of the TPA. The appellant also had filed an application under Section 151 of the CPC, in the partition suit filed by Sh. Rohit Mangla, in 2006, prior to the expiry of the lease deed to deposit the keys to all the co-owners.

6.25. The parties have laid foundation of the issue of Section 108(q) of the TPA in their pleadings, and also led evidence which would be germane to the adjudication in terms of Section 108(q) of the TPA, therefore, the non-framing of an issue on that aspect will not stand in the way of Court deciding the present appeal.

6.26. It is a matter of record that numerous attempts were made by the appellant to hand over the keys as it is borne out of the order dated 10th September, 2008, and later orders of the Trial Court, that whenever it sought to handover the keys to the respondent in Court, the same was avoided. It was recorded in the order dated 24th November, 2009 of the Trial Court, that the respondent refused to accept the keys on the ground that the appellant had not cleared pending dues. Finally, keys were accepted by the respondent in Court on 03rd February, 2010, and it was done despite no change in circumstances.

6.27. Thus, the Trial Court erred in awarding damages for the period beyond 02nd November, 2006, without so much as even considering the settled principles of law on Section 108(q) of the TPA. It is a settled principle that the findings in the orders can be relied on by the Court as being judicial admissions.

6.28. In the cross examination, the *DW-1*, stood firm and stated that the possession of the subject premises was handed over to the respondent on 02nd November, 2006, as an application was moved in the suit for partition *qua* the subject premises. However, the respondent and Sh. Rohit Mangla, kept on delaying the said proceeding, even though the Court was informed that the appellant had removed all articles from the subject premises and it is lying vacant, and had not been used after 02nd November, 2006.

6.29. The real question to be considered is the intention of the parties and whether the lessee either expressed or manifested to vacate the premises. The lessee has no further duty such as approaching a Court or taking further steps other than intimating the landlord about its intention to hand over possession.

6.30. The respondent urged that the possession could not have been accepted by him till certain contractual pre-conditions were met. However, the very fact that the possession was accepted on 03rd February, 2010, without any change in circumstances, provides a complete answer. Such case was never set up in the plaint, nor was any such oral submission ever urged.

6.31. The Trial Court failed to consider Section 111 of the TPA which lists an exhaustive set of circumstances wherein a lease of immovable property can be determined. Section 111(a) provides for determination of a lease by efflux of time, while Section 111(f) provides for implied surrender. The respondent had illegally refused to accept the keys of the subject premises. In any event, without prejudice, such action on part of the respondent constituted a breach of lease. Thus, grant of relief without addressing the said fundamental issue, demonstrates perversity.

6.32. The Trial Court has erred in granting mesne profits to the respondent in view of the evidence on record *qua* handing over the keys of the subject premises and Section 108(q) of the TPA read with Section 111 of the TPA. At best, only arrears of rent as of 02nd November, 2006, could have been decreed in the facts of the present case but nothing more.

6.33. There is a cardinal difference between mesne profits and arrears of rent as is borne from Order XX Rule 12 of the CPC, which has been overlooked by the Trial Court.

6.34. No guess work can be used for ascertaining rent and in this case, by application of Section 108(q), only arrears of rent require computation, on which there is no quarrel that the sum shall be Rs. 20,125/- per month.

6.35. The Trial Court failed to consider that the case of the respondent is based on mutually destructive pleas. Clause 16 of the lease deed provides that the respondent would be entitled to mesne profits at the rate of Rs. 2,000/- per day for the period of overuse of the subject premises in case of no extension of the term of lease. However, the respondent sought mesne profits at Rs. 2,000/- along with loss of rent. This is contrary to the contract between the parties and it would amount to rewriting of the terms agreed. Thus, by way of the impugned judgment the Trial Court has rewritten the terms of the contract, which is wholly perverse.

6.36. The Trial Court has erroneously awarded mesne profits taking into consideration the lease deeds, whose certified copies were placed on record, but were not proved in accordance with law. The respondent was not the author of the said lease deeds, and it is a settled law that the contents of a document remain hearsay until the actual author is produced for cross examination.

6.37. The officer from the Sub-Registrar's office, in her cross-examination, conceded that she does not know the author of the lease deeds and has not seen them signing in her presence, nor does she recognize their signatures; and that she has not even compared the documents with the summoned record and is not aware of their genuineness or authenticity of lease deeds.

6.38. The appellant had already removed all its goods from the premises in dispute by 02nd November, 2006, and the subject premises are lying vacant and have not been used ever since. The burden to prove that the appellant was in possession of the subject premises was on the respondent, and it cannot be shifted on the appellant.

6.39. In respect of the subject premises, which was let out @ Rs. 35/- per square feet, being unfurnished, the Trial Court has awarded mesne profits at Rs. 89/- per square feet for the period of November, 2006 to December, 2006, relying on the lease that on the fact of it confirms that it is for a furnished apartment. The lease rent in all other leases is higher than Rs. 89/- per square feet, thus, the respondent stands unjustly enriched from the impugned judgment and decree.

6.40. The appellant has sought to place on record two documents through *CM APPL. 31913/2022*, viz. legal notice dated 28th March, 2006, and letter dated 09th March, 2006 of the appellant to the Estate Manager of the building where the subject premises is situated. The notice dated 28th March, 2006, stands cross referenced in most of the documents on the Trial Court Record, including legal notice dated 17th April, 2006, and its contents are also consistent with the notice dated 17th April, 2006. Further, it has been recorded in the letter dated 09th March, 2006, that the owners of the subject premises are Smt. Usha Mangla and others.

6.41. The impugned judgment itself records that rent was paid till the month of May, 2005, and therefore, only the rent for the period from June, 2005, to October, 2006, has to be paid by the appellant, which may be adjusted out of the sums deposited with this Court, while the remaining sum be refunded to it, with interest charged till date.

SUBMISSIONS BY THE RESPONDENT/PLAINTIFF:

7. *Per contra,* the submissions put forth by the respondent, are as follows:

7.1. It is an admitted case of the appellant that the respondent is a co-owner of the subject premises and that the subject premises was let out to the appellant by the respondent. Further, it is also a settled principle that a suit for possession of a property let out by one of the co-owners can be instituted by a co-owner.

7.2. The respondent was appointed as Receiver in respect of the subject premises *vide* order dated 15th October, 1999, in *CS 46/2006* by the Trial Court. The said order was in operation when the present suit was instituted in the year 2007, as is evident from the averments in the application for impleadment filed by Sh. Rohit Mangla.

7.3. The said order was modified during the pendency of the said suit *vide* order dated 17th March, 2010, passed by the Trial Court, in *CS 46/2006*, and against which an appeal being *FAO 347/2010* was preferred by the respondent. In the said appeal, this Court *vide* order dated 04th September, 2013, specifically directed that the respondent will continue to pursue the civil suit, being *CS 694/2014,* before the Trial Court.

7.4. There has been no dispute or challenge made by any of the co-owners to the civil suit. Even Sh. Rohit Mangla had sought impleadment and not dismissal of the suit filed by the respondent herein.

7.5. Sh. Rohit Mangla only raised concern about the rental amount being received and accounted for by the respondent in the wake of the on-going suit for partition.

7.6. The vacant and peaceful possession of the subject premises was only handed over to the respondent on 03rd February, 2010, and therefore, the appellant is liable to pay mesne profits till 03rd February, 2010. Prior thereto, the appellant merely put a pretense to offer possession on 02nd November, 2006, as it still was in possession of the subject premises.

7.7. The appellant, from the first date of putting appearance in the suit for possession on 22nd March, 2007, neither offered vacant possession nor took any steps to get the property inspected by a local commissioner and to deposit the keys in Court.

7.8. The appellant was admittedly in the subject premises, as is evident from the address mentioned in the written statement filed by it in the civil suit being *CS 694/2014*. Even as per the statement of the Authorized Representative of the appellant, recorded by the Trial Court on 27th July, 2009, it had shifted premises in 2009. Even, on that date, no offer was made to hand over the possession.

7.9. The evidence in the matter was led by the appellant in 2014. No such alleged offer recorded in the Court order was ever put to the respondent during cross-examination and the appellant has not even referred to the said orders in evidence. Even the issues were framed on 2011, wherein, liability to pay mesne profits was specifically framed and it was within the appellant's knowledge the case it had to meet. The reliance on the order sheets is only an attempt to fill in the lacunae in the case of the appellant.

7.10. Without prejudice to the aforesaid, the offer for deposit of keys was a conditional offer subject to accounting of the cost incurred by the appellant towards renovation in the subject premises. To avoid the payment of mesne profits, the burden of proof is upon the tenant to prove handing over of peaceful vacant title to landlord, which the appellant has failed to discharge.

7.11. Order XX Rule 12 of the CPC shows that it does not bar a suit for arrears of rent as well as for mesne profits, which are routinely granted by Courts. Sub sections of Rule 12 provide for both mesne profits and rent, and there is no mention of 'or' between sub clause (b) and (ba) of Order XX

Rule 12 of the CPC. The direction of enquiry for rent and mesne profits provided in sub clause (b) and (ba) of Order XX Rule 12 of the CPC, is optional as the same is proceeded by 'or'.

7.12. There is no merit in the appellant's contention that the subject premises was without electricity for a period of 03 months and any adjustments be made for the same.

7.13. In the present case, the mesne profits have been granted on the basis of rate of damages mentioned in the lease deed executed between the parties, in accordance with Section 73 and 74 of the Indian Contract Act, 1972 **("ICA")**. Moreover, the respondent had led unimpeached evidence by filing and proving registered lease deeds of similar properties to which there was neither any cross examination nor any contrary evidence led by the appellant.

7.14. It is the admitted case of the appellant that the respondent can only claim damages @ Rs. 2,000/- per day as stipulated in Clause 16 of the lease deed dated 02nd December, 2003. Wherever the calculation of the mesne profits on the basis of computation @ Rs.2,000/- per day + monthly rent of Rs. 20,125/- was higher than the rent prescribed in the lease deed of comparable premises situated in the same building, the Trial Court has computed the same at Rs. 2,000/- per day, as sought by the appellant herein. In case, the contention of the appellant is accepted, the respondent is entitled to higher mesne profits.

