IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 1190 of 2015
Date of decision: 21.02.2015

Vinod Thapar and another ....Petitioner(s)

Versus

Seema Mehra and others ...Respondent(s)

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

Present: Mr. Sunil Chadha, Sr. Advocate,
with Mr. Chetan Bansal, Advocate,
for the tenants-petitioners.

Mr. A.K. Chauhan, Advocate,
for Mr. Arvind Singh, Advocate,
for the landlords-respondents-caveator.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of two civil revision petitions i.e. C.R. Nos. 1190 and 1150 of 2015, as common questions of facts and law are involved in both the revision petitions. For dictating the order, ***C.R. No. 1190 of 2015, Vinod Thapar and others vs. Seema Mehra and another*** is being taken up.

The tenants and the landlords both have challenged the order of the Appellate Authority, Ludhiana dated 07.02.2015 (Annexure P-5) by filing separate revision petitions whereby, mesne profits of the shop in question have been assessed at ₹20,000/- per month.

Senior counsel for the tenant has submitted that the rent has been held to be ₹500/- by the Rent Controller and, therefore, the mesne profits of ₹20,000/- per month without any tool bar is not justified and is a fanciful assessment by the Appellate Authority without any registered lease deed having been placed on the record by the landlord. It is further contended that neither any application was also filed for mesne profits on the basis of which the Appellate Authority could come to the conclusion as to what was the prevalent market rent of a similar premises.

A perusal of the paperbook would to on to show that after the order of eviction was passed on 21.10.2014, the appeal came to be filed by the petitioner-tenant and in view of the execution filed by the landlord, an application for stay and an application for putting up the file, were filed before the Appellate Authority. The Appellate Authority, on the said application, passed the impugned order by holding as under:

> "7. Where the rent fixed as discussed above was in the year 1981 @ Rs. 500/- per month and since then a period of 34 years having lapsed. In order to adjudicate the application, it would be necessary to determine the mesne profits which in the above stated circumstances keeping in view the period which the tenancy was created which was 34 years back in the year, 1981, mesne profits in these circumstances would be justified to be fixed at Rs. 20,000/- per month.
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> 8. Admittedly, appellants have not paid rent @ Rs. 500/- per month from 1.8.2012 onwards. Accordingly, in case appellants pay rent due @ Rs. 500/- per month from 1.8.2012 till the date of ejectment order. i.e., 21.10.2014 and mesne profits assessed at Rs. 20,000/- per month from 21.10.2014 onwards till decision of the appeal and payment of arrears on or before 21.2.2015 and thereafter mesne profits assessed on or before 25th day of each calendar month, the execution shall remain stayed failing which stay granted shall become inoperative. File be put up on the date already fixed whereas copy of order be sent to the learned trial court/executing court."

The law on this issue stands already settled by this Court in ***Surinder Kumar vs. Rattan Lal, 2006 (2) PLR 200*** wherein, it has been specifically held that registered lease deeds of the locality are a good basis to fix the mesne profits. The relevant para reads as under:

> "9. The other question that requires consideration 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."

The Apex Court in ***State of Maharashtra and another vs. M/s. Super Max International Pvt. Ltd. and others, 2009 (9) SCC 772*** has also held that the landlord is entitled for the market rent but the same is to be on the basis of some valuation report or on the basis of the rent prevalent in the area. Thereafter, in ***Mohammad Ahmad and another vs. Atma Ram Chauhan and others, 2011 (7) SCC 755,*** principles were further laid down that the location, type of construction, accessibility with the main road and parking facilities etc. have to be taken into consideration. The relevant observations 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 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."

A perusal of the order of the Appellate Authority dated 07.02.2015 shows that the said exercise was not carried out and merely because the tenancy was created in the year 1981, the mesne profits had been fixed at ₹20,000/- per month from ₹500/- per month. It is, in the opinion of this Court, diametrically opposite to the law laid down which has been discussed above, without having any valid tool bar before the Court.

Accordingly, the said order passed by the Appellate Authority dated 07.02.2015 cannot be held to be sustainable and the same is quashed. The Appellate Authority shall reassess the mesne profits on the basis of a registered lease deed of the same area or valuation report keeping in view the law which is already settled on the above said proposition. The said exercise be carried out within a period of two months from today. The tenants shall not be evicted, however, from the premises till the Appellate Authority passes the said order. However, all the arrears of rent from 01.08.2012 @ ₹500/- per month be cleared within one month.

Resultantly, C.R. No. 1190 of 2015 filed by the tenants is allowed and C.R. No. 1150 of 2015 filed by the landlords is dismissed as having been rendered infructuous.

21.02.2015 (G.S. SANDHAWALIA)
shivani/sailesh JUDGE