Delhi High Court National Radio And Electronic Co. ... vs Motion Pictures Association on 31 May, 2005 Equivalent citations: 122 (2005) DLT 629 Author: G Mittal Bench: M Sharma, G Mittal JUDGMENT Gita Mittal, J. 1. The present appeal has been filed by the appellant aggrieved by the judgment and decree dated 26th May, 2000 passed by the learned Additional District Judge in Suit No. 876/1998 entitled Motion Pictures Association v. Nelko Radio & Electronics Co. Ltd. There is no dispute to the factual matrix between the parties. The appellant (defendant in the suit) was inducted as a tenant in the suit property bearing No. 27, Netaji Subhash Marg, New Delhi. The tenanted premises measured about 2800 sq. ft. The tenancy commenced in the year 1961 and rent was increased from time-to-time as per the demand of the respondent/plaintiff/landlord. The last agreed rent between the parties was Rs. 3,513=84 paise per month. The respondent terminated the tenancy of the appellant vide notice dated 25th September, 1998. The appellant tenant sent a reply to the same dated 30th October, 1998 disputing the contents of the notice. In these circumstances, the respondent brought a suit for possession of the ground floor portion of the said premises bearing No. 27, Netaji Subhash Marg, New Delhi and for recovery of future damages and mesne profit at the rate of Rs. 1,96,000/- per month. 2. The appellant-defendant filed a written statement in answer to the suit disputing the averments made in the plaint setting up a plea of renewal of the tenancy for a period of three years on enhanced rent. By a letter dated 17th November, 1997 issued by the respondent-landlord, it was stated that the tenancy has been agreed to be renewed up to November, 2000 at the rent of Rs. 3513.84. However, it is not disputed that this was not pursuant to any lease deed executed or registered in accordance with law. The respondent-plaintiff brought an application under Order 12 Rule 6 of , the Code of Civil Procedure praying for a decree for possession on the basis of admission made on the part of the appellant tenant in its written statement. This application was considered by the learned trial Judge on 18th August, 1999 who arrived at a finding that there was no dispute to the relationship of landlord and tenant between the parties to the Us; that the agreed rent of Rs. 3513.84 per month and that a notice for termination of the tenancy had admittedly been served on the tenant which not only terminated the tenancy but also gave a statutory period of 15 days for vacating the premises. The learned trial Judge also held that the alleged agreement of the renewal of the tenancy was contrary to the express provisions of the Registration Act and the Transfer of Property Act inasmuch as the same was not by registered lease deed and as a consequence, the tenancy at best stood renewed month-to-month which was determinable by service of notice under Section 116 of the Transfer of Properies Act. The Trial Court noticed that there was no dispute to the legality and validity of the notice. Under these circumstances, the (sic suit) of the plaintiff to the extent of the relief of possession was decreed under the provisions of Order 12 Rule 6 of the Code of Civil Procedure vide the judgment and decree dated 18th August, 1999. 3. On the same date, the Court framed the following issue in respect of the claim of future damages and mesne profit which was to the following effect: 1. At what rate the plaintiff is entitled to claim mesne profit/damages from

the defendants who are in occupation of the premises from 1st November, 1998 onwards? 4. The case was directed to be listed for plaintiff evidence on this issue on 4th November, 1999, perusal of the record of the Trial Court shows that on 4th November, 1999, the plaintiff failed to produce any evidence. The Court gave the plaintiff a last opportunity to produce its entire evidence on 2nd February, 2000. Again on 2nd February, 2000, an adjournment was requested on behalf of the plaintiff on the plea that the only witness to be examined on behalf of the plaintiff was Mr. G.S. Mayawala, its Manager and Joint Secretary. However, as this person was stated to be unwell, and information to this effect was received by Counsel for the plaintiff only in the morning, an adjournment was requested. The learned trial Judge observed that the only issue to be examined related to mesne profit and damages for 1998-1999 in respect of the premises. It was noticed that in this behalf, relevant evidence would be of witnesses who had taken the premises in the area on rent during this period and that inquiry into mesne profit and damages could not be done on the oral testimony of the Secretary of the plaintiff only. The Court also noticed the fact that no person from the adjoining buildings or from the Sub-Registrar's Office for proving any lease deed of the relevant period had been summoned, the Court had been informed that the Secretary of the respondent/plaintiff would prove the value of the property only. Under these circumstances, it was held that there is no justification for grant of adjournment on behalf of the plaintiff and its evidence was closed. Counsel for the defendant stated that he did not want to give any evidence and, consequently, the matter was placed for argument on 22nd March, 2000. 