IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(116-A) **CR No.2998 of 2015**
Decided on: May 4, 2015.

Air Cmde. Raghubir Singh (Retd.)

.... Petitioner

Versus

Sadhu Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Karan Gupta, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

Vide impugned order while admitting an appeal against the ejectment orders, the Appellate Authority has granted interim stay to the tenant subject to payment of mesne profits, estimated at the rate of Rs.3500/- per month against the agreed rent fixed 40 years prior i.e. Rs.215/-.

Learned counsel for the petitioner-landlord submits that the valuation report of rent submitted by an architect shows that the rental value of each shop in possession of tenants in the surrounding areas is not less than Rs.40,000/- per month for each of the shop. Counsel for the petitioner has submitted that as per ***Mohammad Ahmad and another Vs. Atma Ram Chauhan and others 2011 (7) SCC 755,*** certain parameters were laid down in the said judgment for determining mesne profits. Counsel for the petitioner submits that the first guideline provided is as under:

> *"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 rate 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."

No doubt for the purpose of mesne profits, the present market rate can be worked out on the basis of valuation report of the building rented out in the surrounding area in recent past.

In ***Atma Ram Properties Pvt. Ltd. Vs. Federal Motors Pvt. Ltd 2005 (1) SCC 705*** the Apex Court has observed that while admitting the appeal, it is perfectly open to the Appellate or Revisional Court to direct the tenant to pay rent higher than the contractual rent, but the Court, however, will not fix any excessive, fanciful or punitive amount.

Valuation report, no doubt, can be considered but the valuation report Annexure P-6 does not refer to any registered lease deed pertaining to any shop in the close vicinity having same/similar measurements. The estimation of the mesne profits, in said circumstances, cannot be interfered on the ground that discretion has not been fairly exercised. Had some registered lease deed pertaining to any rented premises of similar nature been produced before the Appellate Authority, the Appellate Authority could have estimated the present market rent to assess the mesne profits.

No ground is made out for interference in the discretion exercised by the Appellate Authority, even if, apparently the mesne profits appear to be meager. It is clarified that the mesne profits deposited before the Rent Controller may be got released by the petitioner landlord as the landlord has got right to enjoy the mesne profits.

Disposed of.

(M.M.S. BEDI)
JUDGE

May 4, 2015
harsha