7.15. The appellant has failed to lead any evidence as regards the rental value prevailing in similarly situated premises. The appellant further failed to cross-examine the respondent with respect to the same. In cases for mesne profits, certified copies of registered lease deeds are routinely relied upon by this Court in assessing mesne profits.

7.16. As an Appellate Court, judgment and decree of the Trial Court can only be interfered with if the view taken by the Trial Court is perverse or illegal. Merely because two views are possible, and one acceptable view has been taken, it would not mean that the Court has the power to interfere in appeal.

PROCEDURAL HISTORY:

8. Before adverting to the analysis and findings in the present appeal, it is to be noted that the present appeal was first listed before this Court on 09th August, 2016, whereby, time was granted to the appellant in order to enable him to examine the case before making submissions. This Court *vide* order dated 29th August, 2016, had granted further time to the appellant to deposit the decretal amount (erroneously referred to as the court fees).

9. However, *vide* order dated 21st September, 2016, it was clarified that in the order dated 29th August, 2016, it shall be read as "decretal amount" instead of "court fees". Further, by way of the same order, this Court dismissed the present appeal on the grounds of non-prosecution, as neither the appellant appeared before this Court nor was the decretal amount deposited.

10. By way of order dated 15th November, 2017, notice was issued in the appellant's application being *CM 40893/2017* seeking restoration of the present appeal.

11. This Court *vide* order dated 08th August, 2018, issued Contempt Notice to Mr. Rajinder Rana, director of the appellant-company, for not complying with this Court's orders dated 07th May, 2018, and 28th May,

2018, whereby, directions were given to the appellant-company to place on record the contact details, E-mail addresses, assets and bank account details of its directors, viz. Mr. Rajender Kumar and Mr. Tan Chee Keong Roy; and to deposit Rs. 15 Lacs with the Registrar General of this Court, within a period of 06 weeks, respectively.

12. Further, by way of order dated 29th April, 2019, the respondent's application being *CM 20139/2019,* seeking attachment of the bank account of the appellant-company was allowed. Thus, the bank account bearing no. 00030330001864, maintained by the appellant-company at HDFC Bank, Kasturba Gandhi Marg, Delhi Branch, was attached till the next date of hearing. Further, *vide* order dated 09th August, 2019, the said attachment was continued till further orders.

13. *Vide* order dated 24th July, 2019, the appellant was directed to deposit Rs. 40 Lacs with this Court, out of which Rs. 25 Lacs was to be deposited with the Court and Rs. 15 Lacs was to be attached directly from the bank account of the appellant-company. This order was challenged by the appellant-company by way of a Special Leave Petition (Civil) **("SLP(C)")** bearing no. *1833/2019*, which was dismissed *vide* order dated 02nd August, 2019, by the Supreme Court.

14. By way of order dated 26th August, 2019, this Court allowed the appellant's application being *CM APPL 37969/2019,* seeking directions to the Branch Manager, HDFC, Kasturba Gandhi Marg, Delhi Branch, to credit in the appellant's account Rs. 25 Lacs deposited by the appellant with the HDFC Bank, and further make a Fixed Deposit Receipt **("FDR")** of Rs. 40 Lacs in favour of the Registrar General of this Court. It was further directed that subject to filing of the said FDR, the bank account of the appellant-

company shall be de-attached. The said FDR was deposited on 18th September, 2019.

15. Pursuant to the respondent's application, being *CM APPL. 44808/2019*, seeking release of the said FDR in favour of respondent, this Court *vide* order dated 12th February, 2020, released the FDR of Rs. 40 Lacs in favour of the respondent, in view of one Mr. Sanjay Mahindru furnishing a surety of Rs. 40 Lacs *vide* Suvidha Fixed Deposit dated 01st February, 2020, issued by the IDBI Bank, Uttam Nagar Branch, Delhi, issued in his favour.

16. This Court *vide* order dated 29th March, 2022, permitted the restoration of the present appeal, subject to the appellant depositing Rs. 25 thousand in favour of Delhi High Court Legal Services Committee.

17. *Vide* order dated 21st July, 2022, notice was issued in issued in *CM APPL. 31913/2022* filed by the appellant under Order XLI Rule 27 of the CPC, seeking permission to place additional documents on record.

18. By way of order dated 11th August, 2023, this Court directed the appellant to further deposit a sum of Rs. 25 Lacs with the Registry of this Court, within 08 weeks, subject to which the execution of the impugned decree shall be stayed. Further, *vide* order dated 19th October, 2023, the appellant's application for extension of time was disposed of with directions to deposit the said amount with the Registry of this Court the next day, i.e., 20th October, 2023, pursuant to which the execution of the impugned decree shall remain stayed.

FINDINGS AND ANALYSIS:

19. I have heard learned counsels for both the parties and have perused the record.

20. At the outset, it is noted that no arguments were advanced on behalf of the appellant before the Trial Court in respect of issue nos. 01 and 02. Therefore, considering the documents on record, the Trial Court decided the said issues in favour of the respondent and against the appellant, thereby, holding that the suit was signed and duly verified by an authorized person, and further that the suit was not bad for non-joinder or mis-joinder of any party.

21. It is also noted that issue nos. 03 and 04 were deleted *vide* order dated 16th November, 2011, upon an application made by the respondent/plaintiff under Order XIV Rule 5 of the CPC seeking deletion of the said issues. The said issues were deleted in view of the fact that on 03rd February, 2010, the appellant had handed over the possession and keys of the vacant subject premises to the respondent, therefore, rendering the said issues pertaining to recovery of possession, infructuous.

22. The parties have advanced comprehensive arguments before this Court on issue nos. 05 to 08. Issue no. 05 pertains to mesne profits for the period from 01st June, 2006, to 24th January, 2007. Issue no. 06 is in respect of the arrears of rent for the period from 01st February, 2004, till 02nd November, 2006. Issue no. 07 pertains to prayer towards loss of rent for the period from 03rd November, 2006 to 24th January, 2007. Finally, issue no. 08 is with respect to entitlement of the respondent/plaintiff for mesne profits.

23. The Trial Court has taken up the issues together on the ground that the said issues were interconnected, i.e., finding on one issue would have bearing upon other issue and *vice versa.* Arguments were also advanced *qua* issue no. 9, which pertains to entitlement of interest.

Title Of The Respondent Over The Subject Premises And Maintainability Of The Suit:

24. The case set up by the appellant is that the respondent had never disclosed the fact that he was appointed as a Receiver in respect of the subject premises. Furthermore, without hearing the other co-owners, the suit filed by respondent was not maintainable. It has been argued that once disputes exist between co-owners, agency cannot be presumed and all the co-owners must be joined in a suit against the tenant for recovery of possession and mesne profits.

25. In this regard, it is to be noted that the respondent was appointed as a Receiver in respect of the subject premises *vide* order dated 15th October, 1999, in the partition suit between the respondent and other family members, and the said order was in operation at the time of filing of the suit by the respondent in the year 2007. The said order was only modified during the pendency of the suit on 17th March, 2010, and the same was challenged by the respondent in *FAO 347/2010.*

26. By way of order dated 04th September, 2013 passed by this Court in *FAO 347/2010,* the respondent was directed to pursue the suit filed by him. Significantly, there has been no objection by other co-owners to the institution of suit filed by the respondent seeking recovery of possession and other reliefs. Admittedly, the said co-owners were in the knowledge of the suit filed by the respondent, when the appellant herein moved an application for impleadment in the partition suit of the co-owners and for deposit of keys of the suit property. Even Sh. Rohit Mangla, one of the co-owners who had filed application for impleadment in the present suit, had sought reliefs *qua* payment of rent only.

27. Furthermore, it is to be noted that the objection raised by the appellant in this regard is covered under issue no. 02 framed by the Trial Court. However, the said issue was neither pressed nor argued by the appellant. Moreover, the appellant's application seeking similar relief was also dismissed by the Trial Court on 03rd September, 2013.

28. The appellant admittedly entered into the lease deed dated 02nd December, 2003 with the respondent, paid rent and other charges to him for a substantial period and enjoyed uninterrupted possession under the lease for years without repudiating his title. Section 116 of the Evidence Act precludes a tenant from denying, during the continuance of the tenancy, the title of the person from whom he accepted the property.

29. It is settled law that in a suit for possession by landlord, the question of title is irrelevant. Reference in this regard, may be made to the judgment in the case of ***Sanjay Singh Versus Corporate Warranties Pvt. Ltd., 2013 SCC OnLine Del 3535,*** wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> *28. Though the counsel for the appellant/defendant has not urged, but the defence in the written statement to title of the respondent/plaintiff and of Sh. A.K. Rangaswami and of the appellant/defendant having not attorned to respondent/plaintiff as landlord, is also meritless. It has been held in Nalakath Sainuddin v. Koorikadan Sulaiman, (2002) 6 SCC 1, Mahendra Raghunathdas Gupta v. Vishwanath Bhikaji Mogul, (1997) 5 SCC 329 and Mohar Singh v. Devi Charan, (1988) 3 SCC 63 that on transfer of tenanted premises by the landlord, the transferee automatically becomes the landlord of the tenant by operation of law and the coming into being of the relationship of landlord and tenant between the transferee and tenant is not dependent upon any overt act on the part of the tenant.* ***Similarly, it is the settled position in law that in a suit between landlord and tenant, it is only the title as landlord which is relevant and not the title as owner. As far back as in Sri Ram Pasricha v. Jagannath, (1976) 4 SCC 184 it was held that under the general***

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law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant. Recently also, in State of Andhra Pradesh v. D. Raghukul Pershad, (2012) 8 SCC 584 : (2012) 4 SCC (Civ) 555 it was held that relief of eviction of a tenant is not based on the title of the landlord to the leased premises and even if an averment to the said effect, of landlord being owner, is made in the plaint, as long as no relief of declaration of title is claimed and only the relief of eviction of tenant on the ground that lease has come to an end is claimed, the Court is not called upon to decide the question of title.

xxx xxx xxx"

(Emphasis Supplied)

30. It is undisputed that the respondent is a co-owner of the suit property and the suit property was let out to the appellant by the respondent. It is equally settled law that suit for possession of property let out by one of the co-owners can be instituted by a co-owner. In this regard, reference is made to the decision in the case of ***India Umbrella Manufacturing Co. and Others Versus Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla (Smt) and Others, (2004) 3 SCC 178,*** wherein, the Supreme Court has held that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners, unless it is shown that the co-owners were not agreeable to eject the tenant. The relevant portion of the said judgment, reads as under:

"xxx xxx xxx

6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16], SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-

owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

xxx xxx xxx"

(Emphasis Supplied)

31. Accordingly, the impleadment of all co-owners is not a prerequisite for filing an eviction petition against the tenant. And eviction suit against tenant can be legally maintained by one co-owner alone.