5. The learned trial Judge considered the entire matter laid before it. It was noticed that the premises in question was located in Darya Ganj which was one of the prime business areas in Delhi and that while deciding the issue of mesne profit, the Court could take judicial notice of the prevalent market rent of different areas in Delhi as the Court was routinely deciding similar suits of mesne profit and damages in respect of different areas in Delhi. Noting that rental values in Delhi had suddenly shot up and that the rent in Nehru Place went up to Rs. 60/- to Rs. 70/- per sq. ft. per month while in Connaught Place and Darya Ganj, rent went to between Rs. 200/- and Rs. 250/- per sq. ft. per month. It was further observed that there was a fall in the monthly rental in Nehru Place which came down from Rs. 20/- to Rs. 30/- per sq. ft. per month while in Connaught Place, rent became Rs. 60/- to Rs. 70/- per sq. ft. per month. 6. So far as the suit property was concerned, the Court observed that rent of Rs. 3,513=84 paise was being paid for an area of 2800 sq. ft. for the reason that the appellant/defendant was a tenant since 1961 and rent had gradually increased at the rate of 10% in every new year while market rent in the area from new tenancy had shot up. Finding that the respondent/plaintiff had lawfully terminated the tenancy, the Court held that the respondent/plaintiff was entitled to market rent of the premises after determination of the tenancy from 1st November, 1998. It was held that the market rent could be considered at Rs. 30/- per sq. ft. per month in Darya Ganj which was almost half of the rent prevalent in Connaught Place and accordingly, the claim of the plaintiff-respondent was decreed at the rate of Rs. 30/- sq. ft.

per month w.e.f. 1st November, 1998 till the possession of the premises was recovered by the plaintiff. Accordingly, the suit of the plaintiff was decreed on this basis vide the judgment and decree dated 26th May, 2000. 7. Aggrieved by the judgment dated 26th of May, 2000, the appellant-defendant has preferred the present appeal principally on the ground that despite the plea having been taken and issue having been framed, the respondent-plaintiff had failed to prove the market rate of rent in Darya Ganj which could be considered for the purpose of determination of the liability of the appellant/defendant. 8. Reliance had been placed on behalf of the respondent landlord on several pronouncements of this Court where after taking judicial notice of the factum of increase in rent in Delhi, the Court awarded mesne profits at such market rates of rent based on this presumption. The pronouncements relied upon by the respondent in this behalf are the judgments of the Apex Court in entitled D.C. Oswal v. V.K. Subbiah and Ors.; entitled S. Kumar v. G.R. Kathpalia; entitled Vinod Khanna v. Bakshi Sachdev; 1994 (1) AD Delhi 937 entitled Mrs. (Dr.) P.S. Bedi v. The Project & Equipment Corporation of India; and 1993 RLR 563 entitled Bakshi Sachdev (deceased) by LRs. v. Concord India. 9. We have heard the parties at length and have carefully perused the available record. Learned Counsel have also taken as through the pleadings of the parties and the material placed before the learned Trial Court. 10. We find that the respondent landlord had issued a legal notice to the appellant tenant dated 25.9.1998 wherein it was notified as follows: "4. That since my clients do not wish you to continue any more as a tenant in the said premises as the portion of the premises occupied by you is now required by my clients urgently for expending their activities. Accordingly, my clients wish to terminate your said tenancy which is hereby terminated w.e.f. The midnight of 31.10.1998, by means of this notice which you may please nots carefully at your end and this notice may also be treated as notice of termination of your month-to-month tenancy under Section 106 of Transfer of Property Act. 5. It may be further noted carefully at your end that in the event of your failure to vacate and hand over the vacant physical possession of the ground floor portion of the premises on the midnight of 31.10.1998 or in the morning of 1.11.1998, then in that eventuality, you shall be liable to pay damages for unauthorised occupation w.e.f. 1.11.1998 at the rate of Rs. 1,96,000/- per month @ Rs. 70/- per sq. ft. which is the prevalent market rate in the locality for such type of premises. 