

CR No.1035 of 2014 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1035 of 2014 (O&M)

Date of decision:12.02.2015

M/s V-Mart Retail Ltd.

...Petitioner

Versus

Raghunath Gupta and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Divanshu Jain, Advocate,
for the petitioner.

Mr. Sharan Sethi, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

This petition is directed against the order dated 14.11.2013, staying dispossession of the petitioner subject to payment of arrears of rent as well as mesne profits including the mesne profits for the future period.

In short, Civil Suit No.324 dated 21.07.2007 was filed by the respondents against the petitioner for seeking its ejectment from SCO No.44, Chandigarh-Kalka Road, Notified Area Committee, Manimajra, UT Chandigarh and for recovery of rent for the months of January and February, 2006 amounting to ₹3,50,000/- @ ₹1,75,000/- per month and also for recovery of rent for the months of December 2006 to May 2007, amounting to ₹11,08,500/- @ ₹1,84,750/- per month along with interest @ 6% per annum from the date of institution of the suit till its realization and for recovery of future damages @ ₹4,00,000/- per month from the date of

institution of the suit till the defendants vacate the demised premises voluntarily or evicted in accordance with law. On the pleadings of the parties, the trial Court framed as many as 6 issues, which are reproduced as follows:-

- “1. Whether the plaintiffs are entitled for ejectment of defendants from the tenanted premises as detailed in the head note of the plaint?OPP.
2. Whether the plaintiffs are entitled to recovery of rent for the period as detailed in the head note of the plaint?OPP.
3. Whether the plaintiffs are entitled to future damages @ Rs.4 lacs per month from the date of the suit till the vacation of the premises by defendant?OPP.
4. Whether the suit is not maintainable?OPD.
5. Whether the suit is filed on false and frivolous grounds?OPD.
6. Relief.”

The trial Court decreed the suit on 01.02.2013 and while deciding issue no.3 observed that *“as far as the relief or recovery of future damages at the rate of Rs.4 lac per month is concerned, the plaintiffs have not proved on record as to how they have calculated the said amount. But since the term of lease has already expired on 31.12.2011, therefore the defendant's are in unauthorized possession of the premises in dispute from*

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01.01.2012 onwards. Therefore they are liable to pay damages @ of last payable rent i.e. 2,23,349/- till they vacate the premises, for unauthorized use and occupation of the premises". The decree was passed in the following manner:-

“It is ordered that the suit of the plaintiffs succeeds and is hereby decreed with costs and defendants are directed to hand over the vacant possession of demised premises to the plaintiffs within two months from the date of judgment and plaintiffs are also entitled to recover rent of Rs.3,50,000/- from the defendants with interest @ 6% per annum till the entire payment is made. Plaintiffs are further entitled to recover damages w.e.f. 1.1.12 @ Rs.2,23,349/- per month till the defendants vacate the suit premises.”

The judgment and decree dated 01.02.2013 was challenged by the petitioner in appeal in which an application under Order 41 Rule 5 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) was filed by it for stay and at the same time an application under Section 151 of the CPC was filed by the respondents for grant of mesne profits. The lower Appellate Court decided both the applications together and while staying dispossession of the petitioner, ordered for payment of mesne profits @ ₹7,00,000/- per month from the date of passing of the decree and further directed that the arrears of mesne profits till 31.12.2013 minus the amount already paid, be deposited with the trial Court within 2 months including

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mesne profits for the future period.

Counsel for the petitioner has argued that the lower Appellate Court has erred in directing the petitioner to pay the mesne profits to the tune of ₹7 lacs per month though the decree in favour of the respondents categorically states that the petitioner is liable to pay damages w.e.f. 01.01.2012 @ ₹2,23,349/- per month till they vacate the demised premises.

Counsel for the respondents, however, has argued that as soon as their suit was decreed against the petitioner, the relationship of lessor and lessee came to an end and the occupation of the petitioner in the suit premises was unauthorized. Since the petitioner has been allowed to stay in the demised premises under the impugned order, therefore, it is liable to pay the mesne profits as determined by the lower Appellate Court in view of the law laid down by the Supreme Court in the case of **M/s Atma Ram Properties (P) Ltd. v. M/s. Federal Motors Pvt. Ltd.**, 2005(1) Civil Court Cases 454.

I have heard learned counsel for the parties and examined the available record with their able assistance.

In the normal circumstances, the agitation of the respondents would have been correct and the petitioner had to pay the mesne profits, as determined by the lower Appellate Court, in view of the judgment of the Supreme Court in **M/s Atma Ram Properties (P) Ltd.'s case (supra)** but in the peculiar facts and circumstances of this case in which the decree of the Civil Court specifically provides that the respondents would be entitled to recover damages w.e.f. 01.01.2012 @ ₹2,23,349/- per month till the

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petitioner vacates the suit premises, the mesne profits cannot be assessed over and above the amount already determined by the trial Court in its decree.

In view thereof, the present revision petition is allowed and the impugned order passed by the lower Appellate Court, asking the petitioner to pay mesne profits @ ₹7 lacs per month, is set aside, being erroneous. However, the petitioner shall keep on paying the damages/mesne profits, as ordered by the trial Court in its decree, @ ₹2,23,349/- per month to the respondents.

February 12, 2015
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(Rakesh Kumar Jain)
Judge