

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

RSA No.5181 of 2013 (O&M)

Date of Decision: 24.01.2017

Chairman Bharat Petroleum Corporation Ltd. and another

... Appellants

Vs.

Sardar Inder Mohan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Raman Sharma, Advocate,
for the appellants.

Mr. Aditya Jain, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is an appeal of the defendants in a suit filed by the respondents-plaintiffs (hereinafter to be referred to as the plaintiffs), seeking recovery of rent, mesne profits and damages from the defendants.

Though the suit was decreed by the learned Civil Judge (Senior Division), Gurgaon, in favour of the plaintiffs, however, they still filed an appeal before the learned first appellate Court, being aggrieved of the quantum of mesne profits awarded to them. Cross-objections were also filed in the said appeal by the present appellants-defendants. The appeal of the plaintiffs was allowed, subject to their paying the Court fee on the assessed mesne profits determined by the Court, whereas the cross-objections of the appellants were dismissed.

Hence, this appeal.

2. The case set up by the plaintiffs was that the father of the plaintiffs, the late Sardar Tirlochan Singh, had registered a lease deed on 20.02.1969, in favour of Burmah Shell Oil, Storage and Distribution Company of India Ltd., Connaught Circus, New Delhi, in respect of a plot of land measuring 23468 sq. ft., situated on the Gurgaon-Alwar road, for a period of 20 years, commencing from the aforesaid date. The lease amount/rent was fixed at Rs.450/- per month.

As per the lease deed, the defendants had complete liberty, for a period of 20 years, to make excavations on the land for constructing a tank and for erection and construction of a building, pumping plants and accessories, as they required. They also had liberty to make incidental arrangements regarding the nature of the activities to be conducted on the leased land.

It was further agreed upon between the parties that upon expiration of the period of the lease, the lessee would deliver possession of the suit land to the lessor and would, with reasonable dispatch, remove all its “arrangements” from the land. It was also agreed upon that if the lessee desired to renew the lease deed, then it would express such desire not less than ten months prior to the expiration of the lease and the lessor would then renew the lease deed for a further period of 10 years, commencing from the date of expiry of the previous lease.

3. During the period of lease, the interests of Burmah Shell Oil, Storage and Distribution Company of India Ltd., i.e. the lessee, devolved upon the Bharat Petroleum Corporation Ltd., and upon demise of the original lessor, Sardar Tirlochan Singh, his interest devolved upon his sons, i.e. the

two plaintiffs in the present *lis*.

4. The parties to the litigation had earlier also entered into litigation qua the suit land, with two suits filed, that were disposed of on 10.05.2000, vide a judgment of the Civil Judge (Junior Division), Gurgaon, upon which the appellants herein filed Civil Appeal No.61 of 2000, which was also dismissed by the learned Additional District Judge, Gurgaon, on 16.04.2001, holding the appellants to be in unauthorised occupation of the suit land and therefore, liable to surrender the premises to the lessors. (As stated in the judgments of the learned Courts below).

A petition under Section 13 (3) (b) of the Haryana Urban (Control of Rent and Eviction) Act 1973 (hereinafter to be referred to as the Rent Act), was also filed, which was decided by the learned Rent Controller, Gurgaon, on 18.05.2004, directing the present appellants (respondents in the rent petition) to put the petitioners, i.e. the plaintiffs in the present *lis*, in possession of the suit land within a period of two months from the date of the said order.

It was observed in the said judgment of the Rent Controller that recovery of mesne profits could not granted under the Rent Act, as no provision had been made thereunder and as such, the landlord could seek his remedy by filing a suit for recovery. Even so, the fair market rent value of the premises was assessed at Rs.4,34,000/- per month by the Rent Controller.

However, that judgment was set aside in appeal with the matter remanded to the learned Rent Controller for a fresh decision.

Though that fact is not coming clearly from the judgment of the Courts below, however a copy of the subsequent judgment of the learned Rent Controller (upon remand of the case) dated 22.01.2005 (Ex.PW5/6

before the Courts below) has been produced by learned counsel for the appellants herein, from which it is discerned that after remand of the rent petition, the respondents herein (petitioners in the rent petition) had amended the petition, deleting the prayer for mesne profits and damages, on the ground that a suit (i.e. the one from which the present appeal arises) had been filed for seeking such mesne profits.

Eventually, the rent petition was decided in favour of the respondents herein, ordering the ejection of the present appellants vide the aforesaid judgment of the learned Rent Controller, dated 22.01.2005. That was also challenged by the present appellants but the appeal was also dismissed by the appellate authority under the Rent Act, vide its judgment dated 29.11.2005. Thereafter, even a revision petition filed before this Court is admitted to have been dismissed, thereby upholding the order of the Rent Controller, directing the present appellants to put the respondents herein in possession of the suit property.