6. For the reasons stated hereinabove, I have been instructed to call upon you to deliver the vacant physical possession of the ground floor portion of the premises bearing No. 27, Darya Ganj, New Delhi on the mignight of 31.10.1998 in the morning of 1.11.1998 failing which I have the specific instructions to file a suit for recovery of possession against you in respect of the said premises and also to claim damages @ Rs. 1,96,000/- per month in respect of the ground floor portion of the premises w.e.f. 1.11.1998 till the actual delivery of the possession at your own risk and costs." 11. In its reply dated 30.10.1998 the appellant respondent stated as follow: "5. The contents of para 5 are wrong and denied, the alleged claim on account of alleged unauthorised occupation of demised premises by my client is not maintainable. My client continues to be a tenant till November, 2000, and claim for damages

for vise and occupation is not maintainable. M/ client is a lawful tenant and noy an unauthorised occupant. My client if only liable to pay the rent as agreed between the parties and not beyond it. The claim of damages is not maintainable in view of the fact that tenancy of my client subsists and my client is a lawful tenant." 12. On account of failure of the appellant tenant to comply with the notice of demand the plaintiff filed the suit on 8.12.1998 seeking the decree for possession of the tenanted premises and recovery of future damages and mesne profits @ Rs. 1,96,000/- based on the following averments in the plaint: "6. It is submitted that the tenancy has already been terminated vide notice dated 25.9.1998 and the defendants were bound to deliver the vacant possession of the ground floor portion of the suit premises, to the plaintiff on the midnight of 31.10.1998 but they did not do so. The defendants have failed to deliver the vacant physical possession to the plaintiff and, as such, from the midnight of 31.10.1998, the defendants are in unauthorised occupation. 7. That vide notice dated 25.9,98 sent by the plaintiff the defendants were called upon to deliver the vacant possession of the ground floor portion of the premises and it was also informed that if the said portion of the premises was not vacated on the midnight of 31.10.1998, then in that case and till such time the premises are vacated, the defendant are liable to pay damages at the rate of Rs. 1,96,000/- per month i.e. at the rate of Rs. 70/ - per sq. ft. per month, which is prevailing market rate in the locality for such type of commercial premises." "Prayer: xxx xxx xxx"(ii) pass a decree for recovery of damages/mesne profits at the rate of Rs. 1,96,000/- from 1.11.1998 till the delivery of the actual physical possession of the ground floor portion of the premises. The plaintiff hereby agree and undertake to pay the actual Court fees on the amounts which may be ultimately found due from the defendants at the time of passing the decree." 13. The defendant in its written statement disputed the claim of the plaintiff in the following terms: "7... The claim of the damages @ Rs. 1,96,000/- per month i.e., at the rate of Rs. 70/- per sq. ft. per month is not maintainble in view of the fact' that tenancy of the defendant subsists and the defendant is a lawful tenant. Without prejudice to above even otherwise the market rate of rent is highly excessive and exaggerated and not Rs. 1,96,000/- as alleged. The plaintiff be put to strict proof of the same. The amount of damages claimed is not the prevailing rate of rent in the locality as alleged. The contents of para under reply are absolutely false to the knowledge of the plaintiff and are liable to be rejected." 14. We find that the learned trial Judge framed an issue in respect of the respondent's claim of mesne profits as noticed hereinabove on 18.8.1999 and put the plaintiff to evidence. Despite opportunities being given on 4.11.99 and 2.12.2000, the respondent-plaintiff failed to lead any evidence in respect of the damages and mesne profits. 15. It is settled law that the burden of proof or the onus of proving a claim or a plea rests on a party which has put forth the same. So far as the Trial Court was concerned there was no dispute to the factum of the original tenancy agreement and its rate of rent which was prevalent then. The respondent-plaintiff had put forth the claim of entitlement to damages @ Rs. 70/- per sq. ft. with effect from 1.11.1998 after the notice period in terms of the notice dated 25.9.1998 came to an end. This brought