32. The judgment in the case of ***Nanalal Girdharlal and Another Versus Gulamnabi Jamalbhai Motorwala and Others***, ***1972 SCC OnLine Guj 12***, relied upon by the appellant is clearly distinguishable and does not apply to the facts and circumstances of the present case. The said judgment only holds that where the premises have been let out by all co-owners, it can be terminated only by all co-owners, which is not the position in the present case. In the present case, lease was granted only by the respondent.

33. Similarly, the judgment in the case of ***Abdul Hamid Versus Bhuwaneshwar Prasad, 1952 SCC OnLine MP 125***, relied by the appellant is distinguishable. In the said case, tenancy was given jointly by all co-owners. Thus, the Court held that where relation of joint landlord continues, tenancy cannot be put to an end except by all lessors. On the contrary, in the

present case, tenancy was given by the respondent both as a co-owner and a receiver.

34. As regards the dispute raised *qua* the title of the respondent, it is worthy to note the decision of the Supreme Court in ***Jaspal Kaur Cheema and Another Versus Industrial Trade Links and Others, (2017) 8 SCC 592****,* wherein, it has been held that the tenant who has been let into possession cannot deny his landlord's title, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord. The relevant excerpts of the said judgment, are reproduced as under:

> *"xxx xxx xxx*
>
> ***9.*** *Now, the question is whether it is permissible for the respondent tenant to deny his landlord's title having regard to Section 116 of the Evidence Act. Section 116 of the Evidence Act reads as under:*
>
> > ***"116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property****; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."*
>
> ***10. Section 116 deals with estoppel of a tenant founded upon contract between the tenant and his landlord. It enumerates the principle of estoppel which is merely an extension of principle that no person is allowed to approbate and reprobate at the same time. The tenant who has been let into possession cannot deny his landlord's title. In Bilas Kunwar v. Desraj Ranjit Singh [Bilas Kunwar v. Desraj Ranjit Singh, 1915 SCC OnLine PC 34 : (1914-15) 42 IA 202 : AIR 1915 PC 96], it was held that a tenant who has been let into possession cannot deny his landlord's title, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord.***

11. The principle of estoppel arising from contract of tenancy is based upon the principle of law and justice that a tenant who could not have got possession but for a contract of tenancy admitting the right of the landlord, should not be allowed to put his landlord in some inequitable situation taking undue advantage of the position that he got and any probable defect in the title of his landlord. This Court in Bansraj Laltaprasad Mishra v. Stanley Parker Jones [Bansraj Laltaprasad Mishra v. Stanley Parker Jones, (2006) 3 SCC 91] has enumerated the policy underlying Section 116 as follows: (SCC p. 96, paras 13-15)

> *"13. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.*
>
> *14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.*
>
> *15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time."*

12. In S. Thangappan v. P. Padmavathy [S. Thangappan v. P. Padmavathy, (1999) 7 SCC 474] , this Court has held that Section 116 puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the title of his landlord at the beginning of his tenancy, however defective the title of such landlord could be.

xxx xxx xxx"

(Emphasis Supplied)

35. It is equally true that a tenant cannot take any benefit of the litigation between co-owners, including, the landlord of the property to deny the rightful due of the landlord. Reference in this regard be made to the judgment in the case of ***Chemons India Pvt. Ltd. Versus Vijay Singh Sandhu, 2013 SCC OnLine Del 3733***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> *15. **The only serious contention urged by the counsel for the appellant /defendant is of the suit for ejectment/arrears of rent/mesne profits instituted by the respondent/plaintiff who was only one four heirs left by Lt. Col. G.M.S. Sandhu who had let out the property to the appellant/defendant, being not maintainable.** The counsel for the appellant / defendant has argued that the judgments of the Supreme Court and this petitions under various Rent Control the landlords to be entitled to institute a petition for eviction of the tenant under the said Rent Control legislations would have no application to a civil suit for ejectment after determination of tenancy under Section 106 of the Transfer of Property Act.*
>
> *16. **The aforesaid contention also of the counsel for the appellant / defendant is not in consonance with the judgment of the Supreme Court in India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla 2004 (3) SCC 178, applying the same principle to a civil suit also for eviction of tenant. It was held to be well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. The principle was held to be based on the doctrine of agency - one co-owner filing a suit for eviction against the tenant was held to be doing so on his own behalf in his own right and as an agent of other co-owners was assumed as taken unless it was shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement**.*
>
> *17. **A Division Bench of this Court in Mercury Travels (India) Ltd. Shri Mahabir Prasad 89 (2001) DLT 440 held that even where there- is litigation between the legal heirs of the deceased landlord, the tenant cannot take any advantage thereof and the said litigation does not preclude some of the heirs from filing ejectment suit till the inter se litigation is given a quietus. Another Division Bench in Smt. Krishna Prakash v. Dilip Harel Mitra Chenoy AIR 2002 Delhi 81: 2003 (71) DRJ 770(DB) held that the principle laid***

<u>down by the Supreme Court in eviction suits filed under various Rent Control legislations can equally be applied in general law in a suit for recovery of possession/ejectment. Similarly Mr. Zulfiquar Ali Khan v. J.K. Helene Curtis Ltd. AIR 2002 Delhi 2002 (62) DRJ 442 also it was held that there is hardly a distinction between a suit for eviction and recovery of possession against a tenant after determination of tenancy and a co-owner alone is entitled to determine the tenancy and maintain a suit for eviction of tenant after determination of tenancy.</u>

xxx xxx xxx"

(Emphasis Supplied)

36. In light of the foregoing, it is manifest that the tenant, i.e., the appellant, is precluded from raising a question as to the title of the landlord, i.e., the respondent, who is a co-owner in the subject premises. Therefore, there is no infirmity with findings of the learned Trial Court with regard to maintainability of the suit by the respondent.

<u>Lease Deed Was Validly Terminated:</u>

37. The case set up by the appellant in respect of the termination of the lease deed dated 02nd December, 2003, is centered around the contention that a co-owner is not entitled to terminate a lease deed in respect of the co-owned property, and therefore, in the present case, the respondent *vide* notice dated 17th April, 2006, has not validly terminated the lease deed dated 02nd December, 2003.

38. The appellant has also put forth that *vide* its notice dated 25th April, 2006, it had informed the respondent that the lease deed did not stand terminated and the appellant continued to be the contractual tenant. Further, neither had the appellant replied to the said notice nor had taken any steps towards recovery of possession of the subject premises.

39. In this context, the question arises before this Court as to whether the lease deed dated 02nd December, 2003, was validly terminated by the respondent.

40. It is pertinent to refer to Section 111 (g) of the TPA, the relevant portion of which, reads as under:

> *"xxx xxx xxx*
>
> ***111. Determination of lease.—A lease of immoveable property determines—***
>
> *(a) by efflux of the time limited thereby;*
>
> *(b) where such time is limited conditionally on the happening of some event—by the happening of such event;*
>
> *(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;*
>
> *(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;*
>
> *(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;*
>
> *(f) by implied surrender;*
>
> ***(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter [***]; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; [or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease;***
>
> *(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

41. In view of the above, termination of a lease by forfeiture, as done in the present case, has been enumerated as possible ground for termination of lease deed. In case, the lessee breaks an express condition of the lease, which provides that on breach thereof, the lessor may re-enter and also give notice in writing to the lessee of his intention to determine the lease.

42. In the present case all of the aforesaid conditions have been met. Firstly, it is important to note the mandate of Clause 14 and 15 of the lease deed dated 02nd December, 2003, which read as under:

"xxx xxx xxx

14. That in the event of breach of any of the terms and conditions to be observed or performed by the Lessee and/or in the event of the lessee permitting any order of bankruptcy, liquidation winding up voluntary or otherwise or composition with the creditors or amalgamation or reconstruction of the Lessee firm in any manner or ceasing to work in the demised Premises for any cause whatever the Lessors shall have the right to determine the lease forthwith and re-enter in to possession and take all proceedings for eviction of the Lessee and hold them liable for any lease amount, damages, compensation, interest and costs without prejudice to their rights an also to recover the lease amount in full for the unexpired term of the lease.

15. Notwithstanding anything contained in clause 15 above if any rent shall be in arrear for two months from the date when the same is due whether demanded or not or if the lessee shall omit to perform or observe any convenants or conditions then and in any such case, it shall be lawful for the lessors to determine this lease forthwith without prejudice to any claims, rights or action or remedy which either of the parties hereto may have against the other in respect of any breach, non-performance or non-observance of any of the covenants herein contained.

xxx xxx xxx"

43. It is a matter of record that the respondent had sent the legal notice dated 17th April, 2006, to the appellant intimating the termination of the lease deed dated 02nd December, 2003, on account of non-payment of rent since the initial payment of security deposit.