The suit in the present *lis* was in fact filed by the plaintiffs soon after the first judgment and order of the Rent Controller (dated 18.05.2004), seeking recovery of mesne profits/arrears of rent and damages, at the rate of Rs.4,34,000/- per month. A legal notice was issued on their behalf by their counsel on 15.06.2004, requiring the present appellants to pay the said arrears within one month but upon no reply having been given to the notice, the suit in the present *lis* was filed on 19.07.2004, seeking a decree granting the plaintiffs arrears of rent and mesne profits from 20.02.1989 till the date of delivery of possession of the premises to them.

5. Upon notice having been issued in the suit, the defendants filed a reply raising the usual preliminary objections regarding limitation, lack of

cause of action, non-joinder/mis-joinder of parties, estoppel etc. It was further contended that the relationship of landlord and tenant between the parties still existed and that the defendants had continuously been paying the rent for the plot of land by way of cheques.

It was further submitted that the defendants had preferred an appeal against the order of the Rent Controller which had been accepted and the order dated 18.05.2004 had been set aside in toto.

It was also pleaded that the lease had actually not expired on 20.02.1989 and continued to remain in force and that the market value/fair rent of the plot had been wrongly assessed at Rs.4,34,000/-and in fact, the report of the expert was disbelieved by the Rent Controller.

Receipt of the legal notice stated to have been issued on behalf of the plaintiffs, was also denied. Yet further, it was stated that the plaintiff is a dealer of the company (appellants-defendants), earning a good amount of money from his dealership and as such, was not entitled to any rent, mesne profits and damages.

6. The plaintiffs having filed a replication controverting the averments in the written statement and reiterating those of the plaint, the following issues were framed by the learned Civil Judge:-

- “1. Whether the defendant is (sic) arrears of rent, mesne profit and damages of the property in question since 20.02.1989 till the date of delivery of possession? OPP
2. If issue no.1 is proved, whether the plaintiff entitled for recovery of rent, mesne profit and damages? OPP
3. Whether the suit is barred by limitation? OPD
4. Whether the plaintiff have no cause of action to file the present suit? OPD

5. Whether the plaintiffs have concealed true and material facts from the Court? OPD
6. Whether the plaintiffs are estopped from filing the present suit by their own act & conduct? OPD
7. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
8. Whether the suit is barred u/o 2 Rule 2 and Sec. 11 CPC? OPD
9. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
10. Relief.”

7. By way of oral evidence, the plaintiffs examined the following witnesses:-

PW1	Ram Kishan, DRK Sessions, Record Room (Judicial), Gurgaon.
PW2	Vishal DRK, Sessions, Record Room, Gurgaon.
PW3	Nand Kumar Nagpal
PW4	Kashi Ram Dahiya, Draftsman
PW5	Plaintiff himself.

They also tendered documents exhibited as Exs.PWA to PWE and, as stated in the judgment of the learned Civil Judge, Marks A to E and thereafter, Exs.P1 to P3 and PW5/6, as also Mark-X.

The defendants are stated to have examined their Territory Manager, i.e. defendant no.2, as DW1 and closed their evidence.

8. Upon appraising the evidence and considering the pleadings and arguments before him, as also the judgments cited, the learned Civil Judge first observed that the following propositions and facts emerged from the case:-

- “i. The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years and enhanced-rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rental in the surroundings areas, let out on rent recently.
- ii. Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges, then the same shall also be borne by the tenant only.
- iii. The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.
- iv. But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.
- v. If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years. Thus, for a period of five years, the tenant shall enjoy immunity from being evicted from the premises.
- vi. The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.
- vii. The rent so fixed should be just, proper and adequate, keeping in mind road, parking space facilities available therein etc. care ought to be taken that it does not end up being a

bonanza for the landlord.”

(These actually were guidelines laid down by the Supreme Court in **Mohammad Ahmad and another v . Atma Ram Chauhan and others** 2011 (2) RCR (C) 972 for assessment of mesne profits.

9. Referring to the documentary evidence, it was further found by that Court that it was admitted that the defendants were initially lessees on the land of the plaintiffs since 1969 and subsequently were held to be tenants for a period of 20 years, upto 20.02.1989, on a monthly rent of Rs.450/-, vide a judgment dated 22.01.2005 (Ex.RW5/6) passed by the Rent Controller and that the defendants were ordered to be evicted from the premises; and the revision (eventually) filed against that judgment was also dismissed, vide an order dated 21.07.2006 (Ex.PWA).

Referring to a judgment of this Court in **Ranjit Singh Rana v. Manpreet Phulka** 2012 (Supp.) LJR 415, it was further found that after an order of eviction, the tenant is liable to pay mesne profits as determined by the Court, though guidelines had been laid down by the Supreme Court (as have been reproduced hereinabove, in paragraph 8).

10. Thus, referring to the first guideline on increasing the rent after every three years, it was held by the Civil Judge that the market rate is to be determined on the basis of an enquiry report conducted with regard to the rent but as no such enquiry had been conducted, therefore, the mesne profits were to be calculated on the basis of the valuation report or reliable estimates of the building rentals in the surrounding areas.

It was also found that the plaintiffs had relied upon Ex.PW2/A, i.e. a valuation report prepared by PW3, Nand Kumar Nagpal. However, as that was “in some other case”, therefore, he not being a valuer appointed in

the present *lis*, the aforesaid report, Ex.PW2/A, was held to be of no evidentiary value for determining the mesne profits of the suit premises.

