IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CR 3462 of 2013

Date of Decision: March 18, 2015

Punjab State and another

…..Petitioners

Vs.

Amarjit Singh and others

…..Respondents

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

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Present:- Mr.Neeraj Sharma, AAG, Punjab.,
for the petitioners.

Mr. Kunal Mulwani, Advocate
for the respondents.

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M.M.S. BEDI, J.

State of Punjab and the Subordinate Services Selection Board, Punjab, have preferred the present revision petition against the order dated April 30, 2013 passed by Appellate Authority, Chandigarh, assessing mesne profits at the rate of Rs.2,61,600/- per month whereas the agreed rate of rent was Rs.71992/- per month, during the pendency of the appeal.

Briefly, the facts of the case relevant for decision of the present case are that respondent-landlord had filed an ejectment petition against the petitioners on the ground of non-payment of rent w.e.f. March 1, 2011. The ejectment order was passed against the petitioners on September 17, 2012 on account of assessed rent having not been paid. Copy of the order has been placed on record as annexure P-8. Rent Appeal was preferred before the Appellate Authority, Chandigarh. Vide order dated April 30, 2013, the petitioners had been granted stay subject to payment of mesne profits at the rate of Rs.75/- per sq. ft. for the area of 348 sq. ft. calculated as Rs.2,61,600/- per month. It was ordered that in case the petitioner- tenant failed to deposit the arrears of rent and mesne profits within a period of two months, the stay would stand vacated automatically.

During the pendency of the present petition, the eviction order has been confirmed against the petitioners and the order of ejectment has been finally upheld in CR No. 6791 of 2013 decided on July 30, 2014, directing that the arrears of mesne profits, if any, shall be cleared by the State within a period of three weeks.

The sole question which is required to be determined in the present case is whether the mesne profits determined by the Appellate Authority under the East Punjab Urban Rent Restriction Act, for short 'the Act', is appropriate or it is extraordinary excessive assessment of the mesne profits.

Learned counsel for the petitioners has submitted that no doubt, as per judgment in **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Private Limited**, 2005 (1) RCR (Rent) 1 (SC), the Apex Court has permitted the grant of reasonable market rate of rent to the landlord by the tenant but the Court has to impose reasonable terms which in its opinion are reasonably sufficient to compensate the landlord for loss occasioned by delay in execution of the decree by grant of stay order, in the event of appeal being dismissed.

Learned counsel for the petitioners submits that the amount assessed is not reasonable amount. The Appellate Authority failed to consider that the lease deeds furnished by the respondents-landlord are not relevant to determine the market rate as the lease deed of restaurant Chennai Mirchi in SCO No. 41-42, Sector 8-C, Chandigarh is lying closed for the last many months on account of exorbitant rent of Rs.3 lacs per month. The Appellate Authority has wrongly assessed the rent at the rate of Rs.75 per sq. ft. He has also argued that the tenancy was till September 30, 2014 as per agreement annexure P-5 dated September 25, 2002 in which the landlord had agreed the rate of rent for 12 years, varying from Rs.81550/- in the first year and Rs.1,75,300/- in the 12th year. The lease expired on September 30, 2014 as such landlord was not entitled to claim rent beyond the agreed rent.

I have considered all the contentions of learned counsel for the State. So far as entitlement of the landlord to receive mesne profits or compensation for use and occupation of the premises after the ejectment order having been passed by the Rent Controller or by a Court of law is concerned, there is no controversy regarding the liability of the tenant but the assessment of the mesne profits during the pendency of the appeal has always been a point of controversy as the same is assessed not by permitting the parties to lead evidence as per the provisions of law but is generally the mere estimation of the market rent on the basis of the prima facie material.

It is always the duty of the Appellate Authority to consider the authenticity and reliability of the documents produced towards the rate of market rent. The discretion granted to the Appellate Authority under the Rent Act is not guided by any statutory parameters but it is settled law as laid down in **M/s Atma Ram Properties (P) Ltd.'s** case (supra) that once decree for eviction has been passed, in the event of execution of decree for eviction being stayed, the appellants can be put on such reasonable terms, as would in the opinion of the Appellate Court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of appeal being dismissed. A tenant was held liable to pay compensation for use and occupation from the date of eviction till the time landlord would be able to get the premises vacated after final decision. The Apex Court in **State of Maharashtra Vs. M/s Supermax International Private Limited**, AIR 2010 SC 722 had no doubt, relying on the judgment of **M/s Atma Ram Properties (P) Ltd.'s** case (supra) clarified that while admitting appeal, it is perfectly open to the Appellate or revisional Court to direct the tenant to pay rent higher than the contractual rent but Court, however, will not fix any excessive, fanciful or punitive amount.

In the present case, the Appellate Authority has taken into consideration the lease deeds of the properties in the adjacent areas where the rent at the rate of Rs.175 sq. yards has been agreed to between the landlord and tenant. The Appellate Authority in the present case has assessed the mesne profits @ Rs.75/- per sq. yard. The amount assessed does not appear to be excessive or unreasonable. The subjective satisfaction of the Rent Controller or Appellate Authority in assessing the market rent can be interfered in a supervisory revisional jurisdiction only if the amount assessed is unreasonably exorbitant pricking the conscious of the Court and is perverse on the face of it.

No ground is made out for interference in the order of the Appellate Authority in assessing the mesne profits.

Dismissed.

March 18, 2015 (M.M.S.BEDI)
sanjay JUDGE