44. The appellant sought to justify its non-payment of rent on the ground that Sh. Rohit Mangla, a co-owner of the suit property, had approached the

appellant asserting his own rights and had disclosed the pendency of a partition suit, to which respondent was a party. In its notice dated 17th April, 2006 to the respondent, the appellant stated that it would have no hesitation in depositing rent, once it received a discharge of liability from the other co-owners. The appellant reiterated in its reply dated 25th April, 2006 that it was willing to deposit rent with the Court once the respondent's entitlement, undisputed by other co-owners, was established.

45. The said contentions raised by the appellant are fundamentally flawed. Firstly, a tenant confronted with a genuine doubt as to whom rent is payable, is not without a remedy. He may deposit the rent with the Court in case of such doubts. Further, a stated willingness to deposit rent expressed only in correspondence and never acted upon, does not by itself suspend the obligation to pay.

46. Therefore, in the present case, there is a valid notice, a breach of an express term, the breach of which as per Clause 14 of the lease deed, allows the lessor to re-enter. A written notice dated 17th April, 2006, was issued to the appellant expressing the respondent's intention to determine the lease. Therefore, it is evident that the lease deed was terminated in line with the mandate of Section 111(g) of the TPA.

47. Further, it is important to note that in a catena of judgments, including, in ***India Umbrella Manufacturing (supra),*** it has been held that one co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken, unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. Applying the same principle to termination of lease

deed in the present case, it is inescapable inference that the respondent, being a co-owner, can validly terminate a lease deed in respect of the subject premises.

48. In the present case, the appellant had filed miscellaneous applications in the suit for partition, being *CS 46/1995*, between the respondent and other family members, which included the other co-owners of the subject premises. Therefore, the said co-owners were in notice of the suit filed by the respondent herein against the appellant for seeking possession of the suit premises and other reliefs. However, despite being in notice, none of the co-owners sought to intervene in the said suit, barring Sh. Rohit Mangla, who attempted to intervene but only *qua* the payment of rent and did not question the termination of the lease deed in respect of the appellant.

49. It is important to note that it is the admitted case of the appellant that the lease deed dated 02nd December, 2003, was executed by it with the respondent. Furthermore, the lease deed itself enumerates that the respondent has enacted the said lease on behalf of all the co-owners. Therefore, the appellant, who was in notice of the existence of the other co-owners *qua* the subject premises, cannot choose a landlord of its choice from the co-owners, and state that the termination of the lease deed was invalid, in view of there being no similar objections raised by any other co-owner *qua* the termination of the lease deed dated 02nd December, 2003.

50. The contention raised by the appellant in this regard, is accordingly rejected.

Possession Of The Subject Premises Was Handed Over To The Respondent On 03rd February, 2010:

51. The appellant has put forth its case that the possession of the subject premises was handed over to the respondent on 02nd November, 2006, i.e., upon the expiration of the term of lease deed, and the subject premises has been lying vacant thereafter. It has been averred that the Trial Court has ignored Section 108(q) of the TPA read with Section 111 of the TPA, and has erroneously granted mesne profits to the respondent.

52. The appellant has also put forth that the burden to establish that the appellant is in occupation of the subject premises was on the respondent and it could not be shifted on the appellant. The appellant contends that it did not have any further responsibility to approach the Court rather than just informing the landlord, i.e., the respondent, about its intention to hand over possession of the subject premises.

53. In regards to the aforesaid contention, two questions arise for adjudication before this Court, viz. (i) Whether the appellant has handed over the vacant and peaceful possession of the subject premises to the appellant on 02nd November, 2006, and if the Trial Court has erred in recording that the same was handed over on 03rd February, 2010; (ii) Whether the Trial Court has erred in granting mesne profits to the respondent ignoring the provisions of Section 108(q) read with Section 111 of the TPA.

54. In reference to the first issue, i.e., whether the appellant had handed over the vacant and peaceful possession of the subject premises on 02nd November, 2006, and if the Trial Court has erred in recording that the same was handed over on 03rd February, 2010, it is pertinent to consider the

decision of this Court in ***Sky Land International Pvt. Ltd. Versus Kavita P. Lalwani, 2012 SCC OnLine Del 3082****,* whereby, it has been held that Section 108(q) read with Section 111 of the TPA mandates an obligation to be placed on the tenant to restore the possession of the demised premises to the landlord, after the expiration of a lease. The relevant excerpts of the said judgment read as under:

> *"xxx xxx xxx*
>
> ***Duty of a Tenant under Section 108(q) read with Section 111 of Transfer of Property Act, 1882***
>
> ***13. Under Section 108(q) of Transfer of Property Act, 1882, it is the statutory obligation of the lessee to restore the possession of the leased property to the lessor on determination of the lease. Section 108(q) of Transfer of Property Act, 1882 is reproduced hereunder:***
>
> > ***"Section 108. Rights and liabilities of lessor and lessee.—*** *In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:*
> >
> > *A. - Rights and Liabilities of the Lessor.*
> >
> > *(a) to (c) xxx xxx xxx*
> >
> > *B. - Rights and Liabilities of the lessee.*
> >
> > *(d) to (p) xxx xxx xxx*
> >
> > *(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property."*
>
> ***14. In Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184 : AIR 1998 SC 3085, the Supreme Court held that when a lease comes to an end by efflux of time, or by notice of termination, or if there be a breach and the lessee's rights are forfeited, the lessee becomes a tenant at sufferance, and it becomes the duty of the lessee under Section 108(q) of the Transfer of Property Act to restore possession to the lessor forthwith. The Supreme Court held as under:***

<u>"22. …Under law the erstwhile landlord is entitled to restoration of possession by enforcement of statutory obligation of the erstwhile tenant as statutorily imposed on him under Section 108(q) read with Section 111(a) of the Property Act…"</u>

xxx xxx xxx

20. *In Pakistan International Airlines v. Abaskar Constructions (P) Ltd., this Court held as under:*

"21. Law is clear. If a lease is evidence by a contract in writing, as in the instant case, the duration of the lease would be as per the contract and at the expiry of the lease period, as per contract the lease expires by efflux of time. ***Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and since the lease expires under the contract by efflux of time, no notice of determination of the lease is required****.*

22. ***<u>The mandate of Clause 'q' of Section 108 of the Transfer of Property Act 1882 is that on the expiry of the lease the lessee is bound to hand over possession of the leased premises to the lessor and therefore the lessor would be entitled to maintain an action to compel the lessees to abide by the mandate of Clause 'q' of Section 108 of the Transfer of Property Act 1882</u>****.*

23. ***<u>A person who enters upon the property of another without authority of law is a trespasser. It could be argued that the very next moment after the period of lease stands expired, the act of entering upon property by the tenant is an act of trespass. But law says 'No'. A lessee who continues in possession after expiry of the lease, without the consent of the lessor or without any agreement between the parties or in disagreement with the lessor, is treated in law as a tenant by sufferance</u>****…..*

xxx xxx xxx

(Emphasis Supplied)

55. Having regard to the settled position, the appellant was under the obligation to restore the vacant and peaceful possession of the subject

premises to the respondent, upon the determination of the lease deed dated 02nd December, 2003, and failure to do the same makes the appellant a tenant at sufferance *qua* the subject premises.

56. It is to be noted that the appellant neither ever took any steps to deliver the vacant and peaceful possession of the subject premises to the respondent, nor did the appellant ever sought to deposit the keys of the subject premises in Court. Contrary to the stand of the appellant, the affidavit dated 21st March, 2007, adduced by the appellant with its written statement filed before the Trial Court states its address as that of the subject premises.

57. Even as per the statement of the Authorized Representative of the appellant, recorded by the Trial Court *vide* order dated 27th July, 2009, the appellant had shifted its premises only in the year 2009. Further, even on that date no offer was made to hand over the possession of the subject premises to the respondent by the appellant.

58. It is also to be noted that the appellant has failed to lead any evidence to prove that the subject premises was lying vacant, especially, when the same was disputed by the respondent.

59. At this stage reference may be fruitfully made to the judgment in the case of ***M. C. Chockalingam and Others Versus V. Manickavasagam and Others, (1974) 1 SCC 48****,* wherein, Supreme Court has held that law in general prescribes and insists upon an inquiry into the conduct of the parties. Further, in case a tenant/lessee continues with the possession of the property without the consent of the landlord, such tenant/lessee would be liable to pay mesne profits. The relevant portion of the said judgment reads as under:

"xxx xxx xxx

16. Law in general prescribes and insists upon a specified conduct in human relationship or even otherwise. Within the limits of the law, courts strive to take note of the moral fabric of the law. In the instant case, under the terms of the lease, the property had to be handed over to the lessor. Besides under Section 108(q) of the Transfer of Property Act, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. Since the landlord has not assented to the lessee's continuance in possession of the property, the lessee will be liable to mesne profits which can again be recovered only in terms of his wrongful possession. *Under Section 5(1) of the Act, the licensing authority in deciding whether to grant or refuse a licence has regard, amongst others, to the interest of the public generally. Public interest is, therefore, also involved in granting or refusing a licence. That being the position, the expression 'lawful possession' in Rule 13 assumes a peculiar significance of its own in the context of the provisions of the Act. Hence in any view of the matter possession of the respondents on the expiry of the lease is not lawful possession within the meaning of Rule 13. The High Court is, therefore, not correct in its interpretation of Rule 13. The Board of Revenue in appeal was, on the other hand, right in interfering with the order of the licensing authority and the learned Single Judge of the High Court rightly refused to interfere with the order of the Board under Article 226 of the Constitution.*

xxx xxx xxx"

(Emphasis Supplied)

60. Thus, it is necessary for this Court to scrutinize the conduct of the parties in the present matter. Section 108(q) of the TPA obliges the lessee on determination of the lease to put the lessor into possession of the property. This entails an actual and unconditional vacation of the premises coupled with a clear communication calling upon the landlord to take possession. However, in the present case, it is evident that the appellant never actually offered the vacant and peaceful possession of the subject premises to the

respondent, and only attempted to seek shelter behind expressions of offering keys of the subject premises to the respondent.