In the absence of any valuation report and enquiry report, it was further held that the market rate was therefore to be worked out on the basis of reliable estimates of the building rental in the surrounding area, as were let out recently. On that aspect, it was found that other than the sole statement of plaintiff Inder Mohan Singh, no document pertaining to the rent of any building let out recently had been led by way of evidence and in fact, even no person as had let out his building recently, had been examined by the plaintiffs.

11. On the basis of the aforesaid findings, it was held that the present market rate of rent could not be assessed for the purpose of determination of mesne profits. Yet, as per the order of the Rent Controller dated 22.01.2005 (Ex.PW5/6), vide which the defendants had been ordered to be evicted, a monthly rent of Rs.450/- was found to have been earlier settled (in 1969), which the Civil Judge held to be the rate of mesne profits, in the absence of any other evidence accepted.

Citing Order 20 Rule 12 of the CPC, it was further held that the plaintiffs could only seek mesne profits for a period of three years prior to the date of filing of the suit and with the suit (in the current *lis*) having been filed only on 19.07.2004, they were entitled to mesne profits from 19.07.2001, @ Rs.450/- per month, alongwith interest @ 6% per annum, till the date of delivery of possession.

12. Upon the above findings, the suit of the plaintiffs was decreed in their favour to the aforesaid extent.

13. In the appeal and cross-objections filed, the learned first

appellate Court, i.e. the Additional District Judge, Gurgaon, first noticed the pleadings and evidence led by the parties before the lower Court and thereafter, upon considering the judgment of that Court, as also the arguments raised before him, held as described hereinafter.

As regards the earlier civil suits filed by the parties, it was noticed by that court that the father of the plaintiffs, the late Sardar Tirlochan Singh, had filed a suit for declaration on 05.08.1990, further seeking a consequential relief of permanent injunction against the defendants, contending therein that there was no provision of extension of the lease deed after expiry of the period of 20 years.

The defendants had also filed a suit against Tirlochan Singh, seeking a declaration and mandatory injunction to the effect that he be directed to extend the lease for another ten years. A consequential relief of permanent injunction was also sought by the present appellants, in the suit filed by them. Both the suits are stated to have been disposed of by a single judgment on 10.05.2000 (with a copy of the said judgment and decree having been duly led by way of evidence in the present *lis*).

The appeal filed by the defendants was also found to have been dismissed on 16.04.2001, holding the present appellants to be in unauthorised possession, further directing them to hand over peaceful and vacant possession to Sardar Tirlochan Singh. The said judgment and decree is stated to have held that the period of lease was only for a period of 20 years, after the expiry of which the possession of the present appellants was unauthorised.

14. The learned lower appellate Court, in the present *lis*, further noticed that the next round of litigation between the parties was when the

respondents-plaintiffs herein filed the ejectment petition under Section 13 of the Rent Act, on the ground of bonafide necessity, as also on account of non-payment of arrears of rent. Mesne profits and damages had also been sought in that petition. The judgment of the Rent Controller was appealed against as already noticed, with the appellate Court remanding the matter back to the Rent Controller on the issue of arrears of rent, holding therein that the directions of the Supreme Court in Rakesh Wadhawan v. M/s Jagdamba International Corporation, 2002 HRR 367 (SC) were not “assessed by the Rent Controller”.

The Rent Controller, on remand of the case, came to the conclusion that the defendants had not been able to prove that they had ever paid the arrears of rent and that even after the passing of the assessment order, no rent was tendered and therefore, they were liable to be ejected. That judgment was passed on 22.01.2005, after which the matter went up in appeal and thereafter came up before this Court, and in that revision petition it was held that the concurrent findings of both the Courts below, on the failure of the defendants to pay the rent, did not require to be interfered with. (As found by the Ist appellate Court in the present *lis*).

That judgment of this Court, dated 21.07.2006, was stated to be exhibited as Ex.PWA in the current *lis*.

The plaintiffs in the present *lis* then filed an execution in that *lis*, by which vacant possession of the site was handed over to them on 31.03.2008.

It may be noticed here that the background of how a rent petition came to be filed, after the finding of illegal possession in the earlier civil suit, is not discussed in the judgments of the learned Courts below. However, the

factum of the rent petition against the present appellants having succeeded, leading to their eventually having handed over the suit property to the respondents-plaintiffs herein, on 31.03.2008, is not refuted by counsel for the parties.

15. The learned first appellate Court, in the present *lis*, thereafter went on to examine whether, in the aforesaid background, the defendants (present appellants) could still re-agitate that the judgment of the Civil Judge in the present *lis* was perverse in any manner, by taking a stand that they had already paid the rent of Rs.450/- per month to the plaintiffs.

It was further noticed that other than the legal issue (of that plea now being barred in the current *lis*), no evidence had been led in this round of litigation, to the effect that actually rent @ Rs.450/- per month had been paid to the plaintiffs, other than the solitary statement of DW1, Vijay Sehgal, Territory Manager.

