IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 1132 of 2015
Date of decision: 19.02.2015

Ravi Kumar Bagga ....Petitioner(s)

Versus

Rajesh Kumar Mittal and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Vinay Kumar Mahajan, Advocate,
for the petitioner.

Mr. Indresh Goel, Advocate,
for Mr. Sanjeev Sharma, Advocate,
for the respondents-caveators.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition is to the order dated 27.01.2015 whereby, the Appellate Authority has fixed the mesne profits @ ₹85,000/- per month from the date of eviction i.e. 31.10.2014.

Counsel for the petitioner has vehemently argued that the amount is very high and has placed reliance upon the lease deed of SCO No. 266, Sector 35-D, Chandigarh to submit that the amount of lease money for the period from 01.06.2014 to 31.05.2015 is ₹39,136.60 ps. It is accordingly submitted that the amount quantified is on the higher side being fanciful and excessive.

Counsel for the respondents-landlord, on the other hand, has submitted that the Appellate Authority has rightly placed reliance upon the registered lease deed of another premises bearing No. 283, Sector 35-D, Chandigarh, which has been leased out to the bank on 06.05.2013 for a sum

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of ₹1,40,000/- and has accordingly submitted that the Appellate Authority has justifiably passed the order and the rate of rent is much higher for the premises in question which are bearing SCO No. 263, Sector 35-D, Chandigarh.

After hearing counsel for the parties, this Court is of the opinion that there is no scope for interference in the impugned order. The premises which are subject matter of eviction are being used by the petitioner for running the business of a jeweller. The lease deed in question (Annexure P-5) relied upon by the petitioner is pertaining to the ground floor of SCO No. 266, Sector 35-D, Chandigarh and would go on to show that the rent was fixed by the landlady with the tenant who was already in occupation of the said premises and on fresh terms and conditions, it was enhanced. Thus, it would be apparent that the landlady in that case was happy with the increase by the sitting tenant as he was already in occupation.

This Court in ***R.K. Bansal vs. Jag Parvesh Sharma, 2012 (3) PLJR (SC) 33*** has held that it will be obligation of the Court to ensure that the mesne profits are fixed at a rate which is akin to the market rent and it has been laid down by the Apex Court in ***State of Maharashtra and another vs. M/s. Super Max International Pvt. Ltd. and others, 2009 (9) SCC 772*** that after eviction order has been passed, the contractual rate comes to an end. However, the mesne profits are to be fixed on the basis of some valuation reports or registered lease deeds which is also the law laid down by this Court in ***Surinder Kumar vs. Rattan Lal, 2006 (2) PLR 200.*** The relevant observations read as under:-

"The other questions that requires consideration

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is the mode of determination of the mesne profits or compensation payable. In this respect, it is appropriate to note that the same is to be done on the basis of materials placed on record by the parties. The parties would be at liberty to place cogent evidence by way of recent registered lease deeds of the locality to show their amount of rent which is payable. It is on the basis of such convincing material that a provisional assessment of the compensation/damages which the tenant is liable to pay the landlord pending his appeal or revision against an order of ejectment, can be determined. This provisional assessment that has been made would be subject to adjudication at the time of final disposal of the appeal or revision as the case may be. If the final adjudication by the appellate or revisional Court in respect of the damages or compensation payable by the tenant is at variance with the provisional order, the landlord would be liable to reimburse or refund the excess amount deposited by the tenant and in case of deficient deposit, the tenant shall be liable to make good the deficient amount. In fact in Atma Ram Properties case (supra), the Hon'ble Supreme Court held that reversal of interim orders passed at the interim stage due to final decision going against the party securing the interim order in its favour would entitle the successful party to demand (a) restitution of benefit earned by the opposite party under the interim orders or (b) compensation for what it has lost."

Thereafter also, the Apex Court in ***Mohammad Ahmad and another vs. Atma Ram Chauhan and others, 2011 (7) SCC 755*** laid down the principles wherein, it was held that the factum of similarly situated premises has to be taken into consideration and the accessibility and the

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parking facilities available. The principles laid down read as under:-

> *"(i)The tenant must enhance the rent according to the terms of the agreement or at least by ten per cent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rent should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.*
>
> *(ii)Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges, then the same shall also be borne by the tenant only.*
>
> *(iii)The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.*
>
> *(iv)But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.*
>
> *(v)If the present and prevalent market rent assessed and fixed between the parties is paid by the tenant then the landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years and the tenant shall enjoy*

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> *immunity from being evicted from the premises.*
>
> *(vi)The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.*
>
> *(vii)The rent so fixed should be just, proper and adequate, keeping in mind the location, type of construction, accessibility to the main road, parking space facilities available therein, etc. Care ought to be taken that it does not end up being a bonanza for the landlord."*

Admittedly, the tool bar which has been relied upon by the Appellate Authority is of the same market in Sector 35-D, Chandigarh and, therefore, no fault can be found in the procedure which has been adopted by the Appellate Authority. Rather, counsel for the respondents is well justified to submit that the mesne profits in the adjoining area were much higher as per the lease deed of the bank.

Accordingly, the discretion which has been exercised by the Appellate Authority does not warrant interference and the present revision petition is dismissed. However, since the order of the Appellate Authority has to be complied with within a period of one month from the date of the order, it would be appropriate if time to deposit the amount is extended till 01.04.2015.

19.02.2015 (G.S. SANDHAWALIA)
shivani JUDGE

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