

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

**CR No.1389 of 2013 (O&M)
Date of Decision : 28.4.2015**

Punjab National Bank

.....Petitioner

Versus

Yashpal and ors.

.....Respondents

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. K.R. Dhawan, Advocate for the respondents.

GURMIT RAM, J.

The brief admitted facts pertaining to the background of this revision are that respondents herein filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short – 'the Act') for ejectment of the tenant (petitioner herein) from the demised premises. This petition was accepted by the learned Rent Controller, Zira vide order dated 21.9.2010 (Annexure P-1) and the respondent-tenant was directed to hand over the vacant possession of the demised premises to the respondents herein within a period of three months. The petitioner-tenant filed an appeal before the learned Appellate Authority, Ferozepur which was dismissed and disposed of vide judgment dated 26.10.2012 (Annexure P-4).

2. During the pendency of this appeal before the Appellate Authority, Ferozepur, the respondents-herein filed an

application (Annexure P-2) before that Authority for issuing direction to the appellant-tenant to pay the mesne profits for the use and occupation of the property in dispute till the actual delivery of its possession to them. Reply to this application was also filed.

3. The learned Appellate Authority, Ferozepur while disposing the appeal vide judgment (Annexure P-4) also disposed of the application (Annexure P2) along with appeal. Para No.17 of this judgment is relevant for this purpose. The learned Appellate Authority while relying upon the fact that the present petitioner-tenant had taken another premises on rent at the rate of Rs.20/- per square feet for the shifting of the bank assessed the mesne profits of the demised premises @ Rs.15/- per square feet. Here it is also made clear that during the pendency of this appeal before the learned Appellate Authority, the present petitioner-tenant vacated the demised premises w.e.f. 8.10.2012. So now the dispute in this revision petition is only with regard to mesne profits for the period w.e.f. 21.9.2010 when the ejectment order was passed against the petitioner-tenant till 8.10.2012 when they had actually delivered the vacant possession of demised premises to the respondents herein.

4. The petitioner-tenant feeling aggrieved from the judgments of both the Courts below has filed the the instant revision petition. As above-said now the *lis* between the parties in the instant petition is with regard to the amount of mesne profits in respect of above described period i.e. 21.9.2010 to 8.10.2012 and not more than that since the petitioner-tenant had already vacated the demised premises during the

pendency of the appeal before the learned Appellate Authority, Ferozepur.

5. The learned counsel for the petitioner has contended that the learned Appellate Authority has granted the mesne profits @ Rs.15/- per square feet without the basis of any evidence on the record and as such the impugned order Annexure P-4 is not tenable. It is further his contention that in the application (Annexure P2) filed by the respondents herein for the grant of mesne profits, no reference is made with regard to any rent note, lease deed etc. in order to show the rate of rent prevailing at that time in the locality wherein the demised premises were situated. Admittedly, there is no mention of any rent note as well as lease deed in this application. It is further his contention that in order to get the mesne profits, the concerned party is bound to bring on the record documentary evidence in order to show the rate of rent prevailing at that time in the locality in which the demised premises are situated. In support of his contention, counsel for the petitioner has placed reliance upon **Surinder Kumar Versus Rattan Lal, 2006(3) R.C.R.(Civil) 291.**

6. But any how the learned Appellate Authority while passing the order regarding the grant of mesne profits in question, relied upon two lease deeds Ex.R1 dated 17.7.2006 showing the rate of rent Rs.7.75 per square feet and one more lease deed Ex.R2 dated 1.9.2006 showing the rate of rent Rs.8/- per square feet. So this case is not squarely covered within the ambit of case law cited supra. The learned Appellate Authority had also taken into consideration the fact while passing the order pertaining to grant of mesne profits that the petitioner-tenant had

taken another premises on a fresh lease @ Rs.20/- per square feet for the shifting of bank.

7. Then it is also to note that tenancy in the case in hand was created in the year 1991 vide registered lease deed dated 5.7.1991. So the premises which the petitioner/tenant - bank has taken on rent vide the alleged fresh lease deed would be in a better condition with all modern facilities than the demised premises of this case. Even the copy of the alleged fresh lease deed executed by the petitioner/tenant – bank is also not brought on the record.

8. Then it is also admitted that the total area of the demised premises which was rented out to the petitioner-tenant was 4334.24 square feet. Then it is also admitted that at present the tenant has been making the payment of rent at the rate of Rs.10,491/- per month. So the grant of mesne profits @ Rs.15 per square feet for use and occupation of the demised premises is certainly on the higher side. **So the mesne profits of the demised premises for the above-said period in question are assessed to be Rs.10/- per square feet and the impugned order to this extent is modified.** Then it is also admitted that some payment has been made by the petitioner-tenant to the respondent-herein during the pendency of this revision petition as a part payment of mesne profits. The petitioner-tenant is directed to make the payment of the remaining amount of the mesne profits qua the demised premises @ Rs.10/- per square feet to the respondents herein after adjusting the amount which it has already paid within a period of 1 ½ months from today, failing which, to pay the interest @ 8% per annum on the amount which ever is found due after

adjusting the payment previously made in this regard.

9. So, this revision petition to the extent above-said is partly accepted and disposed of accordingly.

Since the main revision petition has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

28.4.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No