

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

Civil Revision No.460 of 2017

Date of decision: 23.01.2017

Ramesh Arora and another

...Petitioners

Versus

Arun Kumar

...Respondent

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

Present: Mr. Jagjit Gill, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 7.1.2017 (Annexure P/6) passed by the Appellate Authority, Bathinda whereby mesne profits have been fixed at ₹ 11,000/- per month during pendency of the appeal for the shop in question which is situated on the first floor in the New Cloth Market, Bathinda. The parameter taken by the Appellate Authority was that another shop of the same size had been taken on rent by one Manoj Kumar, proprietor of M/s Sri Sai Fashion, Bathinda at the rate of ₹ 1,90,000/- per year vide rent note dated 18.11.2015.

The eviction petition was allowed on 18.12.2015 in which the petitioners-tenants had been proceeded against exparte after they had put in appearance initially which is now subject matter of appeal. The claim filed by the landlords was that the shop was rented at the rate of ₹ 24,000/- per year subject to further enhancement at the rate of 15% after every three years and the rate of rent as on 1.4.2010 was at the rate of ₹ 41,975/- per year. The rent application was filed on 7.3.2012.

Counsel for the petitioner submits that he had produced a rent deed of the adjacent shop whereby rate of rent was shown at the rate of ₹

7,000/- per month.

However, it is not disputed that no rent deed as such has been placed on record in the present case and therefore, the same cannot be considered.

The argument of the counsel for the petitioner is that vide order dated 29.3.2016 stay had been granted by the Addl. District Judge (Fast Track Court), Bathinda on account of payment of arrears along with interest which has not been taken into consideration.

A perusal of the eviction petition would go on to show that arrears from 1.10.2009 were due. The petitioner-tenant has deposited the arrears from the said date till 31.12.2015 on 19.4.2016 since the ejectment order was passed on 18.12.2015. Resultantly, mesne profits were to be paid after the ejectment order and therefore, the earlier payment had only been got deposited by the Appellate Authority rightly so that interest of the landlords can be protected. The relevant portion of the order dated 29.3.2016 reads as under:-

5. Admittedly the impugned order dated 18.12.2015 has been passed exparte against the applicant. He put in appearance before learned Lower Court but thereafter he did not contested the case and proceeded exparte accordingly. From the perusal of the eviction order it is clear that even the rent was not paid by the applicant when the provisional assessment of rent was made by the Learned Rent Controller rather he preferred to be absent from the process of law. At the same time the preposition of law in this regard cannot be ignored as observed by the Hon'ble Apex Court in judgment referred above. However, it is duty of Court to struck the balance between the rights of the both parties. It is not disputed in this case that arrears of rent has not been paid by the applicant, so this application can be allowed subject to reasonable conditions. In view of this Court it will be just

and proper to stay the operation/execution of the impugned order subject to condition that the applicant will pay entire arrears of rent along with interest as calculated by learned Rent Controller from the date arrears fell due till the date of eviction order. So the present application is hereby allowed accordingly by staying the operation/execution of impugned order subject to condition that the applicant will pay the arrears of rent along with interest till 22.04.2016 as observed aforesaid. Let record of Lower Court be also requisitioned for the date fixed.”

The mesne profits which have been fixed at the rate of ₹ 11,000/- per month does not seem to suffer from any infirmity or illegality. This Court in **Angoori Devi and others Vs. Smt. Satya Bhana 2016(5) R.C.R. (Civil) 1043** has held that there cannot be straight jacket formula for fixing the amount of mesne profits and the Court would have to be guided by the facts. Keeping in view the above the Appellate Authority was guided by the rent deed of the shop of the same size situated in the building in question and had fixed the mesne profits which does not appear to be fanciful or a bonanza in any manner keeping in mind the rate of rent alleged by the landlords the order passed is just and reasonable.

In such circumstances, this Court is of the opinion that there is no infirmity or illegality in the impugned order dated 7.1.2017 (Annexure P/6) which would warrant interference by this Court.

Accordingly, the present revision petition is dismissed.

January 23, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No

Pardeep Kumar
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I attest to the accuracy and integrity
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Punjab and Haryana High Court,
Chandigarh