the monthly claim of damages for 2800 sq. ft. of area to Rs. 1,96,000/- per month. The respondent-plaintiff was required to establish the same on record in accordance with law. 16. In view of the pleas set up by the parties and the observations and findings of the learned trial Judge in its judgment and decree dated 26.5.2000, it becomes necessary to examine the legal position. 17. The charges payable for occupation of a premises unauthorisedly and wrongfully have been termed as mesne profits. They are defined thus in the Black's Law Dictionary: "Mesne profits, Intermediate profits; i.e. profits which have been accruing to between two given – Dumas v. Ropp, 98 Idaho 61, 558 p, 2d 632, 633. Value of use or occupation of land during time it was held by one in wrongful possession and is commonly measured in terms of rents and profits." 18. Therefore, it is to be noted that the payment of rent arises in the right and is based on a lawful tenancy agreement between the parties. However, after termination of a tenancy, occupation becomes unauthorised and wrongful and hence the occupation treated as without authority entitling the landlord of the premises to award of damage. 19. The further question which arises upon the occupancy of a person being held as unauthorised, is the actual rate at which such person would be liable to pay occupancy charges and mesne profits. It has been held that mesne profits and damages for unauthorised occupancy after expiry of a tenancy can be granted at a rate higher than the agreed rate of rent after the expiry of the tenancy. It was so held in several judgments of this Court including the judgment reported at 1992 3 RLR 563 entitled Bakshi Sachdev (deceased) by LRs. v. Concord India. 20. We find that in judgment reported at entitled Union of India and Anr. v. Wing Commander RR Hingorani (retd.) the Apex Court held that a person doing something with full knowledge of its adverse consequences must face the consequences and cannot claim an equitable relief. 21. Applying such principle to cases of continuation of occupancy despite termination of tenancy, it is to be held that such person is liable for paying mesne profits and damages at a rate which may be higher than the agreed rent and may be equivalent to the then prevalent market rate of rent. 22. In the Division Bench pronouncement of the High Court of Jammu & Kashmir reported at AIR 1961 J&K page 39(DB) entitled L. Bhagwan Das Mengi v. UOI the Court placing reliance on the earlier pronouncements reported at AIR 1933 Lahore 61 Vol. 20 entitled Sunder Singh v. Ram Saran Das AIR 1929 Patna 717 Vol. 16 entitled Kumar Das v. Radhika Singh entitled Parekh Nandal v. Anant Goving; and 2J and K LR 42 entitled Jogeshwar Kumar v. Mst. Suwarn Kour held that where the tenant after the expiry of the lease remains in occupation of the premises in spite of the fact that the landlord served a notice on him to vacate and warned him that if he remains in occupation he will have to pay a specified sum as damages for wrongful use and occupation of the building, the defendant tenant will be liable to pay that amount provided it is not penal and unconscionable. 23. The question which has arisen before this Court is as to what is the rate at which an award of mesne profits has to be made when no evidence in this behalf has been led by a plaintiff/landlord, we find that such a question had arisen for consideration before the Bombay High Court which had answered the same in a judgment reported at entitled Sau Shantibai

v. Manakchand Ratanchand Raka. The relevant portion of the same reads as under: "Although the plaintiff has claimed the damages to the extent of Rs. 10,000/- he had led no evidence for proving the said damages. No doubt, the Court can take judicial notice of the fact that prices of the land have arisen considerably manifold, from the date of the agreement till this date, but the Court cannot take judicial notice of the exact rate of the increase. The measure of damages would be the excess price that would be required to be paid by the plaintiff to purchase similar lands on the date of the suit, on account of the breach of the agreement on the part of the defendant. But plaintiff has led no evidence in that behalf. The plaintiff would not, therefore, be entitled to a decree for damages of Rs. 10,000/-as claimed by him in the suit." 24. In support of its plea that the Court cannot draw my inference with regard to the factum of the market rate of rent which was prevailing at the relevant time without any evidence in this behalf, the appellant has placed reliance on the pronouncement of the Apex Court in entitled Commissioner of Customs, Vishakhapatnam and Ors. v. Java Satya Marine Exports (P) Ltd. and Ors. It was held by the Apex