

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

+ **RFA No.502/2001**

% **3rd March, 2011**

SHRI H.S.MEHTA & ANR. Appellants
Through: Mr. G.L.Rawal, Sr. Adv. with Mr.
Kuljeet Rawal, Advocate.

VERSUS

UNITED INDIA INSURANCE COMPANY LTD. Respondent
Through: None

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this regular first appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 18.7.2001 whereby the suit of the appellants/landlords for recovery of rent of the demised premises from 6.11.1994 to April, 1997 (when the suit was filed), was dismissed on the ground that the respondent/ insurance company was not using the premises since the fire broke out in the premises on 6.11.1994 and the respondent/defendant/insurance company did not get back the possession after the premises were repaired.

2. The only issue which was relevant for being decided before the trial court was whether the respondent had handed over possession of the premises back to the appellants/landlords. The trial court has dealt with this aspect of the matter in para 13 of the impugned judgment and decree which reads as under:-

“13. Further he has drawn the attention of this court to the statement of the PW-1 in cross examination wherein he has admitted that possession of the premises was given to the plaintiff and he after getting the same repaired, handed over the same to the defendant in the year 1995. Counsel for the defendant has invited the attention of the court to the statement of DW1 in chief who has stated that possession of the premises was handed over to the plaintiff within 10 days when the fire broke out in the premises in suit and entire burnt out material including record and furniture were removed by the defendant from the premises in suit. Statement of the plaintiff to the effect that the possession was handed over to him and he after the same repaired and returned the same to the defendant in 1995 is also contradicted by the statement of DW-1 who has stated that in 1995 when he reached the property he found the Board of ‘Dilsukh Finance Company’ at the suit premises owner of which is Sh. H.S.Mehta plaintiff No.1 and no cross examination of DW-1 has been done on this point. Further he has proved on record office memo of defendant being Ex.DW1/1 dt. 8/2/95 by which the office of the defendant from the suit address has been shifted to Indira Palace premises prior to this it was shifted to another places as per the statement of DW-1 and no cross examination has been done by the plaintiff of DW-1 on this point also.”

3. A tenant is liable to pay rent for a premises which either it is using or with respect to which possession has not been handed over back to the landlord. Once, possession of the premises is handed over back to the landlord in circumstances such as the present, where fire had broken out in

the premises, obviously, the tenancy would stand determined and no rent would be payable. In any case, in my opinion, even the principle of suspension of rent, which is purely a legal issue, can be applied to the facts of the present case which have emerged on record. The trial court has rightly arrived at a finding of fact that possession of the premises were handed over back to the appellant, who himself was a tenant of the subject premises, and which subject premises were further sub-let to the respondent/defendant/insurance company. The trial court has noted that the fact that possession of the premises was given back by the respondent insurance company to the appellants/landlords becomes clear from the fact that in the premises in 1995, a company by the name of Dilsukh Finance Company was being run, and which company was of Sh. H.S.Mehta/appellant/plaintiff no.1. No cross examination of the witness of the respondent company was done on this aspect clearly showing that the possession was not with the respondent company and was handed over back to the appellants/landlords.

4. In view of the categorical finding of the trial court, and with which I agree, I do not agree with the contention of the learned senior counsel for the appellants that the possession of the premises were not delivered back to the appellants. The argument of the learned senior counsel for the appellants that there is no pleading that the respondent handed over back possession to the appellants in the written statement, is once again without basis because repeatedly, in the written statement, the respondent had

stated that the appellants/plaintiffs had not been able to repair the premises and hand over back to the same to the respondent for use.

5. Merely because two views are possible, this court would not interfere with the findings and conclusions of the trial court unless the findings and conclusions are wholly illegal or perverse or that grave injustice/prejudice is caused. I do not find any illegality or perversity in the impugned judgment and decree and nor any prejudice/injustice has been caused to the appellant which calls for interference by this court in the appeal. The appeal, being devoid of merit, is dismissed leaving the parties to bear their own costs. Trial court record be sent back.

MARCH 03, 2011
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VALMIKI J. MEHTA, J.