IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Revision No.5431 of 2016
Date of Decision: August 31, 2016

Jaspal Singh and another

...Petitioners

Versus

Jasraj Pal Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Giri, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 22.07.2016 passed by the Appellate Authority, Jalandhar, whereby the mesne profits of the demised premises which is 20 feet x 9.6 feet shop situated in Model Town Market, Jalandhar, has been assessed at ₹35,000/- per month which according to the petitioners is on the higher side. It has further been asserted that the petitioners had filed a reply, wherein they have taken a preliminary objection that the respondent-landlord may be called upon to submit the statement of property tax which has been presented to the Municipal Corporation in the shape of self-declaration which would disclose the market rent of the shop in dispute. Assertion has also been made that an application for production of the said document was filed which has not been decided by the Appellate Authority. That apart, counsel contends that the Appellate Authority could not have decided the issue with regard to assessment of mesne profits, rather it should have remanded the case to the Rent Controller for inquiry for assessment of the mesne profits as evidence was required to be led by the parties for determining the same. In support of this contention, he has relied upon the observation in the judgment of this Court in *Vijay Kumar and another Versus Rahul Malhotra 2015 (2) PLR 474*, where reliance has been placed upon the order passed by the Supreme Court in *Civil Appeal No.4589 of 2012* arising out of *SLP (Civil) No.3299 of 2012* decided on 11.05.2012, *M/s Bird Travels (P) Ltd. Versus Smt. Amarjit Kaur.*

2. I have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the impugned order.

3. Taking up the first question which would be most relevant as far as the present case is concerned, is reliance upon the observation of the Supreme Court in *M/s Bird Travels (P) Ltd.'s case (supra)*, where the Hon'ble Supreme Court has remanded the case back to the Rent Controller to decide the case on the question of mesne profits. Perusal of the judgment in *Vijay Kumar's case (supra)*, where the observations of the Supreme Court have been dealt with, shows that the Court has in para 11 observed as follows:-

> *"11. The argument raised by counsel for the petitioners that in M/s Bird Travels (P) Ltd.'s case (supra), the Supreme Court has remanded the case back to the Rent Controller to decide and as such all cases are to be decided by the Rent Controller for the purpose of deciding the question of mesne profits is not acceptable because in that case, the Supreme Court was of the view that the fixation of mesne profits requires evidence from both the sides and thus the matter was remanded back to the Rent Controller to decide the question of mesne profits after holding proper inquiry by allowing the parties to lead their respective evidence. However, in the present case, the Appellate Authority, while dealing with the application for payment of mesne profits by the landlord, allowed the parties*

to lead their respective evidence in which the landlord led evidence by way of lease deed of SCO No.6, Sector 11-D, Chandigarh, which has been let out @ Rs. 1.5 lacs per month, whereas the demised premises in the present case is SCF No.21 in the same Sector 11 of Chandigarh for which the mesne profits has been fixed by the Appellate Authority to the tune of Rs. 1 lac only. Since no evidence was led by the petitioners-tenants, therefore, they cannot have a grievance and ask for determination of mesne profits by the Rent Controller in terms of the order passed by the Apex Court in M/s Bird Travels (P) Ltd.'s case (supra)."

4. This Court is in agreement with the observations of the coordinate Bench on this aspect as the facts and circumstances of the present case are similar and, therefore, the judgment of the Supreme Court would not be of any help to the petitioners.

5. The second question, as has been raised by the counsel for the petitioners, is the non-production of the property tax return which has been filed with the Municipal Corporation, Jalandhar, by the respondents in the shape of self-declaration. The said document would not be relevant as far as the question which was under consideration before the Court as the Court had to determine the market rent of the shop in question for which reliance had been placed upon four registered lease deeds by the respondents, the details whereof have been mentioned in the order. The location of the shops are not in dispute and it is also not in dispute that the shops which were the subject matters of these lease deeds are located in the same area i.e. Model Town Market, where the demised premises is located. Taking into consideration the market rent prevalent as per the registered lease deeds which have been produced by the respondent-landlord, the Court has correctly assessed the mesne profits of the demised premises

which is a shop measuring 20 feet x 9.6 feet situated in Model Town, Jalandhar, which is one of the busiest markets of the Municipal Corporation, Jalandhar. It may be noted here that the petitioners had not even produced a single lease deed/document challenging the genuineness of the lease deed or showing that the rent which was mentioned in the lease deed was not correct or to depict the prevalent market rent in the area. The prevalent market rate, as has been assessed by the Appellate Authority, being based upon proper appreciation of the pleadings and the evidence brought on record, do not call for any interference.

6. Finding no merit in the present revision petition, the same stands dismissed.

August 31, 2016 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No