IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 7266 of 2014 (O&M)
Date of decision: 24.04.2015

Harish Kumar ... Petitioner

versus

Surjit Kaur and another
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amit Jain, Advocate for the petitioner.

Mr. Sarju Puri, Advocate for the respondents.

K.Kannan, J.

In the appeal of the tenant who has obtained the relief of stay, the landlord filed a petition for determination of mesne profits. The building is with reference to a shop-cum-flat building in three floors at Sector 23, Chandigarh. That tenancy is reported to have commenced in the year 1988 at the rent of Rs. 10,000/-. The Appellate authority took note of registered lease for SCF 28 in the same sector that had been rented out for commercial purpose in three different floors for a aggregate amount of ₹ 2, 10,000/- and considering the fact that the demised property was not wholly commercial but the tenant was using the 1st floor for residence cum commercial purpose, for running sweet shop and accommodated his labour at the Barsati portion, determined ₹ 1,40,000/- as mesne profits by applying 75% cut on the lease for another property in the vicinity.

Learned counsel appearing on behalf of the tenant points out to the difference that ought to be applied for a case of new tenancy of 3 independent floors for three distinct tenancies for commercial purpose and to a property that is comprehensively used by the same tenant where only the ground floor was used for running the business in sweets and the 1st floor was used for residence purpose by the tenant himself and the 2nd floor was used for his labourers. The counsel would rely on the lease in the year 2002 in respect of a joint property in SCO 46 where the ground floor had been rented out for Rs.13,000/- and with escalation of 10% which if applied now would only fetch about Rs.23,000/-. Counsel would say that this must provide basis, if it all, for determination of mesne profits. The counsel for the landlord would explain that the Lower Appellate Court has already applied 75% deduction for the amount determined in relation to the yet another building for commercial purpose and that was a fair estimation

I would keep my intervention to be limited in jurisdiction but the only error which I would find with the order of the Court below is that a new lease for three distinct portions for commercial purpose, that would have an aggregate amount of ₹ 2,10,000/- can not offer a basis even if 75% is applied. It is to be seen in the context of a different nature of user by the same tenant. The existing rent which is paid and which is now sought to be increased will also be relevant facts. If it must be seen in the context of yet another lease of the adjoining building of the ground floor portion at ₹ 23,000/-, I will take the ground floor portion at ₹ 25,000/-, 1st floor at ₹ 20,000/-, 2nd floor at ₹ 15,000/- and it will aggregate to ₹ 60,000/- but weighing it against the document where the landlord showed transactions for an aggregate amount of ₹ 2,10,000 I will make a further addition to take the damages payable as ₹ 75,000/- for the month. The amount determined already shall stand modified at ₹ 75,000/- per month including ₹10,000/- already had as rent. The revision is allowed to the above extent.

24.04.2015 **(K.KANNAN)**
kv **JUDGE**