

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

C.R. No. 1393 of 2013

Reserved on: 05.01.2015

Date of decision: 21.01.2015

M/s. Jetage Multimedia Gallery and another

....Petitioner(s)

Versus

Sunil Kumar Sharma and others

...Respondent(s)

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

Present: Mr. Sandeep Jain, Advocate,
for the petitioners.

Mr. Madan Sandhu, Advocate,
for the respondents.

G.S.SANDHAWALIA, J.

The question that arises in the present revision petition is whether the Appellate Authority vide order dated 07.02.2013 was justified in fixing the mesne profits at ₹1,00,000/- per month from the date of eviction i.e. 19.05.2012 on the basis of a franchise agreement executed by the petitioners with respondent no. 9, which was the ground of eviction on account of sub-letting.

The argument which has been raised by counsel for the petitioners is that in the absence of any registered lease deed brought on record, the Appellate Authority was not justified in quantifying the above said amount and making the petitioner liable to pay the same.

Counsel for the respondents, on the other hand, has submitted that once the order of eviction had been passed, it is settled principle of law that the contractual rate of rent comes to an end and the tenant is liable to pay the mesne profits as long they are not fanciful and excessive and are

assessed on the basis of some criteria and this Court would not interfere in the well reasoned order passed by the Appellate Authority.

The facts would go on to demonstrate that the landlords filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'the Act') for eviction of the respondents from the entire half portion of the ground floor of SCO No. 6 (6-P) situated in Sector 10, Panchkula on the ground of subletting alleging that the petitioners herein had sublet to respondent no. 9. The categorical case of the landlords was that there was a rent deed dated 11.11.2003 @ ₹20,000/- per month which was substituted on 21.11.2008 and the rent was increased to ₹30,000/- The present petitioner had sublet the major portion of the premises in question measuring 900 sq. ft. excluding the back side portion to M/s. Showoff-respondent no. 9 without the written consent of the landlords. The said respondent was paying ₹1,00,000/- as rent to the petitioners and he was in complete control of the tenanted premises and running a separate business. Eviction was also sought on the ground of arrears of rent and material impairment. The factum of parting of possession was admitted by taking the plea that there was a franchise agreement with the said respondent but complete control of the premises had not been given and there was oral permission of the lessor. The said respondent no. 9 was selling readymade cloths on the front side of the premises in question whereas the answering respondents were carrying on the business on the back side of the premises in question. The franchise agreement dated 27.08.2008 was got exhibited as R-1 and the argument that the possession was only as a licensee on payment of ₹1,00,000/- per month as commission and it did not amount to subletting was rejected by the Rent

Controller. It was noticed that in the rent deed, there was a clause that the lessee shall not sublet the premises without written consent of the lessors and the franchise agreement went on to show that the petitioners were not partners in the business of respondent no. 9 and they had no control over the same. Rather criminal litigation had also commenced inter se them. Accordingly, third party being in possession of the property, eviction was ordered on the ground of subletting.

The Appellate Authority on also upheld the finding and also allowed the application filed under Section 151 CPC for mesne profits keeping in mind the franchise agreement. The registered lease deeds pertaining to the other premises in the vicinity were rejected on the ground that they were related to much larger tenanted premises and the said rate of rent could not be considered. However, as noticed, the petitioners were held liable to pay mesne profits at ₹1,00,000/- per month from the date of ejectment order till the vacation of the premises in question. It is an agreed stand between the parties that the possession is no longer with the petitioners and it was handed over on 01.06.2013.

While issuing notice of motion on 15.05.2013, stay was granted only to the extent of mesne profits in excess of ₹30,000/- per month since the ground argued by counsel for the petitioners was only regarding the dispute of mesne profits and, therefore, the findings recorded by the Authorities below having not been challenged have become final.

The law on the said issue that once the order of eviction has been passed, the contractual rate of rent inter se the parties comes to an end was laid down by the Apex Court in *M/s. Atma Ram Properties (P) Ltd. vs.*

M/s. Federal Motors Pvt. Ltd., 2005 (1) SCC 705. The view was followed

in ***Anderson Wright and Co. vs. Amar Nath Roy, 2005 (2) RCR (Civil) 831*** and by a three-Judge Bench of the Apex Court in ***State of Maharashtra and another vs. M/s. Super Max International Pvt. Ltd. and others, 2009 (9) SCC 772***. It was further held that the amount of mesne profits should not be excessive, fanciful or a punitive amount. The relevant observations read thus:-

“In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.”

This Court in ***Surender Kumar vs. Rattan Lal, 2006 (2) PLR 200*** held that while fixing the mesne profits, registered lease deeds are a valid parameter and a toolbar to fix the mesne profits. It was held that the assessment should be on the basis of some relevant material and the tenant should be protected so that the amount which is to be deposited can be refunded in case the appeal is successful. The lease deeds also were to be of the same locality and of a similar building to show the prevalent rate of rent which the landlord was entitled during the pendency of the appeal of the tenant. The relevant observations read thus:-

“8. The other questions 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. It was observed that to grant such relief is the inherent jurisdiction of the Court and application of the above principle by analogy to support imposition of conditional or periodical deposit of reasonable sum in Court is the pre condition for grant of stay of execution of decree for eviction. Therefore, in case the party filing the appeal or seeking revision of the order is successful it would be entitled to restitution of the

interim benefit which has been granted to the respondent in the appeal or the revision. Insofar as the objection of Shri M.L. Sarin, Senior Advocate as regards the inadmissibility of documents on account of the lease deed being inadmissible for want of registration, it is appropriate to note that there is no dispute to the said proposition that an un-registered lease deed signed by the lesser and lessee is inadmissible in evidence, as has been held in several decisions, c.f. [Satish Chand Makhan v. Govardhan Das Byas](#) , [Bajaj Auto Limited v. Behari Lal Kohli A.I.R. 1989 S.C. 1606](#) and [Anthony v. K.C. Ittoop and Sons and Ors.](#) (2006) 6 S.C.C. 394. It has already been held that the provisional assessment is to be made on the basis of cogent and credible evidence which would necessarily mean that inadmissible evidence like un-registered lease deeds which are required to be registered compulsorily in terms of Section 17(1)(d) of the Registration Act, 1908 are not taken into account.”

The Apex Court thereafter in ***Mohammad Ahmad and another vs. Atma Ram Chauhan and others, 2011 (7) SCC 755*** laid down the principle that the market rent shall be worked out on the basis of valuation reports or reliable estimate of building rentals in the surrounding areas let out on the rent recently. The rent which was to be fixed should be proper and adequate keeping in mind the location, type of construction, accessibility to the main road, parking space facilities and it should not end up being a bonanza for the landlord. The principles laid down read thus:-

“(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.”

In the present case, though the franchise agreement is not a registered document as such but it formed the basis of the eviction proceedings inter se the parties themselves. The factum was never denied by the petitioners that the major portion of the premises comprising of the front portion of the showroom had been handed over to the franchisee. The perusal of Ex.R-1 would go on to show that the petitioner was entitled for a sum of ₹1,00,000/- per month for the period from 01.12.2008 to 30.11.2011 and thereafter, to a sum of ₹1,15,000/- per month from 01.12.2011 to 30.11.2014 whereas, it had to further go up from 01.12.2014 to 30.11.2017 to the tune of ₹1,32,250/- per month. The said amount was inclusive of service tax which was to be borne by the petitioners alongwith other property tax or municipal tax. The term of agreement was 9 years. Thus, it is apparent that the petitioners were getting sum of ₹1,15,000/- per month from 01.12.2011 after the eviction order had been passed on 19.05.2012 pertaining to the same premises in question. It is not disputed that the premises are situated at a prime location in Panchkula and is facing the main bus stand of Panchkula and it is a corner building. Thus, the franchiser which was paying the amount to the petitioners was generating sufficient income and was paying this amount to the petitioners which the petitioners were only receiving on account of the pendency of the litigation after the eviction order had been passed and were in possession only on account of the interim orders. The landlord would have been thus entitled for the said

market rent in case the possession had been handed over to him. The appellate Authority was thus well justified in fixing the mesne profits at ₹1,00,000/- per month on the basis of a franchise agreement which cannot be said to have not been proved in accordance with law and the authenticity of the same cannot be doubted. The argument raised that it should have been a registered lease deed to have been a valid toolbar or a parameter, in the present facts and circumstances, thus is without any basis as the Rent Controller has already ordered eviction on the basis of the said franchise agreement by holding it to be a case of subletting. Even otherwise, the said agreement or the rate was never denied by the tenant himself as his case was that control of the premises remained with him. Thus, once the agreement itself stands proved and the rate of rent which the landlord would be entitled after the eviction has come on record of the same premises in question, no fault can be found with the order of the Appellate Authority.

In such circumstances, the observations made by this Court in *Surinder Kumar's case (supra)* would not be applicable in view of the peculiar facts and circumstances as noticed above.

Accordingly, keeping in view the above discussion, this Court is of the opinion that there is no scope for interference in the well reasoned orders passed by the Courts below and the present revision petition is dismissed.

21.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

