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

CR No.2372 of 2015 (O&M)

Date of decision: April 08, 2015

Nebh Raj

.....Petitioner

Versus

Om Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Namit Gautam, Advocate
for the petitioner.

SABINA, J

Respondents had sought ejectment of the petitioner by moving a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 from the shop in question. The said petition was allowed by the Rent Controller vide order dated 27.05.2014. Aggrieved against the said order, petitioner preferred an appeal. During the pendency of the appeal, respondents moved an application for determination of mesne profits. Vide the impugned order dated 30.01.2015, the Appellate Authority has assessed the mesne profits at the rate of ₹11,000/- per month. Hence, the present petition.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

The learned Appellate Authority while assessing the mesne profits, has held as under:-

“5. In *M/s Atma Ram Properties (P) Ltd. Vs.*

Federal Motors Pvt. Ltd. (2005) 1, SCC, 705, the Hon'ble Supreme Court upheld the principle that the tenant continuing in occupation of the tenancy premises after termination of the tenancy, is an unauthorised and wrongly occupation and decree for damages or mesne-profit can be passed for the period of said occupation till date he delivers the vacant possession to the landlord. From the perusal of the record, it appears that the petition under section 13 of the Punjab Urban Rent Restriction Act was filed by the respondent/landlord in the year 2000 and same was decided in his favour on 27.05.2014. Against that, the appellant/applicant has filed the appeal and alongwith appeal, he has filed the instant application. However, in reply, the respondent/landlord claimed mesne-profit. Since, the eviction order has been passed, though appeal has been filed by appellant/applicant, but since the tenancy has been terminated, as such the respondent being landlord is not bound by contractual rate of rent effective for the period preceding the date of eviction order. Now question has arisen in this case as to assessment of the mese-profit. The Code of Civil Procedure defines mesne-profit is that which a person in wrongful possession of property has actually received or might with ordinarily diligence have received therefrom. Admittedly, the shop in question is situated at main market. Though, the applicant/tenant has claimed that the prevailing rate of rent is not more than Rs.15000/- to 20000/- per month and in order to substantiate his version, he has placed on record copies of the rent deed with regard to the rental value of the area in which the shop in dispute is situated.

However, on the other hand, the respondent/landlord has placed on record the copies of rent notes. Needless to say here that, the rate of rent of the commercial premises always depends about the type of construction, location and accessibility to the main road and parking space facility. It is also well settled that while deciding the mesne-profit, care ought to be taken that it does not end up being bonanza for the landlord. Neither the appellants/applicants nor the respondent/landlord took any initiative to get the rent fixed by official valuer or by any other agency having expertise in the matter. However, the fact deserves to be noticed is that value of the real estate and rent rates have sky rocketed now a days. Keeping in view the factual position that shop in question is situated at main road and taking in overall view of the matter and record made available by rate of Rs.1200/- per month. Though, the parties to this lis have placed on record the rent deeds in order to prove the prevailing rate of rent at present. However, by applying method of 10% increase coupled with overall view of the matter and record made available by the parties, I think that the appellant/applicant should, from the date of passing of eviction order, pay mesne-profit/compensation for the use and occupation at the rate of Rs.11000/- per month. This application disposed of accordingly. The operation of the impugned order of eviction stayed till the pendency of the appeal subject to the following conditions:-

- a) W.E.F. 27.05.2014 the date of passing of eviction order by the learned Rent Controller, the appellants shall be liable to pay the respondent-landlord an amount of Rs.11000/-*

per month in addition to the contractual rent.

b) Payment of mesne profits is permitted to be made either in cash or by way of bank draft in the matter of landlord-respondent, and the appellants shall continue to pay to the respondent-landlord month by month by the 15th day of that month.

c) The respondent-landlord shall file an undertaking on affidavit making a statement that the amount so recovered by him in terms of this order shall be refunded or remain available for adjustment in terms of any direction which this Court may pass at the time of final judgment and if any amount became liable to be refunded consistently with the permission of this Court in this appeal the respondent-landlord shall refund the same with the time provided by the court for the purpose and the amount shall remain charged on the suit property.”

The Appellate Authority has assessed the mesne profits by keeping in view the material placed before it.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

April 08, 2015
m.singh