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

**C.R. No.303 of 2016 (O&M)
Date of Decision : 04.05.2016**

Bhagat Ram

..... Petitioner

Versus

Vinod Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. N.K. Manchanda, Advocate
for the petitioner.

Mr. Vinod Khunger, Advocate
for respondents No.1 and 2.

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 of the appellate authority dated 30.10.2015.

The respondents No.1 and 2 had filed an ejectment petition against the petitioner and the same was allowed. The petitioner filed an appeal. Alongwith it he also moved an application for stay. While hearing the stay application the Appellate Authority directed him to pay mesne

profits at Rs.2000/- p.m. (apart from the contractual rent of Rs.25/- p.m.) to the respondents No.1 and 2-landlord. Hence, the present petition.

Learned counsel for the petitioner has argued that while fixing the mesne profits the appellate authority had to have prima-facie material on record and could not have proceeded in an arbitrary fashion without reference to any material.

I find weight in the argument of learned counsel for the petitioner. In a series of judgments i.e. from *M/s Atma Ram Properties (P) Ltd. vs. M/s Federal Motors Pvt. Ltd., reported as 2005(1) R.C.R (Rent) 1* to the order passed by this Court in *C.M. No.2343-CII-2014 in C.R. No.6248 of 2011 (O&M) Angoori Devi and others Versus Smt. Satya Bhama, decided on 06.04.2016*, it has been held that while granting stay to a tenant in appeal the appellate authority is obligated to compute the charges for use and occupation on the basis of material on record. In the present case, to fix mesne profits @ Rs.2000/- p.m. without any material is completely illegal.

The second argument of learned counsel for the petitioner is that in any case whatever amount is so computed in accordance with law, the landlord cannot be held entitled to the same and at the most it can be directed to be put in a fixed deposit to enure to the benefit of the party who may be successful in litigation. To support his argument he has relied upon Angoori Devi's case (supra).

In my opinion, this argument is also incontrovertible. In the circumstances, the impugned order is set aside. The matter is remanded

back to the appellate authority for fresh decision in accordance with law.

The amount deposited in the Court be put in a fixed deposit in terms of the decision cited above.

Petition stands disposed of in the above terms.

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**