

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

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Civil Revision No.3842 of 2016 (O&M)

Date of Decision: May 30, 2016

Ashwani Chatley

...Petitioner

Versus

Gurwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sumeet Mahajan, Senior Advocate
with Mr. Amit Kohar, Advocate
for the applicant-petitioner.

Mr. Kanwaljit Singh, Senior Advocate
with Mr. Vaibhav Sehgal, Advocate
for the caveator-respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this revision petition is to the order dated 06.05.2016 passed by the Appellate Authority, Ludhiana, under the Rent Act, whereby the mesne profits have been assessed qua the demised premises taking into consideration the rent assessment report dated 29.03.2016 (Annexure P-8) of the Valuer which was relied upon by the respondent-landlord, where the rent was assessed at ₹90,000/- to ₹95,000/- per month but the Appellate Authority has granted ₹60,000/- per month.

2. It is the contention of learned senior counsel for the petitioner that the demised premises is having an area of 250 square yards, for which agreed rent was ₹10,000/- per month in the year 2003. It has been asserted that it is a double storeyed building located in Kitchlu Nagar, Ludhiana. The rent at present would not be more than ₹25,000/- per month. He contends that the Appellate Authority has not properly appreciated the pleadings and had merely proceeded to decide the mesne profits placing reliance upon the report of the Valuer, who had assessed the rent of the

property and was engaged by the respondent-landlord, who had given the said report at the asking of the respondent-landlord. Neither any rent deed nor any evidence has been placed on record to substantiate the prevalent market rent which would justify the grant of mesne profits at the rate of ₹60,000/- per month to the respondent-landlord. He places reliance upon para 21 of the judgment of the Supreme Court in *Mohammad Ahmad and another Versus Atma Ram Chauhan and others 2011(7) SCC 755*, where certain guidelines and norms have been laid down by the Hon'ble Supreme Court and seeking support therefrom, he contends that the impugned order cannot sustain. He has also placed reliance upon the judgment of the Supreme Court in *State of Maharashtra and another Versus Super Max International Private Limited and others 2009 (9) SCC 772* to contend that the Court while assessing the mesne profits would exercise restraint and would not fix any excessive, fanciful or punitive amount. In any case, he contends where mesne profits is assessed, which obviously is over and above the contractual monthly rent, it should not be directed to be paid to the landlord during the pendency of the appeal/revision and it should only be released along with accrued interest after the final disposal to the party concerned depending upon the result of the case. He, thus, contends that the amount so assessed by the Appellate Authority, in case, is upheld, the said amount be not disbursed to the respondent-landlord during the pendency of the appeal.

3. On the other hand, learned senior counsel for the caveator-respondent-landlord submits that the Appellate Authority has rightly taken into consideration the report of the Valuer, who had, keeping

in view of the value of the property, proceeded to assess the prevalent market rent. In any case, he contends that the Court has exercised its judicial discretion in moderating the said amount and fixing the mesne profits at the rate of ₹60,000/- per month instead of ₹90,000/- to ₹95,000/- as assessed by the Valuer. He states that the petitioner had ample opportunity to file rejoinder to the report of the Valuer but despite there being three adjournments after the filing of the reply by the respondent-landlord, for arguments, neither any rejoinder has been filed nor any evidence placed on record in the form of a Valuer's report or any rent/lease deed to project the prevalent market rent contrary to the one on record. He, thus, contends that the order impugned, being fully justified, do not call for any interference, especially when one of the aspects which can be taken into consideration as per the judgment of the Supreme Court in *Mohammad Ahmad's case (supra)*, is valuation report. Prayer has thus been made for dismissal of the present revision petition.

4. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the impugned order as also the record of the case.

5. The Hon'ble Supreme Court in para 21 of the judgment in *Mohammad Ahmad's case (supra)* has laid down some guidelines and norms which have been clarified to be illustrative and not exhaustive and one of the aspects which can be made the basis for assessing the market rate is the valuation report. It, thus, cannot be said that the Appellate Authority, Ludhiana, in its order dated 06.05.2016, has wrongly taken into consideration the report of the Valuer, who had assessed the rent of the

property between ₹90,000/- to ₹95,000/- per month. The Court has not accepted the report *in toto* and has itself proceeded to moderate the same and fix the mesne profits at ₹60,000/- per month for the demised premises. It may be added here that there were three adjournments after the filing of the reply by the respondent-landlord along with which the report of the Valuer was also attached but the petitioner preferred not to file any rejoinder in rebuttal nor has any evidence been placed on record to counter the report of the Valuer as placed on record by the respondent-landlord. The Court has applied its judicial mind in coming to a conclusion that the rent, as of now, of a similar premises in the locality of Kitchlu Nagar, which according to the report of Valuer, is a posh colony, cannot be said to be excessive. The assessment, thus, of the mesne profits, is fully justified.

6. As regards the contention of learned counsel for the petitioner that the mesne profits should not be directed to be withdrawn by the respondent-landlord in the light of the observations of the Supreme Court in *Super Max International Private Limited's case (supra)*, suffice it to say that in the said judgment, it has been observed that it should ordinarily not be directed to be paid to the landlord during the pendency of the appeal/revision, however that is not an absolute rule.

7. Keeping in view the facts and circumstances of the present case, the order of assessment of mesne profits at the rate of ₹60,000/- per month of the demised premises, is upheld.

8. The arrears of mesne profits and the future mesne profits to be deposited by the petitioner shall be disbursed to the respondent-landlord to the extent of 50% without any condition and qua the remaining 50% subject

to furnishing adequate security to the satisfaction of the Appellate Authority, Ludhiana. It may be added here that in case, the appeal as preferred by the petitioner, is accepted, he would continue in the demised premises as a tenant and the excess amount, if so paid beyond the agreed monthly rent, can be adjusted in the monthly rent. However, it would be open to the Appellate Authority to pass appropriate orders in this regard at the time of final disposal of the appeal including refund to the petitioner.

9. With these observations, the revision petition stands dismissed.

10. In the light of the dismissal of the petition, the application for stay i.e. CM No.11714-CII of 2016, stands disposed of as infructuous.

May 30, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE