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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.R. No.2860 of 2016 (O&M)
Date of Decision : 04.05.2016**

Onkar Singh and another

..... Petitioners

Versus

Manpreet Kaur

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Kshitij Sharma, Advocate
for the petitioners.

Mr. Rajbir Singh Guron, Advocate
for the respondent.

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

AJAY TEWARI, J. (Oral)

This revision petition has been filed against the order dated 23.03.2016 passed by the Appellate Authority fixing mesne profits @ Rs.1,50,000/- per month for the shop in dispute.

The first argument of learned counsel for the petitioners is that once there was an existing escalation clause in a subsisting lease deed the mesne profits could not have been computed at a figure higher thereto,

more so when the legal ground which is being pressed before the Appellate Authority is that a petition for eviction on the ground of personal necessity could not have been filed prior to the end of the contractual period in view of the provisions of Section 13(3)(iv) of the East Punjab Urban Rent Restriction Act.

On the other hand learned counsel for the respondent-landlord urges that once the relationship of landlord and tenant has come to an end by decree of eviction there can be no falling back on the terms of the lease deed for fixation of mesne profits. He has relied upon the judgment of the Hon'ble Supreme Court in the matter of *M/s Atma Ram Properties (P) Ltd. vs. M/s Federal Motors Pvt. Ltd., reported as 2005(1) R.C.R(Rent) 1*, wherein their Lordships in paragraph No.18 sub-para (2) held as follows:-

“18. To sum up, our conclusions are:-

(2) in case of premises governed by the provisions of the [Delhi Rent Control Act, 1958](#), in view of the definition of tenant contained in clause (1) of [Section 2](#) of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;”

Learned counsel for the respondent has further relied upon the judgment of the Hon'ble Supreme Court in the matter of *Anderson Wright*

and CO. vs. Amar Nath Roy and others, reported as AIR 2005 SC 2457,

wherein their Lordships in paragraph No.5 held as follows:-

“5. As held by this Court in [Atma Ram Properties \(P\) Ltd. v. Federal Motors \(P\) Ltd.](#) , once a 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 the appeal being dismissed. It has also been held that with effect from the date of decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises on being vacated by the tenant. While determining the quantum of the amount so receivable by the landlord, the landlord is not bound by the contractual rate of rent which was prevalent prior to the date of decree.”

Learned counsel for the respondent has further relied upon the judgment of the Hon'ble Supreme Court in the matter of ***Achal Mishra vs.***

Rama Shankar Singh and others, reported as 2006(1) R.C.R(Rent) 532,

wherein their Lordships in paragraph No.5 held as follows:-

“5..... This Court also noticed the decision in [Atma Ram Properties \(P\) Ltd. vs. Federal Motors \(P\) Ltd.](#) (2005 (1) SCC 705) and clarified that the occupants would be liable to pay the rent equivalent to mesne profits with effect from the date from which they are found to have ceased to be entitled to retain possession of the premises as tenants and for such period the landlord's entitlement cannot be pegged down to the standard rent. The claim of Petitioner no.2 in this application has to be

considered in the context of what has been stated in the Judgment.”

In my opinion, the argument of learned counsel for the respondent carries more weight. It cannot be lost sight of that the entire subject of mesne profits in the event of a decree of eviction and appeal there-against is judge made law chiselled out by the Hon'ble Supreme Court in the case of Atma Ram Properties (supra). The entire premise of the said judgment and the succeeding judgments is that once a decree of eviction is passed the tenant becomes an unlawful occupant (subject to his right in appeal). Therefore, any contract between the parties also comes to an end. It is for this reason that the Courts have carved out this new principle for ensuring that the tenant in unlawful occupation does not further prejudice the landlord who is otherwise entitled to have possession of his property and for this purpose have laid down that the tenant must pay a reasonable amount (of course subject to the decision of appeal). The interest of the tenant is protected by putting the amount over and above the contractual rent in a fixed deposit to ensure to the benefit of the party who may be successful in litigation. Resultantly, it is held that the lease deed or the escalation clause therein would not be determinative for fixing mesne profits.

The second argument raised by learned counsel for the petitioners is that the appellate authority has blindly fixed the amount at the rate of rent which a similar property was fetching in the market. As per him, in all the cases cited above the Court has laid down that the amount fixed cannot be onerous and has to be reasonable. He has made reference to the

decision of this Court in the case of *Angoori Devi and others vs. Smt. Satya Bhama, reported as 2016(2) Law Herald (P&H) 1200*, where after discussing the judgments passed in *Atma Ram Properties' case (supra)*, *Anderson Wright's case (supra)*, *Achal Misra's case (supra)*, *Crompton Greaves Ltd. vs. State of Maharashtra, (2005) 11 SCC 547*; *Pradeep Kumar vs. Hajari Lal, (2008) 3 SCC 299*, *Niyaz Ahmad Khan vs. Mahmood Rahmat Ullah Khan and another, 2008(1) R.C.R. 596 (S.C.)*; *Surinder Kumar vs. Rattan Lal, reported as 2006(2) R.C.R. (Rent) 26*; *Chandrakant Dhannu vs. Sharmila Kapur, passed in Writ Petition No.6858 of 2008, decided on 07.01.2009 and The State of Maharashtra and another vs. Super Max International Pvt. Ltd. and others, AIR 2010 SC 722*, this Court has held as follows:-

“A perusal of the above judgment indicates that the Courts have drawn a balance between the two competing claims by fixing mesne profits at a rate between the contractual rent and the market rent. In the circumstances, it has to be held that there could be no straight jacket formula while fixing the amount of mesne profits in such cases and the Courts would have to be guided by the facts of each case and the judgments extracted above.”

Looking at the facts of the present case, the respondent had placed on record a lease deed dated 10.07.2015 of a similar property which fetched Rs.1,80,000/- as against the contractual rent of Rs.19,606/-. Keeping in view the entire conspectus of facts, I deem it appropriate to fix the mesne profits @ Rs.80,000/- p.m. apart from the contractual rent from the date of eviction order. Ordered accordingly. Let the entire arrears of

mesne profits upto 31.07.2016 be deposited by the petitioners before the Rent Controller within three months from the date of receipt of a certified copy of this order and thereafter the amount would continue to be deposited there. The Rent Controller is directed to deposit the same in a fixed deposit in any nationalized bank. Future deposits be put in a Recurring Deposit and the amount/s so accumulated would enure to the benefit of the party who would be successful.

Consequently, the petition stands disposed of and the stay order granted to the petitioners by the Appellate Authority is modified to the above extent.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 04, 2016

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**(AJAY TEWARI)
JUDGE**