Court that there was no evidence whatsoever before the High Court on the basis of which it could come to a conclusion that prawns and shrimps were not "fish" in common parlance. The Court held that judicial notice could not be taken of a fact that a common man treats fish and prawn as two different articles. This fact required evidence as proof of the statement of fact. 25. It is also settled law that evidence recorded in one case or the findings recorded based on evidence led before it with regard to the rate at which damages/mesne profits would be payable and its quantum cannot form basis for awarding damages for mesne profits in another case. This is more so in the absence of any evidence with regard to the prevailing rate or comparison of the two properties which are the subject matter of the two cases. This was also held by a Division Bench of this Court in the judgment reported at entitled All India Handloom Fabric Marketing Cooperative Society Ltd. v. Phelps & Co. Pvt. Ltd. 26. We find that in several cases, this Court has rejected claims for mesne profits where no evidence had been led on the issue framed in this behalf. Noteworthy are the pronouncements reported at 102 (2003) DLT215 (DB) : 2002 (VI) AD Delhi 725 entitled Hari Singh (deceased) through LRs v. S.S. Jogi, etc.; entitled Kanti Singh and Ors. v. Project and Equipment Corporation of India Ltd. 27. We also find that in cases where the Court had based the award of mesne profits after judicial notice of the factum of increase there was some evidence led by the owner/landlord as to the prevailing market rates of rent or there was no serious challenge to the findings of the learned Judge in this behalf even in appeals preferred. 28. We may appropriately advert to the statutory provisions which enable a Court to take judicial notice of certain facts. These are to be found in Sections 56 & 57 of the Indian Evidence Act, 1872, which read as under: "56. Fact judicially noticeable need not be proved – No fact of which the Court will take judicial notice need to be proved."57. Facts of which Court must take judicial notice.". The Court shall take judicial notice of the following facts: (1) All laws in force in the territory of India. (2) All public Acts passed or hereafter to be passed by Parliament [of the United Kingdom], and all local and personal

Acts directed by Parliament [of the United Kingdom] to be judicially noticed; (3) Articles of War for [the Indian] Army, [Navy or Air Force]; (4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the Legislatures established under any law for the time being in force in a Province or in the State. (5) The accession and the sign manual of the Sovereign for the being of the United Kingdom of Great Britain and Ireland; (6) All seals of which English Courts take judicial notice; the seals of all the [Courts in (India), and all Courts out of (India)] established by the authority of [the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime jurisdiction and of Notaries Public, and all seals which any person is authorised to use by [the Constitution or an Act of Parliament of the United Kingdom or any Act or Regulation having the force of law in (India)]. (7) The accession of office, name, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in [any Official Gazette]; (8) The existence, title and national flag of every State or Sovereign recognised by [the Government of India]; (9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette; (10) The territories under the dominion of [the Government of India]; (11) The commencement, continuance and termination of hostilities between [the Government of India] and any other State or body of person; (12) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and/or of all Advocates, attorneys, proctors, Vakils, pleaders and other persons authorised by law to appear or act before it; (13) The rule of the road, [on land or at sea]. In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so." 29. The matters of which a Court can take judicial notice have fallen for consideration before the Apex Court in several pronouncements. Noteworthy amongst these are the pronouncements of the Apex Court in (i) entitled Ujagar Singh v. Mst. Jeo. In this case the Court was concerned with proof of prevalency of a custom. The Court held that when a custom has been so recognised by the Courts, it passes into the law of the land and in such circumstances proof of it then becomes unnecessary under Section 57(1) of the Evidence Act. In entitled Onkar Nath v. Delhi Administration, the Apex Court held as under: "The list of facts mentioned in Section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge, (see Taylor 11th edn. pp. 3-12; Wigmore sec 2571