16. Noticing the aforesaid facts, it was held that it had already been proved that after the expiry of the 20 year lease period on 19.02.1989, the appellants-defendants were holding possession of the land in an unauthorised manner. The finding of the lower Court on that aspect, was reiterated by the first appellate Court, referring also to the lease deed in question.

17. The learned Additional District Judge thereafter went on to examine whether the suit of the plaintiffs could be held to be time barred. It was found that the relief of mesne profits and damages having been declined by the Rent Controller vide his order dated 18.05.2004 (the first judgment prior to remand of the petition by the appellate authority), and they having filed their suit in the present *lis* on 19.07.2004 itself, it could not be held to be time barred.

As regards the finding of the learned Civil Judge to the effect that they were entitled to mesne profits for a period of only three years prior to the date of the filing of the suit, that finding was also upheld, however, further holding that the valuation report had been wrongly rejected by the lower Court.

On that issue, it was seen by the lower appellate Court that a attested copy of the valuation report was produced by the plaintiffs, from the record of the ejectment petition, and that the valuer, Nand Kumar Nagpal, had duly testified in support thereof. Further holding that it was impossible for the plaintiffs to place on record the original report, with litigation in the ejectment petition still going on (in appeal and on remand), it was held that the said report should not have been discarded only on the ground that the original was not produced.

Citing a judgment of this Court in **Pyare Lal vs. Mehar Singh** 2012 (2) LJR 223, it was held by the Additional District Judge that the said document should have been treated as a public document in terms of Section 74 of the India Evidence Act, 1872 and as such, the judgment of the lower Court was erroneous in that respect.

18. It was further held that it was also erroneously held by that Court that there was no enquiry report on record, as there was no provision in Order 20 Rule 12 CPC, as also Section 2 (12) thereof, by which mesne profits were only to be granted to the plaintiffs upon holding an enquiry in that regard and in fact, that was only one of the modes for determining mesne profits. (What the Ist appellate intended to say, it seems, was that non-determination of the market value could not have been avoided only because there was no enquiry report on record).

It was further held that the contention of the defendants that the plaintiffs were also earning an income as dealers of the defendant company, was also not an acceptable argument, in view of the fact that the dealership for the products of the company had nothing to do with the payment of rent for the land on which the petrol pump was set up.

19. Thereafter, going on to determine as to what the quantum of mesne profits payable would be, it was held that the report of the assessor/ valuer, i.e. PW3 N.K. Nagpal, to the effect that the rent in the area was Rs.4,34,000/- per month was not acceptable, even though he was a Government approved valuer. However, it was also held that the said report could not be “discarded on its face value”, as the defendant had also failed to lead any evidence to refute it.

Hence, holding that even though no other evidence was led in that regard by either party, the Court could not still ignore the fact that the suit land was located at a prime location on the main road from Sohna Chowk to Rajiv Chowk, Gurgaon, and that the valuer had adopted certain yardsticks to determine the fair market value.

Further discussing the fact that though one of the yardsticks adopted by the valuer was the rental payable by the Bank of Maharashtra in two buildings, the lower appellate Court however did not accept that criterion, as no distance had been shown between the vacant plot in question and those two buildings.

20. Further noticing that the suit property measured 2606 sq. yards, falling within the area of the Municipal Corporation, Gurgaon, it was considered appropriate to assess the rental value to be half of what was assessed by the valuer, by a reference to *Ranjit Singh Ranas'* case (supra) and

the guidelines of the Supreme Court noticed therein (as laid down in *Mohammad Ahmads'* case). Thus, the Ist appellate Court came to the conclusion that the aforesaid was a fair assessment of the rental value, as in a judgment of the Delhi High Court, in S. Kumar v. G. R. Kathpalia 1999 (2) RCR (Civil) 425, Rs.25,000/- per month had been held to be the rental value for property situated in a prime location in Delhi.

Therefore, holding that the plot of the plaintiffs being a very large one, located at a prime location within the Municipal Corporation of Gurgaon, Rs.2,17,000/- per month was considered fair and reasonable rent and consequently, the plaintiffs were held entitled to mesne profits in terms of thereof.

The plaintiffs having been forced to go through many rounds of litigation and having been deprived of their property for many years was also cited as one of the reasons for granting them mesne profits in the aforesaid terms, further noticing that property prices were escalating in Gurgaon, during the period in question, i.e. 2001 to 2008.

21. On the issue of the suit being bad for want of proper court fee, that contention of the defendants was rejected, on the ground that the plaintiffs had not sought a specific amount as mesne profits and had paid a “tentative court fee of Rs.2845/- at the rate of Rs.450/- per month on a total amount of Rs.16,200/-”. (This amount of Rs.16,200/- is seen to be the total rent payable for a period of three years @ Rs.450/- per month, i.e. Rs.450/- x 36= Rs.16,200/-).