61. The appellant, in 2006, had filed two applications in *CS 46/2006,* i.e., the suit for partition between the respondent and other family members, seeking impleadment therein and also the permission to handover the possession of the subject premises by way of depositing the keys before the Trial Court. However, it is important to note here that firstly, this offer was a conditional offer subject to payment of Rs. 3,20,424/- claimed by the appellant from the respondent. Secondly, the said application was preferred during the currency of the term of the lease deed, when the appellant was admittedly in possession of the subject premises.

62. Significantly, the appellant never filed any such application before the Trial Court in the *CS 694/2014*, i.e., the civil suit filed by the respondent herein which culminated in the impugned judgment and decree. The said civil suit was filed in the year 2007, and till 03rd February, 2010, i.e., when the possession was actually transferred to the respondent, as recorded by the Trial Court, no such application was preferred by the appellant.

63. Furthermore, in the affidavit dated 21st March, 2007, appended to the written statement, appellant had mentioned its address as that of the subject premises. This Court is cognizant that the said affidavit cannot be used as evidence for the purpose of determining possession of the appellant over the subject premises, however, it cannot be discounted as a valid contradiction in the case set up by the appellant before the Trial Court as well as this Court. The relevant portion of the said affidavit is reproduced as under:

"

AFFIDAVIT.

I,R.K. Rana son of Shri G.C.Rana, aged about years, working as Manager in M/s U.E. Trading Corporation India Pte. Ltd. at Flat No. 913, Arunachal Building, 19 Barakhamba Road, New Delhi do hereby solemnly affirm and declare as under:-

xxx xxx xxx"

64. The appellant, for the first time post institution of the civil suit, on 10th September, 2008, expressed its willingness to hand over the keys to the respondent. In response, the respondent stated that he would like to inspect the subject premises, however, there was no follow up on the said purpose, and the civil suit proceeded further. The said plea was not pressed by the either of the parties thereafter.

65. Subsequently, on 24th November, 2009, the appellant again offered keys to the respondent, however, the same was rejected by the respondent on account of pending clearance of dues. It is pertinent to note that the said offer merely pertained to keys and in no manner whatsoever did the appellant contend that the same would amount to the transferring of the vacant and peaceful possession of the subject premises to the respondent.

66. Finally, on 03rd February, 2010, the possession of the subject premises was transferred to the respondent by the appellant, as recorded by the Trial Court.

67. It is also important to note that the appellant never led any evidence to the effect that the subject premises had been vacated on 02nd November, 2006, and that the same was lying vacant ever since. The letter dated 02nd September, 2006 was at best a prospective offer to vacate with effect from

the date on which the original lease term happened to expire. There is nothing on record to show that it was accompanied or followed by actual vacation of the suit property.

68. In this regard, it is imperative to consider the decision of the Madras High Court in the case of ***Balasubramania Iyer Versus Subbiah Thevar and Another, 1963 SCC OnLine Mad 345***, wherein, it has been held that it is well settled that when a suit is filed by a landlord to recover arrears of rent due from a tenant who was inducted into possession in pursuance of the lease, the burden is clearly upon the lessee to allege and prove that during the currency of the lease and for the period for which rent was claimed, he had delivered possession of the property back to the lessor. The relevant portion of the said judgment, reads as under:

> *"xxx xxx xxx*
>
> ***When a suit is filed by a landlord to recover arrears of rent due from a tenant who was inducted into possession in pursuance of the lease, the burden is clearly upon the lessee to allege and prove that during the currency of the lease and for the period for which rent was claimed, he had delivered possession of property back to the lessor. Unless such redelivery of possession of the property to the lessor is established, the tenant will clearly be liable for arrears of rent.*** *Learned Counsel for the respondent however contends that this position under the general law will not apply to a tenant who is governed by Madras Act XXIV of 1956. He contends that under S. 3 (9) it is enough if the tenant sends a notice to his landlord that on account of the Sub-leses granted by the tenant he is not liable to pay the rent. There is no force in this contention. From a reading of S. 3 (9) it is clear that if a tenant desires to get the benefit of that provision he must establish that he has inducted certain sub-tenants into his lands, and that those sub-tenants were not only entitled to the benefits of Madras Act XXIV of 1956 but they had also actually claimed those benefits and that as a consequence thereof there has been a reduction in the rent payable to the main tenant by the sub-tenants. In my opinion, both these*

conditions must be concurrently satisfied; (a) that the sub-tenants be entitled to the benefits of the Act and (b) that the sub-tenants actually claimed the benefits, after availing themselves of the provisions of the Act resulting in a reduction of the rent that was originally stipulated by the main tenant. The evidence in this case does not satisfy either of the two conditions. None of the sub-lessees had been examined in this case. No evidence has been adduced as to the rent originally stipulated or as to which of the sub-lessees claimed the benefit of the Act, and whether there had been any consequent reduction in the rent payable by them. On the facts of the instant case I have no doubt that S. 3(9) does not help the first defendant in any manner.

xxx xxx xxx"

(Emphasis Supplied)

69. It is evident that the appellant has failed to discharge the onus placed on itself to prove that the subject premises was actually vacated after 02nd November, 2006. On the contrary, the Trial Court's finding is that the appellant continued to be connected with the suit property until it shifted its corporate address in July, 2009 and that formal actual possession was restored to the respondent only in Court on 03rd February, 2010. The appellant's application to offer keys in the suit for partition, and not in the present case, cannot constitute a tender of possession made by the appellant to the respondent in respect of the present tenancy.

70. Considering all the facts and circumstances of the present case and applying the test of preponderance of probabilities, the probabilities lean strongly in favour of the respondent to the effect that the possession over the subject premises was only handed over to him on 03rd February, 2010, and not on 02nd November, 2006, as contended by the appellant.

71. On careful consideration of the rival contentions of the parties and applying the well-settled principles of law, this Court is of the view that the vacant and peaceful possession of the subject premises was only delivered to

the respondent on 03rd February, 2010, as has been recorded in the order of the same date by the Trial Court.

72. The Court now deals with the second issue, i.e., whether the Trial Court has erred in granting mesne profits to the respondent ignoring the provisions of Section 108(q) read with Section 111 of the TPA.

73. In this regard reliance may be made to the decision in the case of ***MEC India Pvt. Ltd. Versus Lt. Col. Inder Maira & Ors., 1999 SCC OnLine Del 422,*** whereby, it has been held that the status of a lessee whose lease has expired and whose continuance is not assented to by the landlord, is that of a tenant at sufferance. It has further been held that such tenant/lessee would be liable to pay mesne profits for the use and occupation of the property. Applying the same to the facts of the present case, the appellant is a tenant at sufferance in respect of the subject premises, and liable to pay mesne profits. The relevant paragraphs of the said judgment are reproduced as under:

> *"xxx xxx xxx*
>
> ***45. Section 108(q) thus ensures that a lessee continues to be liable to the lessor till possession has been actually restored to the lessor and a semblance of relationship subsists till that contingency takes place. His continuing in possession is expressive of his continuing stand that the tenancy, in whatever form, continues****. It is said that he does not hold it adversely to the landlord only till he has unequivocally renounced his status as a tenant and asserted hostile title, but even that appears to be doubtful, for in law his possession remains permissive till it has been actually restored to the landlord.*
>
> ***46.*** *In law there is presumption in favour of the continuity of the tenancy and against the possession of the tenant becoming adverse.* ***Furthermore, the doctrine of tenant estoppel, which continues to operate even after the termination of the tenancy, debars a tenant who had been let into possession by a landlord,***

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from disputing the latter's title or pleading adverse possession, without first openly and actually surrendering possession of the tenanted premises and restoring them to the landlord.

47. ***A tenant who upon determination of the tenancy does not deliver up possession to the landlord as required by Section 108(q), cannot be heard to say that he is not a tenant—be he one at sufferance or be he one from month-to-month. Therefore, unless the landlord is actually put into possession, the premises remain under a tenancy, which unless assented to by the landlord, has the character of one at sufferance.***

48. ***Thus, a tenant at sufferance is one who wrongfully continues in possession after the extinction of a lawful title and that a tenancy at sufferance is merely a legal fiction or device to avoid continuance in possession from operating as a trespass. A tenant remaining in possession of the property after determination of the lease does not become a trespasser, but continues as a tenant at sufferance till possession is restored to the landlord****. The possession of an erstwhile tenant is juridical and he is a protected from dispossession otherwise than in due course of law.* ***Although, he is a tenant, but being one at sufferance as aforesaid, no rent can be paid since, if rent is accepted by the landlord he will be deemed to have consented and a tenancy from month-to-month will come into existence. Instead of rent, the tenant at sufferance and by his mere continuance in possession is deemed to acknowledge both the landlord's title and his (tenant's) liability to pay mesne profits for the use and occupation of the property.***

49. ***To sum up the legal position or status of a lessee whose lease has expired and whose continuance is not assented to by the landlord, is that of a tenant at sufferance. If, however, the holding over has been assented to in any manner, then it becomes that of a tenant from month-to-month. Similar, i.e. from month-to-month, is the status of a lessee who comes into possession tinder a lease for a period exceeding one year but unregistered. He holds it not as a lessee for a fixed term, but as one from month-to-month or year-to-year depending on the purpose of the lease. If upon a tenant from month-to-month (or year-to-year) and in either of the aforesaid two contingencies, a notice to quit is served, then on the expiry of the period, his status becomes of a tenant at sufferance.***

Waiver of that notice, or assent in any form to continuation restores to him his status as a tenant from month-to-month, but capable, of once again being terminated with the expiry of any ensuing tenancy month.

xxx xxx xxx"

(Emphasis Supplied)

74. Further, reference may also be made to the decision of the Supreme Court in the case of ***Bijay Kumar Manish Kumar HUF Versus Ashwin Bhanulal Desai, (2024) 8 SCC 668,*** wherein, it has been held that in any of the situations of termination of lease deed, be it by way of determination, termination, forfeiture, or expiration, the mesne profits would be payable as the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves. The relevant excerpts of the said judgment read as under:

"xxx xxx xxx

29. While the abovestated position is generally accepted, it is also within the bounds of law, that a tenant who once entered the property in question lawfully, continues in possession after his right to do so stands extinguished, is liable to compensate the landlord for such time period after the right of occupancy expires*. In this regard, we may refer to Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd. [Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd., (2023) 16 SCC 704 : 2022 SCC OnLine SC 1161] , wherein this Court in SCC para 81 observed as under:*

> *81.* ***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."