footnote; Stephen's Digest, notes to Article 58; Whitley Stokes' Anglo-Indian Codes Vol. II p. 887). Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No Court, therefore, insists on formal proof, by evidence." 30. In such position in law so far as facts of which Courts may take judicial notice is concerned, we may now examine the specific contention raised before us with regard to the parameters within which Courts would take judicial notice of matters relating to increase of rent and prevailing market rents. In the pronouncement of the Apex Court reported at entitled D.C. Oswal v. V.K. Subbain and Ors., the Apex Court held as under: "7. We allow the appeal and reverse the judgment of the High Court and dismiss the petition for eviction. We would, however, like to add that judicial notice can be taken of the fact that rental has escalated everywhere and appropriate rent in the present case should be raised to Rs. 400 per month from 1.1.1992. The tenant should have a direction to pay the rent in advance from month-to-month as stated by him in the Courts below and it should be by the end of every month. There will be no order as to costs." 31. We find that this Court has in several cases taken judicial notice of the factum of increase of rent and made awards of mesne profits and damages. Noteworthy in this behalf is a judicial pronouncement of the Division Bench reported at (supra) entitled Vinod Kumar v. Bakshi Sachdev. This judgment was delivered by a Division Bench of which one of us (Dr. M.K. Sharma, J.) had delivered the judgment. It was held as under: "21. The learned Counsel for the appellants also urged before us that the learned Trial Court was not justified in taking a judicial notice of the fact of increase of rents like the suit property and also in providing Rs. 10,000/- per month as fair amount towards damages/mesne profits in favor of the plaintiff. It is true that no substantial evidence has been led by the plaintiff in respect of the increase of rent in the properties like that of the suit property. However, it is a well known fact that the amount of rent for various properties in and around Delhi has been rising staggeringly and we cannot see why such judicial notice could not be taken of the fact about such increase of rents in the premises in and around Delhi which is a city of growing importance being the capital of the country wich is a matter of public history. At this stage we may appropriately refer to the Court making judicial notice of the increase of price of land rapidly in the urban areas in connection with the land acquisition matters. Even the Apex Court has taken judicial notice of the fact of universal escalation of rent and even raised rent of disputed premises by taking such judicial notice in case of D.C. Oswal v. V.K. Subbiah . 22. In that view of the matter we have no hesitation in our mind in holding that the Trial Court did not commit any illegality in taking judicial notice of the fact of increase of rents and determining the compensation in respect of the suit premises at Rs. 10,000/- per month w.e.f. 19.1.1989, in view of the fact that the rent fixed for the said premises was at Rs. 6,000/- per month as far back as in the year 1974. We may, however, note here that the learned Counsel for the appellants did not seriously challenge the findings of the learned Judge that Rs. 10,000/- per month would be the fair market rent of the suit premises. Accordingly, in

view of the aforesaid findings arrived at by us the submissions of the learned Counsel for the appellant in our view have no substance at all." 32. In another Division Bench pronouncement reported at (supra) entitled S. Kumar v. G.R. Kathpalia the issue raised was as follow: "4. Lastly, the learned Counsel for the appellant vehemently argued that the judgment of the learned Addl. District Judge cannot be sustained insofar as it has fixed damages @ Rs. 50,000/- p.m. It is submitted that in the plaint the plaintiff has claimed damages @ Rs. 10,000/- p.m. And, therefore, the Trial Court could not go beyond the said figure while fixing the amount of damages/mesne profits. It is true that in the plaint the plaintiff claimed damages @ Rs. 10,000/- p.m. up to the date of filing of the suit. However, it is to be noted that the plaintiff has further prayed that till such time that the possession of the suit premises is delivered to the plaintiff, the Court may hold an inquiry under Order 20 Rule 12, CPC and determine the mesne profits/damages and decree in respect thereof may also be passed. The plaintiff has also undertaken to pay the requisite Court fee on such a decree. The Trial Court has considered the evidence in this behalf and reached a conclusion that the damages/mesne profits for the premises at the relevant time ought to