Further taking note of the contention of counsel for the plaintiff that they were ready to pay Court fee on the assessed mesne profits, eventually the appeal of the plaintiffs was allowed and the cross-objections

filed by the defendants were dismissed, as already noticed, holding that the plaintiffs were entitled to mesne profits @ Rs.2,17,000/- per month for the period 19.07.2001 to 31.03.2008, alongwith interest @ 6% per annum thereupon. This was subject to the condition that the plaintiffs would make good the deficient Court fee within one month from the date of the judgment, i.e. 09.07.2013, failing which their appeal would be deemed to have been dismissed.

Thus, the suit of the plaintiffs was decreed in their favour by the first appellate Court also, with the judgment and decree of the lower Court modified to the extent of mesne profits payable to them, the amount awarded by the Civil Judge having been enhanced considerably.

22. Before this Court, Mr. Raman Sharma, learned counsel for the appellants, first referred to Section 2(h) of the Haryana Urban (Control of Rent and Eviction) Act 1973 and Section 13 thereof, to submit that ejectment from the suit property could only have been sought under the aforesaid provisions. Mr. Sharma further relied upon two judgments of the Supreme Court in V.Dhanapal Chettier v. Yasodai Ammal 1979 (2) RCR (Rent) 352 and Bharat Petroleum Corporation Ltd. v. P. Kesavan and another (AIR 2004 (SC) 2206 in support of his arguments.

He thereafter referred to Section 4 of that Act to submit that fair rent is actually to be determined as per the said provision.

Thus, learned counsel further contended, that the rent fixed in the lease deed being Rs.450/- per month, the same would be applicable till the ejectment of the tenant. In this regard, he cited a judgment of this Court in C.R. No.6248 of 2011, Angoori Devi and others v. Smt. Satya Bhama, decided on 06.04.2016.

Mr. Sharma further relied upon a judgment of this Court in Smt. Shobhya Rani and others v. Moti Ram and others 2010 (4) PLR 144 on the same issue, to submit that the Rent Controller having failed to fix a fair rent even for determination of the arrears of rent, the learned Civil Judge had correctly fixed it as per the agreed rent between the parties.

23. Replying to the aforesaid contentions, Mr. Aditya Jain, learned counsel appearing for the respondents-plaintiffs, submitted that the appellants-defendants had already been held to be in unauthorised possession of the suit property since 1989, by the Rent Controller. Hence, thereafter, the rent payable to the plaintiffs would have to be on the basis of fair rent in the market, which was duly determined by the valuer in his report before the Rent Controller, a certified copy of which was duly exhibited in the present *lis*.

Learned counsel further submitted that the said report was never challenged before the Rent Controller and in fact, the learned Civil Judge erred in holding that there was actually no valuation report and enquiry report in respect of the market rental rate. He thus contended that the learned first appellate Court had correctly held that the valuation report submitted before the Rent Controller should not have been rejected out of hand by the Civil Judge. He further submitted that even though the plaintiffs have not challenged the judgment and decree of the first appellate Court, reducing the rental value of the property to 50% of the value assessed by the Government approved valuer, however, at least the assessment made by that Court itself, on the basis of the location of the suit property and the market trends, does not require any interference with.

He, therefore, prayed for dismissal of the appeal.

24. In rebuttal, Mr. Sharma, learned counsel for the appellants,

submitted that there was no occasion for the appellants to challenge the valuation report, in view of the fact that no mesne profits had actually been granted by the Rent Controller and as regards the present *lis*, only a photocopy of the report was produced. He further pointed to paragraph 16 of the judgment of the learned Civil Judge to submit that, in fact, the valuation report Ex.PW2/A, in support of which PW3 had testified, was a report prepared by the said witness in some other case. Hence, learned counsel contended that the report was correctly rejected by the lower Court but was wrongly relied upon by the first appellate Court.

He, therefore, prayed that the appeal be allowed and the suit of the plaintiffs be dismissed with costs through out.

25. Having considered the aforesaid arguments and the judgments of the learned Court below, first of all it has to be stated that as regards the contention of Mr. Sharma, learned counsel for the appellant-Corporation, that the ejectment of the appellants from the suit property could only have been sought under Section 2(h) of the Rent Act, 1973, read with Section 13 thereof, the contention has to be rejected straightway, that not being the subject matter of this *lis*. The ejectment of the appellants having reached finality pursuant to the petition for possession filed by the respondents-plaintiffs herein, before the Rent Controller, that subject stands closed. All that is to be determined in the present appeal, which arises out of a suit seeking recovery of mesne profits and damages, is whether the Courts below have erred in awarding such mesne profits to the extent that the lower appellate Court has done.

26. From the pleadings of the parties, it is very obvious that initially the rent petition also contained a prayer for mesne profits, alongwith the

seeking eviction of the present appellants and for the respondents-plaintiffs to be put in possession of the suit property. That prayer was not answered in favour of the respondents-plaintiffs, in the rent petition, though they were ordered to be put in possession of the suit property, vide the first order of the learned Rent Controller dated 18.05.2004. As regards the mesne profits, though the Rent Controller assessed such mesne profits at the rate of Rs.4,34,000/- per month, however, he declined the prayer itself holding that in the Rent Act, 1973, there was no provision for granting mesne profits and that a separate suit would lie for that purpose. (As stated in the judgment of the learned Civil Judge in the present *lis*).

