IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CR 4533 of 2014

Date of Decision: August 10, 2015

State of Haryana and another

…..Petitioners

Vs.

Gurdeep Kahlon and another

…..Respondents

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

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Present:- Mr.Raj Kumar Makkad, DAG, Haryana.
for the petitioners.

Mr. Raman Mahajan, Advocate
for the respondents.

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M.M.S. BEDI, J.

This revision petition has been preferred by State of Haryana through the Secretary, Government of Haryana, Department of Printing and Stationery and Controller of Printing and Stationery aggrieved by an order dated April 9, 2014 passed by the Appellate Authority by virtue of which the ejectment order passed against the petitioners by Rent Controller vide order dated July 30, 2013 has been upheld whereby it was held that the landlord-respondents want the tenanted premises for personal use and occupation.

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Since the petitioners have vacated the tenanted premises in dispute on June 30, 2014, the validity of the order of eviction passed by the Appellate Authority has not been questioned but the grievance of the petitioners is that the Appellate Authority vide order dated April 9, 2014 passed on an application for grant of mesne profits/ compensation for use and occupation of the premises in dispute has assessed the mesne profits at the rate of Rs.5.48 lacs per month over and above the rent to be deposited by the tenant by way of a fixed deposit carrying maximum rate of interest in a nationalized bank.

After ejectment order was passed by the Rent Controller on July 30, 2013, the tenant- petitioners had assailed the same by filing an appeal. While the appeal was listed for September 23, 2013, the landlord-respondents filed an application dated September 16, 2013 pleading therein that the premises in dispute consisting of first and second floor of SCO No.32, Sector 7, Chandigarh was on rent at the rate of Rs.3118/- per month for both the floors being paid by the tenant, whereas the first floor of SCO No. 151-52, Sector 9, Chandigarh which had been let out at a monthly rent of Rs.2,58,750/-, for first floor which is 2559 sq. ft. at the rate of Rs.103.50 per sq. ft. The respondent-landlord claims that the first floor of the demised premises consisted of 2427 sq. ft. and second floor was 2869 sq. ft as such the total area of demised premises in Sector 7, Chandigarh was 5290 sq. ft. A copy of the registered lease deed dated December 23, 2009 was placed on record.

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The application for mesne profits was resisted by filing a reply to the effect that the premised had been rented out in the year 1970. The building was old having no comparison with the newly construed buildings and the lease deed produced for comparison was not relevant for determining the mesne profits. It was claimed that on account of different location of SCO No.151-152, Sector 9, Chandigarh which is the subject matter of the lease deed dated December 23, 2009, the application for mesne profits should be dismissed.

The Appellate Authority relying upon the judgment of **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Private Limited**, 2005 (1) RCR (Rent) 1 (SC) and **Surinder Kumar Vs. Rattan Lal**, 2006 (3) RCR (Civil) 291 observed that both the demised premises were on the same Madhya Marg and fall within the ambit of commercial hub of City Chandigarh. Considering the area of the demise premises as 5296 sq. ft., the Appellate Authority assessed the mesne profits as Rs.5.48 lacs per month for the period during the pendency of the appeal over and above the contractual rent of Rs.3118/- per month. A direction was issued to the tenant to deposit the mesne profits calculated w.e.f. July 30, 2014 within a period of one month.

Learned counsel for the petitioners State has vehemently contended that the Appellate Authority has adopted wrong parameters for determining the mesne profits by comparing the per sq. ft. rent, for area of 5290 sq. ft. A strong reliance has been placed on rent agreement of shop of

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Sector 7, i.e. SCO No. 40 where the tenanted premises is 1100 sq. ft. By registered lease deed, the landlord has agreed to rent out the same at the rate of Rs.35000/- per month with an escalation clause for next five years which is approximately at the rate of 10% per annum.

I have heard learned counsel for the petitioners and considered the lease deed relied upon pertaining to SCO No.40, Sector 7-C, Chandigarh. So far as the concessional rate for approval at the annual rateable value for self-assessment of commercial properties in Chandigarh city are concerned, vide notification issued by Chandigarh Administration Gazette Extra dated June 3, 2006, rent per sq. ft. per month for Sectors 7 and 9 has been considered to be same as such the comparison of the rent of the demised premises with another building in Sector 9 on the same Madhya Marg of similar nature does not appear to be inappropriate.

I have considered the lease deed relied upon by the State of Haryana. A careful perusal of the lease deed indicates that in SCO No. 40, Sector 7, Chandigarh, the tenant had been in occupation of the 2200 sq. ft. area w.e.f. 2005. He had agreed to vacate half of the area of the first floor and handed over the vacant possession to the lessors and he was re-let remaining half portion of the first floor measuring 1100 sq. ft. Even if it is presumed that in the year 2013 the rental value of 1100 sq. fit was agreed in context to a sitting tenant, the rental value for 5290 sq. ft. area comes to approximately Rs.1.68 lacs but for the purpose of comparison, the rental value cannot be assessed by comparing the rental value of a similar

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commercial building in same zone. The Apex Court in **M/s Atma Ram Properties** case (supra) and **State of Maharashtra and another Vs. M/s Super Max International Pvt. Limited and others**, 2009 (2) RCR (Rent) 246 has held that while fixing the mesne profits higher than the contractual rent, the Court will not fix any excessive, fanciful or punitive amount. Drawing a parallel by adopting the mean average, I am of the considered opinion that mesne profits assessed by the Appellate Authority is slightly on higher side and deserves to be reduced to an amount which is certainly more than the rental value of SCO No.40 of Sector 7 but lesser than SCO No.151-152, Sector 9, Chandigarh. It is reduced from Rs.5.48 lacs per month to Rs.2.74 lacs per month. The mesne profits for the period from July 30, 2013 to June 30, 2014 calculated at said rate comes to Rs.30.14 lacs. It is not out of place to mention here that a sum of Rs.15 lacs has already been paid to the landlord-respondent and another sum of Rs.15 lacs was paid pursuant to the order dated January 23, 2015. The amount of Rs.30.14 lacs is payable as mesne profits for the period from July 30, 2013 till June 30, 2014. A sum of Rs.30 lacs has already been paid.

With the above observation, the revision petition is partly allowed.

August 10, 2015 (M.M.S.BEDI)
sanjay JUDGE

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