have been @ Rs. 50,000/- p.m. It is a premises built on a 500 sq. yds. plot in East of Kailash, New Delhi and the period under consideration is the year 1994. The learned Counsel for the respondent submitted on this aspect of the matter that the amount of mesne profits/damages may be fixed by this Court as it may be deemed proper and the decree of the Trial Court in this behalf could be modified. We have heard learned Counsel for the parties on this aspect and considered the evidence adduced. Respondent/landlord has not led any documentary evidence of the prevalent market rate of other premises in the vicinity. However, keeping in mind the prime location of suit premises, its proximity to Community Centre and commercial activity, we are of the view that a sum of Rs. 25,000/- p.m. would be a just and fair amount by way of damages/mesne profits from the date of institution of the suit till the delivery of the possession of the premises. The decree of the Trial Court will stand modified to this extent. The respondent will pay the decree and the requisite Court fee stamps will be deposited in the trial (sic treasury) within four weeks from today." 33. The respondents have also drawn our attention to the pronouncement of learned Single Judge of this Court in (supra) entitled Mrs. Dr. P.S. Bedi v. The Project and Equipment Corporation of India Ltd. Adverting to the several pronouncements, noticed by us hereinabove the Court answered the issue relating to damages/mesne profits as follows: "29. Next question that arises for consideration would be at what rate the damages/mesne profits should be awarded in favor of the plaintiff and against the defendant. In this case the defendant has not vacated the premises in spite of legal notice and also particularly when the period of lease was renewed by the plaintiff. The defendant has occupied the premises without any authority of law, therefore, the plaintiff is entitled to damages/mesne profits at the market rate provided the same is not penal and unconscionable. 30. The plaintiff has produced evidence about the market rate of rent prevailing in that area at the relevant time i.e. in 1989 whereas the defendant has not produced any evidence at all. The plaintiff appearing as PW 1 in her statement has

specifically stated in cross-examination that the market rate of rent of similar premises in the year 1989 was about Rs. 32/- sq. ft. She has also in this context proved a document dated 19.6.1985, Ex. PW? Shri PC Bedi, PW 2 has also deposed about the market rent of the premises. He has brought certain lease deeds dated 22.8.1989 (Mark A) showing the rent for the relevant period. Document Mark A dated 22.8.1989 produced during cross-examination of PW 2 is in respect of 8th floor of Hansalaya building for a flat rate of Rs. 1333 sq. ft. from 22.8.1989 to 21.8.1992. This document however cannot be taken into consideration as it has not been exhibited. However, having regard to the oral evidence of PWs 1 and 2, the document Ex. PW 1/4 and the phenomenal rise in rents in Delhi and particularly in the area where the property in suit is located, in my opinion it would be just and equitable to fix the market rate of rent for the demised premises at the rate of Rs. 25/- per sq. ft. which such premises might have fetched on 30.4.1989." 34. Judicial notice is taken of only such facts of which there can be only one view. In the light of the aforesaid position in law, there can be no manner of doubt that so far as the increase of rent is concerned, judicial notice can be taken of a fact that over a certain period rents generally have arisen. However, so far as quantification of the rate at which the increase has actually taken place, a finding can be arrived at only on the basis of legal evidence and material establishing the actual rates at which properties have been let over the period and comparison of such properties with the property which is the subject matter of the lis. Rents may vary based on location of properties, nature of construction, period of construction, purpose/user for which the premises are let, variation between demand for tenanted premises and availability of premises and even factors relating to the position of the economy. Therefore, while a learned trial Judge may be justified in taking judicial notice of the fact that rents have risen over a certain period of time in the area in question, it would be incumbent upon a person laying a claim of entitlement to mesne profits to prove the same by cogent and reliable evidence in accordance with law. As has been noticed in the judicial pronouncements noticed hereinabove, the evidence may include documentary evidence relating tenancies of properties in the area which can be summoned from the office of the Sub-Registrar or by examination of property dealers, oral testimony of the parties to the litigation and persons in the trade of real estate, other property owners. 