However, that judgment having been appealed against, before the appellate authority under the Rent Act, 1973, it was set aside and remanded to the Rent Controller with a direction that the arrears of rent be calculated in compliance with the ratio of the judgment of the Supreme Court in **Rakesh Wadhawan v.v. M/s Jagdamba International Corporation,** (2002) 5 SCC 440.

Yet, before remand of the matter, the respondents-plaintiffs had already filed the suit in the present *lis* and therefore, upon remand, amended the petition by omitting the prayer for mesne profits, thereby only seeking possession of the suit property, in the petition under the Rent Act.

At this stage, it is necessary to notice that though in the copy of the judgment thereafter passed by the learned Rent Controller on 22.01.2005, (Ex.PW5/6 in the present *lis*), though in the heading of the petition, it is shown to be one filed for eviction, it is at the outset shown as a petition filed under Section 13(3) (b) of the Rent Act, 1973. Thus, it was actually not a petition for eviction under Section 13(2)(i) or any other clause of sub-section

2, but one under Section 13(3)(b), the relevant extract of which reads as under:-

“13. Eviction of tenants.

XXXXX XXXXX XXXXX

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-

(a) in the case of a residential building, if,--

XXXXX XXXXX XXXXX

(b) in the case of rented land, if he requires it for his own use, is not occupying in the urban area concerned for the purpose of his business any other rented land and has not vacated such rented land without sufficient cause after the commencement of the 1949 Act;

XXXXX XXXXX XXXXX

Provided further that where the landlord has obtained possession of a residential building or rented land under the provisions of sub-clause (i) or sub-clause (v) of clause (a) or clause (b), he shall not be entitled to apply again under the said provisions for the possession of any other building or rented land of the same class.

XXXXX XXXXX XXXXX”

Sub-section (4) thereafter states that the Controller being satisfied that the claim of the landlord is bonafide, shall make an order directing the tenant to put the landlord in possession of the building or rented land on a specific date.

Sub-section (6) goes on to state that if a landlord, who has obtained possession under clause (a) or (b) of sub-section (3) does not occupy

it, for a specified period, the tenant would be within his right to apply to the Controller that the possession be restored to him.

However, the aforesaid provisions, i.e. sub-sections (4) and (6) not being germane to the present controversy, have not been reproduced.

27. It is also necessary to notice here that the judgment of the hon'ble Supreme Court in *Wadhawans'* case (supra) is seen to be in a case where the suit by the landlord was filed under Section 13(2)(i) of the Rent Act which reads as follows:-

“(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied,--

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant, within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per centum per annum on such arrears together with such costs of the application, if any, as may be allowed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid:

Provided further that the landlord shall not be entitled to claim arrears of rent for a period exceeding three years immediately preceding the date of application under the provisions of this Act;”

Thus, the Rent Controller in his order dated 18.05.2004, seems to

have held that there is no provision in the Rent Act for payment of arrears of rent/mesne profits, in view of the fact that the petition before him was not filed under Section 13(2)(i) of the Rent Act but Section 13(3)(b), wherein no provision for assessment of rental value has been stipulated.

28. Upon remand of the matter to him, the learned Rent Controller vide his judgment dated 22.01.2005, did not assess the exact arrears of rent to be paid but in effect went on to hold that whatever be the arrears, since the tenant (present appellant-Corporation) had not tendered the rent within 15 days from such assessment, and in fact, stated that the rent already tendered by it was in excess of the rent payable, the petitioner (father of the respondents-plaintiffs herein) had proved his right to get possession of the suit property.

To repeat again, the said judgment in the rent petition seeking a decree of possession, has acquired finality.

29. In the present *lis*, to repeat at this stage for the sake of convenience, the learned Civil Judge went on to hold that the rent assessed in the valuation report, Ex.PW2/A, proved by PW3, Nand Kumar Nagpal, a Government approved Valuer, could not be made the basis for assessment of mesne profits as the report was actually prepared by PW3 “in some other case” and therefore, he not having been appointed as a valuer in the present *lis*, the said report had no evidentiary value in the suit for mesne profits.

Thereafter, finding that the plaintiffs had not tendered any other document by way of evidence in respect of the rent in neighbouring buildings etc., with only the statement of plaintiff no.1 in support of the rental value, that Court held that it could do no more than grant mesne profits @ Rs.450/- per month, which was the rent/lease amount settled at the time of the

agreement entered into between the parties, in the year 1969.

That was the amount therefore awarded w.e.f. 19.07.2001 (that date being three years prior to the institution of the suit), alongwith interest @ 6% per annum thereupon, till delivery of possession of the premises (which had already come to be delivered by the time of the judgment of the learned Civil Judge in the present *lis*).

Though an issue of whether the suit was maintainable or not had been framed, on the contention that it was barred under Order 2 Rule 2 and Section 11 of the CPC, the learned Civil Judge held all other issues, other than the main issues of the amount of mesne profits to be awarded, to have been not pressed and therefore, also decided them in favour of the plaintiffs.