30. It is to be noted that the Court in Sudera Realty [Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd., (2023) 16 SCC 704 : 2022 SCC OnLine SC 1161] observed that mesne profits become payable on continuation of possession after "expiry" of lease. In our considered view, the effect of the words "determination", "expiry", "forfeiture" and "termination" would, subject to the facts applicable, be similar i.e. when any of these three words are applied to a lease, henceforth, the rights of the lessee/tenant stand extinguished or in certain cases metamorphosed into weaker iteration of their former selves. Illustratively, Burton's Legal Thesaurus, 3rd Edn. suggests the following words as being similar to "expire" — cease, come to an end; "determine" is similar to — come to a conclusion, bring to an end; "forfeiture" is similar to — deprivation/destruction of a right, divestiture of property; and "terminate" is similar to — bring to an end, cease, conclude. Therefore, in any of these situations, mesne profits would be payable.

xxx xxx xxx"

(Emphasis Supplied)

75. Thus, under the established legal framework, when a tenant fails to handover the vacant and peaceful possession of the subject premises to the landlord, the said tenant bears clear liability to pay mesne profits for the period of possession after the termination of such lease.

76. Considering the foregoing discussion, this Court is of the view that there is no infirmity with the decision of the Trial Court in the impugned judgment to grant mesne profits to the respondent. Therefore, no interference by this Court is warranted to the impugned judgment and decree to this effect, and the challenge of the appellant to this effect, is thus, rejected.

The Mesne Profits/Arrears Of Rent Were Duly Awarded:

77. It is the case of the appellant that the Trial Court has overlooked the difference between mesne profits and arrears of rent as is borne from Order XX Rule 12 of the CPC, and has failed to consider that the case of the respondent is based on mutually destructive pleas. Clause 16 of the lease deed dated 02nd December, 2003, provides that the respondent would be entitled to mesne profits at the rate of Rs. 2,000/- per day for the period of overuse of the subject premises in case of no extension of the term of lease. However, the respondent had sought mesne profits at Rs. 2,000/- along with loss of rent.

78. The appellant contends that the awarding of the same is contrary to the lease deed between the parties and it would amount to rewriting of the terms agreed. Thus, the by way of the impugned judgment the Trial Court has rewritten the terms of the contract, which is wholly perverse.

79. *Per contra,* it is the case of the respondent that Order XX Rule 12 of the CPC does not bar a suit for arrears of rent as well as for mesne profits, which are routinely granted by Courts. Sub sections of Order XX Rule 12 of the CPC provide for both mesne profits and rent, and there is no mention of 'or' between sub clause (b) and (ba) contained therein. The direction of enquiry for rent and mesne profits provided in sub clause (b) and (ba) of Order XX Rule 12 of the CPC is optional as the same is proceeded by 'or'.

80. In this regard, it is pertinent to refer to Order XX Rule 12 of the CPC, which reads as under:

> *"xxx xxx xxx*
>
> ***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) <u>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;</u>

(ba) <u>for the mesne profits or directing an inquiry as to such mesne profits;]</u>

(c) directing an inquiry as to rent or mesne 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.

xxx xxx xxx"

(Emphasis Supplied)

81. It is significant to note that the Trial Court has only granted mesne profits/damages based on its own independent calculations on the basis of certified copies of the lease deeds adduced by the respondent for the respective periods from the year 2006 till 2010.

82. The Trial Court while awarding damages/mesne profits, has merely ensured that while calculating the amount for damages/mesne profits, the said amount does not exceed what has been sought by the respondent, i.e., Rs. 2,000/- per day along with the monthly rent of the subject premises, i.e., Rs. 20,125/-, which computes to be Rs. 80,125/-. It has rightly been held by the Trial Court that no relief can be granted for more than what has been sought.

83. In this regard, it is important to note Section 2 (12) of the CPC, which provides the definition of mesne profits, and reads as under:

> *"xxx xxx xxx*
>
> ***(12) "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;***
>
> *xxx xxx xxx"*

(Emphasis Supplied)

84. The above provision has been interpreted in various judgments that ordinarily the mesne profits which a landlord is entitled against a tenant who continues to stay in the tenanted premises after the termination of the tenancy, is the amount which the premises can fetch if let out on rent during the period of its illegal occupation by the tenant.

85. In this regard, this Court in the case of ***M/s. M.C. Agrawal Huf Versus M/s. Sahara India & Ors., 2011 SCC OnLine Del 3715***, has held that when damages due to breach of contract can be proven, a Clause awarding liquidated damages does not apply. Furthermore, in the case of mesne profits, the rent which could have been earned during the period of illegal occupation, can easily be proved through leading evidence as regards the rent of similar premises within the locality. Thereafter, considering the same, Courts award mesne profits to the landlord. The relevant excerpts from the said judgment, read as under:

> *"xxx xxx xxx*
>
> ***4. The entitlement of a landlord to claim mesne profits from a tenant who is in illegal possession of the premises after the tenancy is terminated, is governed by Section 2(12) of Civil***

Procedure Code, 1908 (CPC) and which defies mesne profits as under:

> ***"Section 2(12) "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."***

5. The above provision has been interpreted in various judgments that ordinarily the mesne profits which a landlord is entitled against a tenant who continues to stay in the tenanted premises after the termination of the tenancy is the amount which the premises can fetch if let out on rent during the period of its illegal occupation by the tenant.

6. A clause in a lease deed that if a tenant stays in the premises after the expiry of the lease period or termination of the tenancy, then, the penalty/damages at double the market rate are payable would be ex facie violative of provision of Section 74 of the Contract Act, 1872 being a clause interrorem. ***Right from the Constitution Bench decision of the Supreme Court in the case of Fateh Chand v. Balkishan Das, 1963 SCC OnLine SC 49: AIR 1963 SC 1405 it has been held that where on account of breach of contract damages can be proved, then, there cannot be any validity of a clause which gives liquidated damages. 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 Court, on considering such evidence, with respect to rent of similar premises thereafter awards mesne profits to the landlord****. It is only in cases where the damages/mesne profits cannot be proved in a court of law, and one of which contract was the subject matter of the decision of the Supreme Court in the case of O.N.G.C. v. Saw Pipes Ltd., (2003) 5 SCC 705, then, in such cases liquidated damages as fixed by the contract would become payable. The Supreme Court in the case of O.N.G.C. (supra) has referred to a ……………*

xxx xxx xxx"

(Emphasis Supplied)

86. Therefore, in the present case, Clause 16 of the lease deed dated 02nd December, 2003, cannot be construed as a bar to recovering mesne profits. The Trial Court has computed the mesne profits based on the rental value of other similar premises located in the same building as the subject premises. The respondent had placed on record certified copies of lease deeds of premises situated in the same building as the subject premises, which have been considered by the Trial Court as evidence to calculate the mesne profits.

87. The appellant has also averred that undue reliance has been put on the certified copies of the lease deeds produced by the respondent, which have not been proved in accordance with the law. The contents of a document remain hearsay, unless actual author is cross examined.

88. It is also the case of the appellant that the Trial Court has mechanically relied upon the lease deeds produced by the respondents for the quantum of mesne profits, without carrying out the exercise of segregation as to which of the lease pertained to furnished or unfurnished premises.

89. Therefore, another question arising before this Court is that whether the Trial Court has rightly placed reliance on the certified copies of lease deeds of premises in the same building as the subject premises, submitted by the respondent.

90. In this regard, the Supreme Court, in the case of ***Appaiya Versus Andimuthu Alias Thangapandi and Others, (2024) 19 SCC 602***, has held that upon a conjoint reading of Section 65(e), 74, 74 (2), 77, 79, 57 and 57 (5) of the Evidence Act, the certified copy of a registered sale deed is

admissible in evidence for the purpose of proving the contents of the said original document. The relevant excerpts of the said decision, are as follows:

> *"xxx xxx xxx*
>
> ***32.*** *Having regard to all the aforesaid circumstances and in the light of the various provisions of the Evidence Act mentioned hereinbefore we will firstly consider the question whether the appellant-plaintiff had succeeded in proving the contents of Ext. A-1.* ***Going by Section 65(e) when the original of a document is a public document within the meaning of Section 74, secondary evidence relating its original viz. as to its existence, condition or contents may be given by producing its certified copy. Ext. A-1, indisputably is the certified copy of Sale Deed No. 1209/1928 dated 27-8-1928 of SRO, Andipatti. In terms of Section 74(2) of the Evidence Act, its original falls within the definition of public document and there is no case that it is not certified in the manner provided under the Evidence Act. As noticed hereinbefore, the sole objection is that what was produced as Ext. A-1 is only a certified copy of the sale deed and its original was not produced in evidence.*** *The hollowness and unsustainability of the said objection would be revealed on application of the relevant provisions under the Evidence Act and the Registration Act, 1908.* ***It is in this regard that Sections 77 and 79 of the Evidence Act, as extracted earlier, assume relevance. Section 77 provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness of certified copies provided the existence of a law declaring certified copy of a document of such nature to be admissible as evidence. When that be the position under the aforesaid provisions, taking note of the fact that the document in question is a registered sale deed, falling within the definition of a public document, the question is whether there exists any law declaring such certified copy of a document as admissible in evidence for the purpose of proving the contents of its original document. Sub-section (5) of Section 57 of the Registration Act is the relevant provision that provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. In this context it is to be noted that certified copy issued thereunder is not a copy of the***

original document, but is a copy of the registration entry which is itself a copy of the original and is a public document under Section 74(2) of the Evidence Act and sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original. *There is no case that foundation for letting in secondary evidence was not laid and as noted earlier, both the trial court and the first appellate court found it admissible in evidence.* ***Thus, the cumulative effect of the aforementioned sections of the Evidence Act and Section 57(5) of the Registration Act would make the certified copy of Sale Deed No. 1209/1928 dated 27-8-1928 of SRO, Andipatti, produced as Ext. A-1 admissible in evidence for the purpose of proving the contents of the said original document****. When this be the position in the light of the specific provisions referred hereinbefore under the Evidence Act and the Registration Act, we have no hesitation to hold that the finding of the High Court that the certified copy of Ext. A-1 owing to the failure in production of the original and proving through an independent witness is inadmissible in evidence, is legally unsustainable. In the other words, the acceptance of the admissibility of Ext. A-1 found in favour of the appellant-plaintiff by the trial court and confirmed by the first appellate court was perfectly in tune with the provisions referred hereinbefore and the High Court had committed an error in reversing the finding regarding the admissibility of Ext. A-1.*

xxx xxx xxx"

(Emphasis Supplied)

91. Considering the aforesaid judgment, the sale deeds and lease deeds pertain to similar aspects of law, and therefore, the irrefutable inference is that the certified copies of the lease deeds produced before the Courts can be used and read into evidence.

