IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL REVISION NO.2008 OF 2016 (O&M)
DATE OF DECISION: MARCH 21, 2016

Sanjeev Kumar Gulati

.....Petitioner

VERSUS

Narinder Pal Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sunil Chadha, Sr.Advocate with
Mr. Divanshu Jain, Advocate,
for the petitioner.

Mr. Kanwaljit Singh, Sr.Advocate with
Mr. Ajay Pal Singh Brar, Advocate,
for respondent Nos.1 and 2.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.5876 CII of 2016

C.M. is allowed.

Exemption is granted from filing certified/true typed copies of impugned order as also Annexures P-1 to P-11. The said documents are taken on record.

C.M. No.5877 CII of 2016 & Civil Revision No.2008 of 2016

Notice of motion.

Mr.Ajay Pal Singh Brar, Advocate, accepts notice on behalf of contesting respondent Nos.1 and 2.

Challenge in this revision petition is to the order dated 25.02.2016 passed by the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949, whereby the mesne profits have been assessed at ₹ one lac per month for the ground floor portion of SCO No.75, Sector 40-C, Chandigarh.

It is the contention of learned senior for the petitioner that as per the lease deed dated 07.01.2004 (Annexure P-10), the rent was fixed at ₹13,500/- per month with an increase of 7% per year. Thereafter, one of the persons, namely, Parvinder Singh, who was 20% share holder in the SCO in question, sold his share to respondent Nos.3 and 4, Subhash Chand Gulati and Kavita Gulati wife of Sh.Subhash Chand Gulati respectively. The petitioner thereafter entered into a lease deed dated 26.03.2009 (Annexure P-9) with respondent Nos.3 and 4, according to which the lease amount was fixed at ₹18,000/- per month with an increase of ₹500/- per annum. He contends that as per the said registered lease deed, the lease amount of the demised premises would be ₹21,000/- whereas as per the lease deed dated 07.01.2004 (Annexure P-10), it would be ₹13,000/- per month. He contends that the mesne profits, as assessed by the Appellate Authority at ₹ one lac per month is not sustainable, especially in the light of the fact that the same is punitive, unreasonable and violative of the principles as laid down by the Hon'ble Supreme Court in Mohammad Ahmad and another Vs. Atma Ram Chauhan and others, 2011 (2) PLR 711 as also in M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd., 2005 (1) R.C.R. (Rent) 1. Reliance has also been placed upon judgements passed in Civil Revision No.1704 of 2013 (Simrat Bajwa Vs. Shri Balbir Singh) on 22.04.2013 and Civil Revision No.6863 of 2009 (M/s Jewellers Khanna Sons Vs. Naresh

Mittal and others) on 30.07.2013, M/s Bird Travels (P) Ltd. Vs. Smt.Amarjit Kaur and others, 2012 (1) R.C.R. (Civil) 822 and in Civil Revision No.6152 of 2011 (Jammu and Kashmir Bank Limited Vs. Amrit Pal Singh) on 13.05.2015. Counsel for the petitioner has also relied upon the lease deed dated 08.11.2011 (Annexure P-11), which belongs to SCO No.70, Sector 40-C, Chandigarh, where the lease amount has been fixed as per the present rate i.e. ₹44,100/- per month. He, thus, contends that the order impugned cannot sustain and deserves to be set-aside.

Mr.Kanwaljit Singh, learned senior counsel for respondent Nos.1 and 2 submits that the Appellate Authority has not violated any of the principles as have been laid down by the Hon'ble Supreme Court in the judgements referred to by the counsel for the petitioner. He contends that two registered lease deeds were placed on record by the respondent-landlords i.e. the lease deed dated 09.07.2014 pertaining to the ground floor and the basement of SCO No.66, Sector 40-C, Chandigarh, according to which the lease amount was ₹1,43,000/- per month since 01.08.2015 and the other lease deed is dated 22.07.2015, which is regarding basement of SCO No.60, Sector 40-C, Chandigarh, which was fetching lease amount of ₹23,000/- per month. The petitioner has not placed any lease deed on record. So far as lease deed dated 08.11.2011 (Annexure P-11), which has been placed on record alongwith the present revision petition, the same was not available with the Appellate Authority. In any case, he contends that the latest position has been reflected in the lease deeds, which have been placed on record by the respondent-landlords as they are later in time as compared to the lease deed, which has now been placed on record by the petitioner-tenant. For assessing the mesne profits, the market rent as prevalent today is to be taken into consideration as it is the mode of damages, which are paid to the landlord, who despite having an order of eviction in his favour is unable to get the vacant premises. He, thus, contends that the impugned order being in accordance with law does not call for any interference by this Court.

I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the impugned order dated 25.02.2016 but I find the said order to be in accordance with law.

The learned Appellate Authority has rightly relied upon two registered lease deeds dated 09.07.2014 and 22.07.2015 respectively as both reflect latest position with regard to the prevalent rent of the commercial property in the area in question as it pertains to close vicinity to the demised premises. The Appellate Authority, so as to give a moderate and reasonable amount, has itself taken note thereof and has reduced the lease amount to a reasonable level of ₹ one lac per month for the ground floor, which is in possession of the petitioner-tenant. The parameters, which are the guiding principles in the judgements which have been referred to by the counsel for the petitioner, namely, Mohammad Ahmad's case (supra) and M/s Atma Ram Properties (P) Ltd.'s case (supra), have been properly appreciated by the Appellate Authority and have been given effect to while passing the impugned order. In the opinion of this Court, the mesne profits, as assessed at the rate of ₹ one lac per month of the demises premises, cannot be said to be unreasonable or punitive in nature.

The lease deed dated 08.11.2011 (Annexure P-11), on which reliance has been placed by counsel for the petitioner, being much prior in time than the lease deeds, which have been relied upon by the respondent-landlord, has also been taken into consideration by this Court but it appears that the said lease deed would have no effect keeping in view the fact that moderation in the lease amount assessed has already been done by the Appellate Authority while fixing the mesne profits. The impugned order, thus, being in accordance with the pleadings and the documents available with the Appellate Authority as also being in accordance with the principles as laid down by the Hon'ble Supreme Court, does not call for any interference by this Court.

In view of the above discussion, there is no merit in the revision petition. The same stands dismissed.

Since the main petition stands dismissed, C.M. No.5877 CII of 2016 for staying the operation of the impugned order dated 25.02.2016 is also dismissed.

March 21, 2016 **(AUGUSTINE GEORGE MASIH)**
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