30. Again, as discussed earlier, the learned first appellate Court found that soon after the first disposal of the rent petition on 18.05.2004, the plaintiffs had filed the suit in the present *lis* on 19.07.2004, i.e. two months after the order of the learned Rent Controller and therefore, the plea of the suit being time barred could not be sustained against them.

Though nothing specifically is seen to have been argued before the lower appellate Court (nor in fact before this Court), to the effect that the present suit was barred either under Order 2 Rule 2 or Section 11 of the CPC, as regards that issue, in the aforesaid circumstances, in the opinion of this Court also, the suit seeking mesne profits would not be barred. This would be so because even though the appeal filed by the present appellants against the judgment of the Rent Controller dated 18.05.2004 was remanded by the appellate authority to the Rent Controller, primarily on the ground that the rent be assessed in terms of the judgment of the Supreme Court in *Rakesh Wadhawans'* case (*supra*), however, as is not denied even by the appellants,

well before that order, the suit in the present *lis*, seeking mesne profits, had already been filed by the plaintiffs and as such, they in fact, amended their rent petition after it was remanded to the Rent Controller, to omit the prayer for mesne profits in that petition, it already being the subject matter of the present *lis*.

31. Coming then to whether the assessment of rent by the learned appellate Court, @ Rs.2,17,000/- per month, is excessive or can be accepted as the correct value of the suit property, on the basis of which mesne profits were also awarded to the respondents-plaintiffs.

The learned lower appellate Court held that the report of the valuer, duly supported by his testimony, should not have been rejected by the Civil Judge, as it was actually a report submitted by the valuer in the 'rent petition' filed by the plaintiffs seeking possession of the suit property and that the original report could not have been produced, it already being on the case file of that petition.

Though in the opinion of this Court, that reasoning is not sound, as even if the report was tendered in evidence in the rent petition, it could also have been produced by way of a fresh report in the present *lis*, with the valuer having in any case testified as PW3. However, factually, it is not denied that the report of the valuer was filed in the rent petition.

Even so, in the opinion of this Court, since eventually the learned lower appellate Court held that the valuation of rent at Rs.4,34,000/- per month was excessive and 50% of that amount should be taken to be the rental value of the property, it being a 2606 sq. yards plot situated within the area of the Municipal Corporation, Gurgaon, the said report was obviously used as the basis to determine the market rental value by the Ist appellate

Court. However, it was further stated by that Court that the property was also situated on the main road between Sohna Chowk to Rajiv Chowk, which, as described by that Court, “is a busiest road”.

It needs to be noticed here that the monthly rent paid by the Bank of Maharashtra, as was seemingly taken into account by PW3 to assess the rental value of the suit property, was rejected by the lower appellate Court, as was the rental of another building, on the ground that the distance between those buildings and the suit property, was not shown in the report. Further, those rentals were of properties where buildings already stood constructed, whereas the suit property was a vacant plot (as per the learned lower appellate Court).

The next criteria on which 50% of the value fixed by the valuer (PW3) was adopted by the lower appellate Court, was that prices of property in Gurgaon were stated to be escalating during the period in question, i.e. between 2001 to 2008 (the latter year being the one in which the possession of the suit property was actually handed over to the plaintiffs).

32. Hence, it is in the aforesaid background that this Court is to determine as to whether the aforesaid rental value assessed was fair and reasonable or not.

It must be stated here that even at this stage no document has been placed on record, even by way of additional evidence by the appellants, or the respondents to either, to refute the market value of the suit property as assessed by the appellate Court, or in support thereof. Hence, as regards the actual market value during the aforesaid period, this Court is wholly in the dark.

It is therefore necessary to revert to the parameters laid down by

their Lordships of the Supreme Court in *Mohammad Ahmads'* case (supra), as have been reproduced in the earlier first part of the present judgment.

33. On those parameters, it needs to be first noticed that the Civil Judge had simply taken the market rent to be the same as was settled between the parties in 1969, on the ground that no evidence had been led as per the real market value.

In one manner, that rationale cannot be faulted, as the onus was primarily on the plaintiffs to lead evidence with regard to the actual rental value in the vicinity. They obviously relied only upon the report of PW3, as submitted by him in the rent petition and other than that, led no evidence. However, in the opinion of this Court, the Civil Judge could have resorted to the original rental value of 35 years earlier only if the plaintiffs had not led any evidence whatsoever on the actual rental value at the time of the filing of the suit or before that. They having relied upon a particular rental value, thereafter, some rationale should have been adopted by that Court, to determine the actual value, instead of simply resorting to the value settled 35 years prior to the filing of the suit or 30 years prior to the filing of the earlier rent petition.

In fact, that approach adopted by the learned Civil Judge, would be against the first guideline laid down in *Mohammad Ahmads'* case, duly reproduced by that Court itself. As per the said guideline, if the rent was fixed more than 20 to 25 years earlier between the parties, then the market rate should be worked out either on the basis of a valuation report or on reliable estimates of building rentals in the surrounding areas.