92. The certified copies of registered lease deeds are public documents within the meaning of Section 74 of Evidence Act, and are admissible by virtue of Section 65(e) and (f) and Section 77 of the Evidence Act. Such certified copies can be produced to prove the contents of the originals

without the necessity of separately proving execution by calling the executants. Furthermore, PW-2, an official of the office of the Sub-Registrar has deposed that she has compared the certified copies with the original registers maintained in that office and found them to correspond.

93. Therefore, the Trial Court has rightly relied upon the certified copies of the lease deeds as submitted by the respondent for the purpose of computation of mesne profits.

94. Further, as regards the issue regarding the submission of lease deeds being not of similarly situated premises as the subject premises, reliance is placed on the decision of this Court in the case of ***Hindustan Motors Ltd. Versus Seven Seas Leasing Ltd., 2018 SCC OnLine Del 11391**,* wherein, it has been held that some amount of honest guesswork is always involved in the calculation of mesne profits and rent of similar premises has to be taken into consideration for the said calculation. An interest of 9% p.a., as it is in the present case, was also upheld as reasonable. The relevant portions of the said judgment, read as under:

> *"xxx xxx xxx*
>
> ***5. A reading of the aforesaid paragraphs show that the trial court has relied upon the evidence led by PW 2 with respect to the premises in the same area and on the basis of the rent paid by the tenant M/s. Tirupati Services Ltd., the mesne profits have been calculated. I may note that some amount of honest guess work is always involved in calculation of mesne profits and therefore once rent is taken of similar premises situated in the same area, I do not find any illegality in the impugned judgment awarding mesne profits at Rs 75 per square feet, per month for the ground floor and Rs 65 per square feet, per month for the mezzanine floor.***
>
> ***6. The definition of mesne profits, contained in Section 2(12) CPC, provides that mesne profits include the interest payable on mesne profits. Therefore, the trial court has***

committed no illegality in awarding reasonable rate of interest of 9% per annum on the decretal amount towards mesne profits.

7. I fail to understand the attitude of tenants who despite termination of the tenancy, insist on continuing possession of the tenanted premises, and thereafter, come shouting to courts seeking reduction of mense profits, whereas, if the occupation of premises were not convenient and the mesne profits were not to be paid, then why would the tenants not immediately vacate, as per time period provided in law, on receiving the notice of termination of tenancy. There is no inherent right in citizens of this country, who are tenants, to violate the law by overstaying in the premises where the tenancy stands terminated.

xxx xxx xxx"

(Empasis Supplied)

95. In like manner, reference may also be made to the decision in the case of ***Food Corporation of India Versus Sarvshri Bal Karan Singh & Ors., 2011 SCC OnLine Del 5206****,* wherein, this Court, while further enumerating the principle that some guesswork is involved *qua* computation of mesne profits, has held that a civil case is decided on preponderance of probabilities and merely because two views are possible, unless the view taken by the Trial Court is perverse or causes grave injustice, the Appellate Court cannot interfere. The relevant excerpt of the said judgment reads as under:

"xxx xxx xxx

6. *I may note that there is no challenge to these lease deeds, Ex. PW 2/1 and Ex. PW 4/1 on the ground that these lease deeds are bogus or fabricated documents or that the same were not acted upon by the concerned parties.* ***It is also relevant to note that some amount of honest guesswork is always entailed when mesne profits have to be calculated and which mesne profits are basically rents of similar premises in the vicinity/area.*** *The trial court, therefore considering the two lease deeds, which were for the same area of Nehru Place granted the mesne profits* *at Rs 40 per square feet per month.* ***<u>A civil case is decided on balance of probabilities, and merely because two views are possible, unless the view taken by the trial court is perverse or causes grave injustice, this Court will not interfere in appeal. I do not find any perversity or illegality causing injustice in the impugned judgment.</u>***

xxx xxx xxx"

(Emphasis Supplied)

96. Therefore, the Trial Court in computing the mesne profits based on the lease deeds of similar premises has taken a valid view. It is to be noted that the premises of which the certified copies of lease deeds were put forth by the respondent, were located in the same building as the subject premises, and therefore have a direct connection and similarity with the subject premises. Furthermore, it is next to impossible to draw parallels and comparisons to an exactly identical premises, and therefore, a perfect comparison becomes extremely painstaking, if not impossible. The Court has to reason its way through such comparative computation of mesne profits.

97. Considering the said practical limitation, the Courts have laid down that some reasonable guesswork is permissible while computing the mesne profits, as long as it is based on evidence. In terms of the law as laid down in a catena of judgments, it is evident that assessment of mesne profits is inherently an exercise in estimation rather than one demanding proof to a mathematical certainty.

98. In the present case, the Trial Court awarded actual comparable figure of Rs. 51,000/- per month for the year 2006. Further, for the years 2007 and 2008, the rentals of the comparable properties would indicate approximately Rs. 89,320/- and 97,750/-, respectively. However, the said amount was not

applied by the Trial Court, which instead capped the award at a lower amount of Rs. 80,125/- per month, considering Clause 16 of the lease deed. For the years 2009 and 2010, the Trial Court awarded an amount of Rs 71,875/-, relying upon certified copy of a lease deed for the year 2009, by holding that the rate of rent in the month of January 2010, may be similar as compared to the year 2009.

99. It is therefore noted that in the present case, the Trial Court has relied upon the certified copies of the lease deeds of premises located in the same building as that of the subject premises, and there is no perversity with the said approach.

100. It is also important to note that no evidence has been led by the appellant before the Trial Court to challenge the computation of prevailing market rate claimed by the respondent for the purpose of grant of mesne profits. The appellant itself failed its onus to disprove the market rate put forth by the respondent before the Trial Court, and therefore, it cannot be allowed to challenge the same at this stage. The appellant led no evidence with regard to what a fair, unfurnished-equivalent rent for the relevant period would have been.

101. Furthermore, it is to be noted that the Trial Court has awarded for each year, the lower of the rate between the contractually stipulated rate and the rate independently indicated by the comparable rentals. The Trial Court assessed the mesne profits year-wise on comparable rentals, subject to Clause 16 of the lease deed as an upper limit. Therefore, the contention that the sum awarded by the Trial Court amounted to a penalty or exemplary damages, is without any merits and liable to be rejected.

102. Therefore, no interference is warranted by this Court upon the said challenge, and therefore, the said challenge fails.

<u>The Interest Is Validly Awarded By The Trial Court:</u>

103. The appellant has raised the ground that Trial Court has also erred in awarding interest @ 9 % p.a., which is excessive in the facts and circumstances of the present case. At best, only 6 % may be awarded as there are genuine *inter se* disputes between the parties. Further, on arrears of rent, the respondents cannot be better off than how the rent would have earned interest, if kept in a bank account.

104. In this regard, it is significant to refer to Section 34 of the CPC, which pertains to the grant of interest. The Section reads as follows:

> *"xxx xxx xxx*
>
> ***34. Interest.***
>
> *(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent, per annum, as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit."*
>
> *xxx xxx xxx"*

105. A bare reading of Section 34 of the CPC indicates the power of Courts to award interest and such power is a discretionary exercise. In this regard, it is imperative to note the decision of the Apex Court in the case of ***Tomorrowland Limited Versus Housing and Urban Development Corporation Limited and Another, (2025) 4 SCC 19****,* whereby, it has been held that the power of awarding interest under Section 34 of the CPC is a

discretionary exercise *dehors* of the contract between the parties. This discretion must reflect a balanced approach, grounded in reason, and guided by the objective of equity. The relevant paragraphs of the said decision, read as under:

> *"xxx xxx xxx*
>
> ***48. It is trite law that under Section 34 CPC, the award of interest is a discretionary exercise steeped in equitable considerations. The law in this regard has been succinctly discussed in the Constitution Bench judgment of this Court in Central Bank of India v. Ravindra [Central Bank of India v. Ravindra, (2002) 1 SCC 367 : (2001) 107 Comp Cas 416] , which states : (SCC p. 404, para 55)***
>
> > *"55. ... (8)* ***Award of interest pendente lite or post-decree is discretionary with the Court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit, the component of interest is disproportionate with the component of the principal sum actually advanced, the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline to award such interest. The discretion shall be exercised fairly, judiciously and for not arbitrary or fanciful reasons."***
>
> ***49. There is no gainsaying that the power to award interest ought to be exercised judiciously, aligning with equitable considerations and also ensuring neither undue enrichment nor unfair deprivation. Courts are duty-bound to assess the facts and circumstances of each case, applying the principles of fairness and justice. This discretion must reflect a balanced approach, grounded in reason, and guided by the overarching objective of equity.***
>
> *xxx xxx xxx*
>
> ***57. We are conscious of the fact that as a general principle, in commercial disputes, the award of interest pendente lite or post-decree is typically granted as a matter of course. This is because such interest serves to compensate the aggrieved party for the time value of money that was due but withheld during***

the legal process. It reflects an established norm aimed at ensuring fairness and equity in commercial transactions.

