

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

C.R. No. 2756 of 2017
Date of decision: 20.04.2017

Punjab State Co-operative Supply & Marketing Federation Ltd.
....Petitioner(s)

Versus

Vinod Mittal
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Vikas Singh, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition filed by the tenant is directed against the order dated 09.03.2017 (Annexure P-2) passed by the Appellate Authority whereby, mesne profits have been assessed as ₹75,000/- per month during the pendency of appeal in view of the eviction order passed on 01.12.2016 by the Rent Controller, Chandigarh (Annexure P-1).

The mesne profits have been assessed of the premises in question which is SCO No. 25, Sector 16 D, Chandigarh which had been leased out way back in the year 1968 and the petitioner-tenant was only paying ₹500/- per month. On account of filing of the appeal and for seeking stay of the eviction order, the application for determination of mesne profits was filed by the respondent-landlord, who claims to be the owner of 50% of the property in question and has sought eviction from the ground floor portion. The Appellate Authority took into account the registered sale deed pertaining to a similarly situated premises namely SCO No. 20, Sector 16-D, Chandigarh, which was leased out to the bank. The ground floor of the

premises in question with the bank was admittedly 722 sq. ft. and the first floor and the second floor had 474 sq. ft. each. Thus, a total area of 1670 sq. ft. was available with the bank and the monthly rent was fixed at ₹3,30,000/-. The lease deed was dated 12.02.2014 prior to the eviction order passed in the present case.

Keeping in view the same and the fact that it was alleged that the said premises were leased out to a bank, the mesne profits have been assessed at ₹75,000/ per month inclusive of the agreed rent. This Court in ***Surender Kumar vs. Rattan Lal, 2006 (2) PLR 200*** held that while fixing the mesne profits, registered lease deeds are a valid barometer and a relevant toolbar to fix the mesne profits. It was held that the assessment should be on the basis of some relevant material and the tenant should be protected so that the amount which is to be deposited can be refunded in case the appeal is successful. The lease deeds also were to be of the same locality and of a similar building to show the prevalent rate of rent which the landlord was entitled during the pendency of the appeal of the tenant. The relevant observations read thus:-

“8. The other questions that requires consideration is the mode of determination of the mesne profits or compensation payable. In this respect, it is appropriate to note that the same is to be done on the basis of materials placed on record by the parties. The parties would be at liberty to place cogent evidence by way of recent registered lease deeds of the locality to show their amount of rent which is payable. It is on the basis of such convincing material that a provisional assessment of the compensation/damages which the tenant is liable to pay the landlord pending his appeal or revision against an order of ejectment, can be

determined. This provisional assessment that has been made would be subject to adjudication at the time of final disposal of the appeal or revision as the case may be. If the final adjudication by the appellate or revisional Court in respect of the damages or compensation payable by the tenant is at variance with the provisional order, the landlord would be liable to reimburse or refund the excess amount deposited by the tenant and in case of deficient deposit, the tenant shall be liable to make good the deficient amount. In fact in Atma Ram Properties case (supra), the Hon'ble Supreme Court held that reversal of interim orders passed at the interim stage due to final decision going against the party securing the interim order in its favour would entitle the successful party to demand (a) restitution of benefit earned by the opposite party under the interim orders or (b) compensation for what it has lost. It was observed that to grant such relief is the inherent jurisdiction of the Court and application of the above principle by analogy to support imposition of conditional or periodical deposit of reasonable sum in Court is the pre condition for grant of stay of execution of decree for eviction. Therefore, in case the party filing the appeal or seeking revision of the order is successful it would be entitled to restitution of the interim benefit which has been granted to the respondent in the appeal or the revision. Insofar as the objection of Shri M.L. Sarin, Senior Advocate as regards the inadmissibility of documents on account of the lease deed being inadmissible for want of registration, it is appropriate to note that there is no dispute to the said proposition that an un-registered lease deed signed by the lesser and lessee is inadmissible in evidence, as has been held in several decisions, c.f. [Satish Chand Makhan v. Govardhan Das Byas](#) , [Bajaj Auto Limited v. Behari Lal](#)

Kohli A.I.R. 1989 S.C. 1606 and *Anthony v. K.C. Ittoop and Sons and Ors.* (2006) 6 S.C.C. 394. It has already been held that the provisional assessment is to be made on the basis of cogent and credible evidence which would necessarily mean that inadmissible evidence like un-registered lease deeds which are required to be registered compulsorily in terms of Section 17(1)(d) of the Registration Act, 1908 are not taken into account.”

The said view was in view of the binding precedent laid down by the Apex Court in *M/s. Atma Ram Properties (P) Ltd. vs. M/s. Federal Motors Pvt. Ltd.*, 2005 (1) SCC 705 which was followed in *Anderson Wright and Co. vs. Amar Nath Roy*, 2005 (2) RCR (Civil) 831 and by a three-Judge Bench of the Apex Court in *State of Maharashtra and another vs. M/s. Super Max International Pvt. Ltd. and others*, 2009 (9) SCC 772. It was further held that the amount of mesne profits should not be excessive, fanciful or a punitive amount. The relevant observations read thus:-

“In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.”

In *Angoori Devi and another Vs. Satya Bhama* 2016 (5) RCR (Civil) 1043, it has been held that mesne profits would depend on various factors which have to be taken into consideration by the Appellate Authority and there is no fixed formula as such.

In the absence of any other lease deed having been placed on record before the Appellate Authority, the mesne profits which have, thus, been fixed at ₹75,000/- per month for a similarly situated property does not seem to be suffering from any infirmity. The Appellate Authority has also further directed that the amount of the mesne profits shall not be paid to the respondent-landlord and shall be disbursed only to the party succeeding in appeal and, therefore, the necessary protection has also been granted to the petitioner-tenant. In the above said judgments, the Apex Court has also said that the similarity of the facilities available in both the premises have to be taken into consideration so that there is a valid barometer. The premises of the bank is just four buildings away in the same block in the same market and would have a same parking lot and similar facilities. The Appellate Authority has made necessary deduction keeping in view the fact that the other property has been leased out to the bank and fixed mesne profits at 1/4th the amount.

Resultantly, this Court is of the view that the necessary protection has been granted to the petitioner-tenant and the amount is only to be disbursed on the decision of the appeal.

Accordingly, the present revision petition is dismissed. However, the time to deposit the amount is extended till 31.05.2017 subject to the same terms and conditions as imposed by the Appellate Authority.

20.04.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No