Hence, the lower appellate Court having assessed the market value to be half of that which was given in the valuation report, and no

material whatsoever having been led by way of evidence, by the present appellants, to rebut any kind of rental value relied upon by the plaintiffs, even at this stage of second appeal by way of any additional evidence, to try and prove any error in the assessment made by the lower appellate Court, and no evidence having been led to controvert the evaluation report relied upon by the plaintiffs before the Courts below in any case, this Court finds itself unable to interfere *per se* in the judgment of the lower appellate Court, fixing the rental value at Rs.2,17,000/- per month on the ground that it was a property of more than 2500 sq. yards located in a prime location in the city of Gurgaon. This would be especially so as that value is half that asked for by the respondents-plaintiffs on the basis of the valuation report that they relied upon. However, since one of the factors relied upon by the lower appellate Court was that prices in Gurgaon were escalating during the period 2001-2008, obviously the rental value would not have remained constant for seven years. Hence, in the opinion of this Court, it would be more appropriate to possibly accept the rental value of Rs.2,17,000/- per month in the year 2008 and thereafter reduce it by 10% every three years beyond that up to 2001. Without a doubt, this Court is also relying wholly upon the judgment of the learned Additional District Judge, to accept even the value of Rs.2,17,000/-, to be the actual rental value in the year 2008. However, in the absence of any other parameter by way of evidence led by the appellant, I do not find any other methodology to actually arrive at any particular rental value and therefore accept it to be that which was fixed by the Ist appellate Court, prevalent for the period in question.

Hence, accepting the rental value to be Rs.2,17,000/- per month in the year 2008, by deducting 10% therefrom, it would be Rs.1,95,300/-

(rounded to of Rs.1,95,000/-) upto the year 2005 and Rs.1,75,500/- upto the year 2002.

It may be stated here that the deduction of 10% has been applied by this Court on the basis of the first guideline given by the hon'ble Supreme Court in *Mohammad Ahmads'* case. Though of course therein it has been laid down that there should be an increase by at least 10% every three years, however, in this case, the parameter would have to be worked backwards, in the opinion of this Court, as the rental value of the year 2008 cannot be accepted to be the same in 2001.

34. As regards the judgments relied upon by the learned counsel for the appellants, firstly, in *Angoori Devis'* case, before a co-ordinate Bench of this Court, the issue was primarily as to whether any mesne profits should be ordered to be paid to the landlord, at the time when a decree of eviction is stayed by an appellate Court. The present case is not even remotely related to that issue. If at all that issue was to be pressed, it should have been at the time when notice was issued in this appeal on 28.01.2014, when the appellant, at that stage, could have contended that instead of disbursement of the mesne profits to the respondent-plaintiffs, the amount should be deposited either with the Court or in a fixed deposit, with the person who eventually succeeded in appeal, being entitled to the amount, alongwith the interest accrued thereupon. However, that having not been done, I do not see how *Angoori Devis'* case helps the appellants at this final stage.

Coming to the judgment in *Shobhya Ranis'* case (supra), that relates to possession of a tenant after the expiry of the tenancy period, with this Court holding that the tenant would be entitled to continue in possession of the premises, unless evicted in accordance with the provision of the Rent

Act.

That plea again was only available to the appellants in proceedings arising out of the rent petition, which have, to repeat yet again, attained finality up to this Court, in favour of the appellants-plaintiffs. Hence, that judgment again is wholly inapplicable to the present case.

Similarly, the judgments in *P. Kesavan* and *Chettiers'* cases (supra) (the former being a case of the appellant-Corporation itself), also are not judgments which apply to the issue of payment of mesne profits.

Chettiers case is on the basic issue of whether a notice in terms of Section 106 of the Transfer of Property Act, 1882, is required to be issued to a tenant governed by the provisions of a Rent Act. Nothing in that case also has been pointed out to this Court, on the issue of payment of arrears of rent/mesne profits.

In *Kesavans'* case, the issue was with regard to continuation of the lease without the necessity to execute a fresh one, once an intention to continue it had been expressed in the first lease. That again is an issue that does not arise presently because the lease practically continued right uptill 2008, with the initial lease deed having been executed in the year 1969, and in any case, that issue again would be one that would have arisen in the suit/rent petition seeking eviction of the present appellants by the respondents-plaintiffs.

35. Consequently, having held as above, this appeal is partly allowed, to the extent that instead of a continuous rental value of Rs.2,17,000/- per month as assessed by the Ist appellate Court, from 2001 till the date of vacation of the suit premises, i.e. 31.03.2008 (as given in the judgment of that court), the rental value would be assessed as given

hereinafter.

For the period from 01.04.2005 to 31.03.2008 it would be taken to be Rs.2,17,000/- per month, from 01.04.2002 to 31.03.2005 it would be taken to be Rs.1,95,000/- and for the period 20.07.2001 to 31.03.2002, it would be Rs.1,75,500/- per month. Interest would accrue upon the amount calculated, @ 6% per annum, as held by the Ist appellate Court.

The parties are left to bear their own costs.

January 24, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.