xxx xxx xxx"

(Emphasis Supplied)

106. Further, reference may also be made to the decision of a Division Bench of this Court in the case of ***J.K. Lakshmi Cement Limited Versus Master Avishkar Prakash and Others, 2024 SCC OnLine Del 8335***, whereby, this Court was of the view that the award of 9% interest on the mesne profits awarded to the respondent, is reasonable. The relevant excerpts read as under:

"xxx xxx xxx

34. *Thus, the finding with respect to the prevailing rate, based on the lease agreements presented during the trial, is also a finding of fact and, therefore, does not raise any substantial question of law.* ***Moreover, the finding of fact is not based on an error or misreading of law so as to give rise to any question of law.***

35. Furthermore, so far as the argument with respect to the award of 9% interest p.a. on the recoverable amount is concerned, the same also deserves to be rejected. In the face of the settled proposition of law that the interest forms an integral part of the mesne profits, it could be observed that once the court awards mesne profits, the interest accruing thereon has to be allowed as a necessary corollary thereof in the computation of the mesne profits itself. A tenant cannot be permitted to urge that mesne profits, which in fact, ought to have been paid years ago, should not bear any interest. In this regard, reference may be made to the ratio laid down in paras 64 and 65 of Consep India (P) Ltd. v. CEPCO Industries (P) Ltd. wherein, this Court, after examining the decision of the Supreme Court in State Bank of Bikaner and Jaipur v. I.S. Ratta observed as under : (Consep India (P) Ltd. case, SCC OnLine Del paras 64 and 65)

"64. ***As regards the claim for interest on mesne profits, in I.S. Ratta case, relying upon the judgment of the Supreme Court in Mahant Narayana Dasjee Varuv. Board of***

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Signing Date:21.09.2026
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Trustees, the Tirumalai Tirupathi Devasthanam, 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. *Paras 16 to 18 of the said judgment are apposite and are reproduced hereunder : (I.S. Ratta case, SCC OnLine Del paras 17-20)*

xxx xxx xxx

18. ***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 : (Mahant Narayana Dasjee Varu case, SCC OnLine SC para 26)***

"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."

19. 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.

20. 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 RFA No. 20 of 2016 p. 41 of 42 I.S. Ratta case, 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."

36. In the present case, the trial court, in its discretion, has awarded simple interest of 9% p.a. towards the arrears of mesne profits. In the facts of the present case, the grant of interest at the rate of 9% p.a. can neither be termed as arbitrary nor exorbitant. Thus, this Court does not find any reason to interfere with this discretion of the trial court.

xxx xxx xxx"

(Emphasis Supplied)

107. It would also be instructive to note the decision of this Court in the case of ***M/s. P.E.C. Limited. Versus Sh. Samir Prakash & Another, 2011 SCC OnLine Del 2847***, whereby, this Court has held that the Appellate Court cannot interfere with the judgment and decree of the Trial Court merely because two views are possible and one acceptable view has been taken by the Trial Court. Furthermore, the Court also upheld grant of interest on mesne profits. The relevant portions of the said judgment, read as under:

"xxx xxx xxx

7. On the aspect that no rate of interest should be awarded on mesne profits, the argument is without any basis. This issue was recently dealt with by me while deciding a batch of RFA Nos. 209/2011 to 213/2011 decided on 18-5-2011 and para 2 of which judgment reads as under:

"2. ***So far as the relief claimed by the appellant that no interest should at all be payable, I find that the prayer is misconceived because to the extent monies/amounts are not***

paid when due to a due person, the same results in a loss to the person entitled to such monies towards interest which would have been earned if the monies would have been paid on time to the person. Looking at the aspect in another manner since the monies remained in the pocket of the appellant it would have earned interest on these amounts and thus it is logical that they return such benefit to the respondent/landlord. *That interest ought to be paid on the arrears of rent is also now statutorily recognized vide Section 26 of the Delhi Rent Control Act, 1958 wherein, the rate of interest of 15% per annum is payable on the arrears of rent.* ***The Supreme Court has also been granting interest on the arrears of rent/mesne profits which are decreed and one such judgment is the decision in the case of Indian Oil Corporation v. Saroj Baweja, (2005) 12 SCC 298.*** *Accordingly, considering the provision of Section 26 of the Delhi Rent Control Act and the decision in the case of Indian Oil Corporation (supra),* ***I find that the trial court was completely justified in granting interest on that portion of the rent which was not paid on the respective due dates."***

Accordingly, there is no merit in the argument as urged on behalf of the counsel for the tenant company that no mesne profits should be awarded on the arrears of mesne profits.

8. As an appellate court, I can interfere with the judgment and decree of the trial court only if the view as taken by the trial court is illegal or perverse. Merely because two views are possible and one acceptable view is taken by the trial court and which view itself is based upon balancing the entire evidence, led by both the parties in the case, would not mean that this Court has power to interfere in appeal.

xxx xxx xxx"

(Emphasis Supplied)

108. In view of the aforementioned, the Trial Court was well within its power and discretion to award the interest @ 9 % p.a. on the mesne profits/damages. The view taken by the Trial Court does not appear to be perverse or illegal and therefore does not warrant intervention by this Court.

The challenge of the appellant on the rate of interest is, therefore, not tenable.

CM APPL. 31913/2022 (For Bringing On Record Additional Documents)

109. The appellant has sought to place on record two documents through *CM APPL. 31913/2022*, viz. legal notice dated 28th March, 2006, and letter dated 09th March, 2006, of the appellant to the Estate Manager of the building where the subject premises is situated.

110. It is put forth by the appellant that the notice dated 28th March, 2006, stands cross referenced in most of the documents on the Trial Court Record, including, legal notice dated 17th April, 2006, and the contents of which are also consistent with the notice dated 17th April, 2006.

111. The appellant has contended that the question to be considered is not the relevancy of the issue at hand or whether the appellant had the opportunity for adducing such evidence at an earlier stage or not, but it depends on whether or not the Appellate Court requires such evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.

112. On the aspect of additional evidence, reference may be made to the decision of the Supreme Court in the case of ***Gobind Singh and Others Versus Union of India and Others, (2026) 4 SCC 130***, where it has been held that additional evidence can only be allowed at the stage of first appeal in three circumstances, viz. (i) where court which passed the decree has refused to admit such evidence, (ii) where party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, it was not within their knowledge or could not have been produced at the time when the decree was passed, (iii) the appellate court itself requires it to

pronounce judgment or any other substantial cause. The relevant portions of the said judgment read as under:

"xxx xxx xxx

20. ***Rule 27, being couched in negative terms, makes it abundantly clear that parties to an appeal are not entitled to adduce additional evidence, whether oral or documentary, save and except in the circumstances expressly enumerated therein. The provision contemplates only three eventualities in which additional evidence may be permitted: first, where the court which passed the decree has refused to admit evidence which ought to have been admitted; second, where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed; and third, where the appellate court itself requires any document to be produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause.***

21. Accordingly, it is only upon satisfaction of any of the aforesaid three contingencies that an application under Order 41 Rule 27 CPC can be entertained. Sub-rule (2) of the said provision further mandates that where the appellate court forms an opinion that additional evidence is required to be admitted, it must record the reasons for such admission*. While elucidating the scope and object of Order 41 Rule 27CPC, this Court, in Union of India v. Ibrahim Uddin [Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362], undertook an exhaustive analysis of the provision. The relevant extract is reproduced hereinafter: (SCC pp. 167-68, paras 36, 38 & 41)*

"36. ***The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not***

apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. *The matter is entireBaly within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. …*

* * *

38. Under Order 41 Rule 27CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. *It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. …*

* * *

41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment."

xxx xxx xxx

23. *In State of Karnataka v. K.C. Subramanya [State of Karnataka v. K.C. Subramanya, (2014) 13 SCC 468: (2014) 5 SCC (Civ) 725], the appellants therein had moved an application before the appellate court under Order 41 Rule 27CPC seeking leave to produce a map of the area to establish that the disputed land constituted a public road. This Court, while affirming the High Court's decision [State of Karnataka v. K.C. Subramanya, 2011 SCC OnLine Kar 4754] to reject the said application, held as follows: (SCC p. 469, paras 4-5)*

"4. … On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will."

(emphasis supplied)

24. This Court in K.C. Subramanya [State of Karnataka v. K.C. Subramanya, (2014) 13 SCC 468: (2014) 5 SCC (Civ) 725] thus categorically held that unless the requirements stipulated under Order 41 Rule 27 CPC are strictly satisfied, a party cannot be permitted to adduce additional evidence at the appellate stage. Such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party.

xxx xxx xxx

26. The procedural framework under Order 41 CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the trial court. The appellate court is not expected to embark upon a fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the appellate court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below.

xxx xxx xxx"

(Emphasis supplied)

113. However, in the present case, it is not requirement of this Court to consider the said additional documents, sought to be placed on record by the appellant, for the purpose of adjudication of the present appeal. Furthermore, it is also not the case of the appellant that the Trial Court has refused to admit the said documents as evidence before itself, or that the said documents were not within their knowledge and could not be produced before the Trial Court. Thus, evaluating the facts against the aforesaid legal principle, the three pre-conditions enumerated for the application of Order XLI Rule 27 of the CPC, do not meet in the present case.

114. Accordingly, the present application is dismissed.

CONCLUSION:

115. In view of the detailed discussion hereinabove, issue nos. 05 to 09, i.e., in respect of the respondent's entitlement to mesne profits/damages/arrears of rent and interest, have rightly been granted in favour of the respondents.

116. No merit is found in the present appeal. This same is accordingly dismissed.

MINI PUSHKARNA
(JUDGE)

SEPTEMBER 21st, 2026
C/KR/SK/AK