

104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4702 of 2016
DECIDED ON: MARCH 16, 2017

INDER DHIR THROUGH HER LRS KIMAL DHIR & ORS

....PETITIONERS

VERSUS

RENU DHIR AND ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Kashika Kaur, Advocate for
Mr. Gaurav Chopra, Advocate
for the petitioners.

Mr. Lalit Mohan Suri, Sr. Advocate with
Mr. Manpreet Singh Kanda, Advocate
for the respondents.

JASPAL SINGH, J

Challenge in this revision petition preferred under Article 227 of the Constitution of India is to the order dated November 21, 2015 (Annexure P-3), passed by learned Additional District Judge, Kapurthala whereby, an application filed by the petitioners in Civil Appeal No. 81 of 2014 captioned **Renu Dhir & others vs. Inder Dhir & others**, while disposing an application for awarding *mesne profits*, has been granted a meagre amount of ₹10,000/-, which is on lower side.

While assailing the impugned order, it has been argued with

vehemence by learned counsel for the petitioner that the learned Additional District Judge, Kapurthala while deciding an application for the assessment of mesne profits has completely ignored the valuable document i.e. report submitted by Bhasin and Associates (Annexure P-4) as well as an information sought from the Municipal Corporation, Kapurthala under the Right to Information Act, 2005. A perusal of report of Chartered Engineer (Annexure P-4) suggests that market rental value just like Punjab National Bank Building, Moh. Sarai Dewana, Guru Nank Nagar, Near Sat Narain Bazar, Kapurthala is ₹2,00,000/- per month. Similarly, as per information sought from the Municipal Corporation, Kapurthala, the house tax of YES Bank, Kapurthala is ₹2,25,000/- annually and the rent of the said building is ₹1,25,000/- per month. Both these documents have been disbelieved and ignored by learned Additional District Judge, Kapurthala while passing the impugned order, simply on the ground that these documents can be considered and taken into account at the time of deciding the appeal, in which, application for grant of mesne profits was filed.

Learned counsel for the petitioners further contended that it is an admitted fact that the respondents are in possession of the property in dispute. Otherwise also, they have no right to retain its possession. They came into possession of the disputed premises as a licensee, which can be revoked by the petitioners at any point of time. Thus, in the facts and circumstances of the case, the mesne profits deserve to be enhanced at least to ₹1,00,000/- per month or ₹1,25,000/- per month, at least.

Per contra, learned counsel for the respondents while controverting the afore-said contentions raised by learned counsel for the petitioners, has submitted that all the factors have already been taken into consideration by

learned Additional District Judge, Kapurthala while assessing the mesne profits and the said amount is being paid to the petitioners. Moreover, the documents, if any, which are alleged to have been ignored and disbelieved by the concerned court can be taken into consideration while deciding appeal. Even otherwise, the building in question is more than 125 years old, as Nanakshahi Bricks have been used for raising its construction. It cannot be compared with the building of YES Bank or that of Punjab National Bank, which one of new construction(s). Similarly, location of the building is also matters while making an assessment. Rather, in the facts and circumstances of the instant case, the grant of mesne profits to the tune of ₹10,000/- are on the higher side.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioner and has perused the record available on file.

Concededly, respondents are in possession of the disputed premises but it is a matter of consideration in appeal as to in what capacity they are in possession. It is also an admitted fact that at the time of assessment of mesne profits of a building, location, construction and condition of the building has to be considered. In the case in hand, the building is stated to have been constructed by using Nanakshahi bricks, which is suggestive of the fact that it was more than 100 years old. Similarly, there is nothing on record to suggest as to how much is the distance of the buildings of Punjab and National Bank and that of YES Bank and when those buildings were constructed. A building which was constructed 100 years ago cannot be compared with the buildings of the above-referred banks, while assessing the mesne profits. Similarly, the prospective market value or the market rental value cannot be taken in to consideration while assessing the mesne profits, especially, in the circumstances

that the building in question appears to be in a dilapidated condition. Thus, this court does not find any illegality or irregularity in the impugned order.

In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, it stands dismissed. No order as to costs.

MARCH 16, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*