

Delhi High Court S. Kumar vs G.R. Kathpalia & Anr. on 14 August, 1998
 Equivalent citations: 1999 IAD Delhi 744, 77 (1999) DLT 266, (1999) 121 PLR 43, 1999 RLR 114 Author: A Kumar Bench: A Kumar, M Sarin JUDGMENT
 Arun Kumar, J. 1. We have heard the learned Counsel for the parties and perused the record. The only point urged by the learned Counsel for the appellant at the time of hearing was that a petition for fixation of standard rent of the premises was already pending before the Rent Controller and the landlords/respondents could not pursue the remedy by way of a suit for possession simultaneously. It is also submitted that an eviction petition under Section 14 of the Delhi Rent Control Act is also pending. The learned Addl. District Judge has noticed an order passed by this Court in a Civil Revision filed by the appellant against the order dismissing the application of the appellant under Order 7, Rule 11, CPC. That order makes it dear that the two parallel proceedings can in law continue simultaneously and this could not be a ground for rejection of the plaint under Order 7, Rule 11, CPC. A Division Bench judgment of this Court has been relied upon in the said order. The said judgment is a decision dated 10th May, 1996 in RFA No. 94/1996 entitled M/s. New United Automobiles Vs. Cycle Equipments Private Ltd., 1997 1 RCR 69. We would like to add that mere pendency of an application for fixation of standard rent cannot defeat a suit for possession. The present tenancy was admittedly created vide a registered lease deed dated 29th April, 1980. As per the lease deed agreed rent of the premises is Rs. 4,000/- per month. Para 1 of the terms and conditions of the lease runs as under : “1. That the lessee shall pay to the lessor for the premises the lease amount of Rs. 4,000/- (Rupees four thousand only) composing of Rs. 2,500/- for, the premises and Rs. 1,500/- for fittings, furniture and fixtures provided therein viz. cupboards, fans, geysers, pelmets, light fittings, chandliers, hand pump, booster pump, marble bath tubs, etc. in advance on or before 8th of each English calender month.”/BLOCKQUOTE> 2. Thus we find no merit in the submission made on behalf of the appellant. 3. The learned Counsel for the appellant submits that as a matter of fact the rent for the suit premises was Rs. 2,500/- per month and the balance amount of Rs. 1,500/- per month was to be paid on account of use of furniture and fittings provided in the premises. Since no furniture and fittings were actually provided, the appellant according to the Counsel for the appellant was delivered possession of the first floor of the premises in lieu thereof. We are unable to accept this. The argument appears to be preposterous. Firstly, a list of the furniture and fittings provided in the premises is annexed to the lease deed itself. This forms part of the registered lease deed. In view of this, it cannot be said that furniture and fittings were not provided to the tenant. Secondly, the above quoted para of the lease deed shows that the rent of the premises was the consolidated figure of Rs. 4,000/- per month. Here we would also like to note that now the law is settled that in such matters, we have to take into consideration the consolidated figure of rent. Therefore, there is no merit or substance in the argument that the rent was actually Rs. 2,500/- per month and, therefore, a civil suit was not maintainable. 4. Lastly, the learned Counsel for the appellant vehemently argued that the judgment of the learned Addl. District Judge cannot be sustained in

so far as it has fixed damages @ Rs. 50,000/- per month. It is submitted that in the plaint the plaintiff had claimed damages @ 'Rs. 10,000/- per month 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/- per month upto 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/- per month. It is a premises built on a 500 sy. 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 rent 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/- per month 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 balance requisite Court fee on this part of the decree and the requisite Court fee stamps will be deposited in the Trial Court within four weeks from today. 5. For the above reasons, we find no merit in this appeal. The appeal is dismissed subject, however, to the modification directed above. It is clarified that the interest awarded by the Trial Court @ 15% on the amount of mesne profits/damages stands. No order as to costs.