

**SUPREME COURT OF INDIA**

Union of India

Vs.

Satish Kumar Mehta

C.A.No.628 of 2017

(Kurian Joseph and A.M.Khanwilkar,JJ.,)

10.01.2017

**JUDGMENT**

**Kurian Joseph,J.,**

SLP(C) No. 37467/2012

1. Leave granted.

2. The appellants are before this Court aggrieved by the judgment dated 6.8.2012 in RFA(OS) No.107/2009 and Cross Objections C.M. No.472/2010. The appeal was filed by the appellants herein aggrieved by the judgment dated 23.09.2009 in Civil Suit (OS) No.264/2004. That suit was filed by the respondent challenging the demand for an amount of Rs.42,11,604/- towards misuser charges, for having used the residential property for non-residential purposes. No doubt, such misuse was by a sub-tenant, who was evicted by the respondent subsequently on account of violation of the lease conditions. The learned Single Judge decreed the suit. The decretal portion reads as follows:

"...Accordingly, the demand raised in the letter dated 17th December 2003 of the Defendants towards misuser charges payable by the Plaintiff in respect of the suit property would stand modified as under:

(i) Rs.10,31,630/- + Rs.10,316/- towards misuser charges for the first floor  
(ii) Rs.55,866/- for the misuse of the ground floor the plaintiff. (iii) Other sums demanded in the letter dated 17th December 2003 i.e. the sums under Sl. Nos.1 to 3, Ground Rent under Head "A", and Misuse Charges at Ground Floor under Head "B" to the extent admitted by the plaintiff in para 25 of the plaint (and in para 21 of his affidavit dated 15 th September 2006). The above sums will be paid by the Plaintiff together with simple interest at 10% p.a. from 1st January 2004 till the date of payment. The interest rate is what is indicated in the calculations given by the Plaintiff himself. Since the demand raised is as of 17th December 2003, the interest payable will be calculated For the period 1st January 2004 till date of actual

payment. Against the sum so payable, the Plaintiff is entitled to adjust the amount of Rs.10 lakhs deposited in this Court together with the interest accrued thereon, and after payment of the balance amount within a period of four weeks, the Plaintiff is entitled to have the breaches regularised."

3. The appellants pursued the matter before the Division Bench in the First Appeal. The respondent filed a cross objection. It was the main contention of the appellants that having regard to the admitted misuse, the respondent was liable to pay the demand, as raised by the appellants. On the contrary, the respondent contended that even assuming that the respondent was liable to pay the misuser charges it could in no way exceed the rent he had already received, in terms of the Circular dated 31.03.1976. We find it difficult to appreciate the contention raised by the respondent. That circular only states that having regard to the peculiar facts of each case, in consultation with the Ministry of Works and Housing and Finance and taking note of the inability on the part of the lessee, an appropriate order would be passed limiting it to the income of the lessee.

4. Be that as it may, on going through the plaint, we find that in unequivocal terms, the Respondent /plaintiff had averred in the plaint that the charges cannot exceed Rs.10,31,630/-.

5. Having heard learned counsel appearing for the appellants extensively and Mr. Jayant Bhushan, learned senior counsel appearing for the respondents and going through the pleadings we find that in any case the respondent cannot go back on what he had agreed towards the payment of misuse charges, in the suit filed by him. Though Mr. Bhushan, learned senior counsel invited our attention to a decision of this Court in *D.D.A. v. Ram Prakash, reported in'*, we do not think that the said decision would be of any help to the respondents. What the Court held in the said case was that what would be the reasonable time would depend upon the facts and circumstances of each case. In the present case, action had already been initiated in 1978 for the misuse of the premises.

6. Mr. Bhushan, learned senior counsel, made a vehement submission that the offer to pay an amount of Rs.10,31,630/- was an alternative submission recorded by the Division Bench in the impugned judgment. We have gone through the plaint. We find it difficult to appreciate that it was an alternative submission. The clear case of the respondent/plaintiff was that the amount in any case, cannot exceed Rs.10,31,630/-.

7. Though, normally the matter should have been remanded for fresh consideration, having regard to the fact that the litigation has been pending for long and since it is in the interest of parties on both the sides to give a quietus to the dispute, without relegating the parties for another round of litigation this appeal is partly allowed by restoring the decree passed by the learned Single Judge on the original side.

8. Learned senior counsel appearing for the respondents submits that the amount, as decreed by the learned Single Judge on the original side have already been paid. Needless to mention that the amount paid will be duly adjusted towards the decretal amount.

9. There shall be no order as to costs. disposed of.

**Judgment Referred.**

<sup>1</sup>(2011) 4 SCC 0180