35. The defendant/ tenant is entitled to know not only the landlord's claim but also the extent to which the same stands established. The defendant has a legal right to an opportunity to prove the contrary. 36. In the instant case we find that other than the admission of the tenancy, extent of the tenanted premises and receipt of the notice, there was no admission on the part of the tenant. The tenant in its reply sent on 30.10.1958 had rebutted the claim of the landlord made in the legal notice dated 25.9.1998. The claim made in the plaint was also vehemently disputed in the written statement as noticed hereinabove. Faced with such a denial and challenge, the learned trial Judge had framed a specific issued in this behalf on 18.8.1993. In spite of this position the plaintiff failed to lead any evidence in this behalf either on 4.11.1999 or 2.2.2000. No list of witnesses even was filed and the only witness who was

sought to be produced as a witness, was being examined to prove the valuation of the property. The respondent-plaintiff miserably failed to discharge the onus and burden of proof cast on it in accordance with law. 37. It has been brought on record that after the judgment and decree and grant of the relief of possession on 18.8.1999, the appellant handed over possession of the suit property to the respondent-plaintiff on 2.11.1999. The suit had been filed only on 8.12.1998. 38. In this background of the factual position and the law, despite taking judicial notice of the fact that rentals have generally increased in Delhi there was no material at all on which the claim of the plaintiff could have been granted by the learned trial Judge. We find that the learned trial Judge has observed that it could take judicial notice of the prevalent market rates of rent of different areas in Delhi as the "Court has routinely been deciding" similar suits of mesne profits and damages in respect of different areas. 39. We have manner of doubt that observation are totally contrary to the settled position in law. The extent to which the rents are actually rising in specific areas has to be proved as a statement of fact in every case. A party would need to lead evidence in respect of the period over which the rental has increased and also the percentage for which it has increased in order to enable a Court to arrive at a finding of the actual prevalent market rate of rent at the given point of time with regard to a particular property. A finding of fact in a litigation binds only the parties to the lis. 40. It is also necessary that a defendant/tenant is put to notice with regard to the basis and claim on which a relief is being ascertained. The defendant must know the rate which a plaintiff will be able to prove in its evidence so that it can lead its evidence in defendant to the claim. 41. In the instant case the plaintiff did not lead any evidence and the defendant was thereby deprived of an opportunity to prove that the prevalent market rate of rent was not Rs. 30/- per sq. ft. per month which is the rate arrived at by the learned trial Judge in its conclusion. We hold that this finding of the learned trial Judge is based on no material whatsoever, is speculative and presumptuous and has no basis in fact. 42. In this view of the matter we set aside and quash the findings of the learend trial Judge on the basis raised before it in the judgment and decree dated 26.5.2000. 43. At this stage we may mention that in order to find an amicable resolution of the dispute in regard to the fact that rentals have increased over the years, that the appellant was paying such low rate of rent only because of the tenancy was an old one and that the premises were commercial premises in a prime area, learned Counsel for the appellant at one stage of the argument agreed that the rent/mesne profit which is being paid is on the lower side. He had to admit that although the market rate of rent in the area could not be Rs. 30/- per sq. ft. yet it would be somewhere near Rs. 15/- to Rs. 20/- per sq. ft. and that the appellant may not be averse to pay such rental. We take on record the aforesaid and accept Rs. 15/- per sq. ft. as appropriate and just rental for the aforesaid premises with effect from 1st November, 1998 till vacation. 44. We, therefore, modify the judgment and decree and hold that the respondent shall be entitled to mesne profits @ Rs. 15/- per sq. ft. per month with effect from 1st November, 1998 till date of vacation on 2nd November, 1999. The respondent shall be entitled to costs of

the suit and appeal. The decree sheet be prepared accordingly.