IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.1099 of 2013(O&M)
Date of decision: 22.03.2018

State of Punjab and others ...**Petitioners**

Versus

Smt. Kamlesh Ohri and another ...**Respondents**

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

Present: Mr. Navdeep Chhabra, Deputy Advocate General, Punjab for the petitioners.

Mr. Gurpreet Singh, Advocate for the respondents.

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G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 17.12.2012 (Annexure P/3) passed by the Appellate Authority, Chandigarh whereby the petitioner-State has been directed to pay mesne profits at the rate of ₹ 7 lakh per month from the date of passing of the ejectment order dated 24.4.2012 (Annexure P/1) by the Rent Controller, Chandigarh.

It is not disputed that the petitioner-State has vacated the premises in June, 2016 and therefore, the only issue now arises is that for the occupation from the date of eviction order till 30.5.2016 what would be the amount payable of mesne profits. The premises in question which were occupied by the petitioner-State as a tenant was SCO Nos.98-100, Sector 17-D, Chandigarh and the petitioner was in possession of 2nd, 3rd and ½ of 4th floor which works out approximately 9900 square feet. Resultantly, keeping in view the fact that the rented premises were in the heart of the town and a coveted commercial sector-17, the rent deed of SCO No.109-111, Sector 17-D, Chandigarh having carpet area of 2200 square feet executed in favour of M/s Levi Strause (India) Private Limited executed on 15.10.2012 wherein rent payable was ₹ 13,75,000/- per month which was of ground floor and Ist floor, the market rent was calculated at ₹ 625/- per sq. feet. The Appellate Authority, Chandigarh accordingly held that 25% of the amount would come to ₹ 15,46,875/-and the rate of ₹ 625/- per sq. yard. Therefore, the petitioner-State being in possession since 1977 and the Government Department which was paying rent of ₹ 7662/- per month was liable to pay the mesne profits at the rate of ₹ 7,73,437/- being 50% of the market value. However, since the claim only was for ₹ 7 lakh, the mesne profits was accordingly fixed at the said rate while disposing of the application.

Counsel for the State has vehemently submitted that the mesne profits is not to be windfall or bonanza for the landlord and placed reliance upon the judgment in **<u>Anderson Wright and Co. Vs. Amar Nath Roy</u> 2005(6) SCC 489, <u>Surinder Kumar Vs. Rattan Lal</u> 2006(3) R.C.R. (Civil) 291** and **<u>Angoori Devi and others Vs. Smt. Satya Bhana</u> 2016(5) R.C.R. (Civil) 1043.** It was accordingly submitted that being an old tenant and being in occupation of 2nd, 3rd and 4th floor (partly), the amount fixed was exorbitant. Reference has been made to Annexure P/7 which is sanction order in favour of the tenant of SCO Nos. 106-108, 2nd, 3rd and 4th floor, Sector 17-D, Chandigarh wherein the office of Directorate, Punjab State Lotteries & Directorate of Small Savings, Punjab, Chandigarh was paying rent at the rate of ₹ 1,51,477/- to the landlord. Similarly reference has also been made to other annexures to show that for similar premises the rent was much lower. It is pertinent to notice that these documents had not been placed before the Appellate Authority in the first place. The site plan

(Annexure P/4) has also been referred to show that the location of M/s Levi Strause (India) Private Limited and the building in question occupied by the petitioner-State.

It is not disputed even by the counsel for the landlord that access of the building in question is not from the main parking but from the parking of other side whereas entry for M/s Levi Strause (India) Private Limited opens out from the main parking. M/s Levi Strause (India) Private Limited's building is a corner building and on the ground floor. The lease deed was much later in point of time which is admittedly of 15.10.2012 though the market rent is payable as such once order of eviction has been passed and registered lease deeds are also valid parameters and good tool bar to fix the mesne profits. But it is to be seen whether type of construction and location and accessibility to the main road and parking facility are identical which was noticed by the Apex Court in **Mohammad Ahmad Vs. Atma Ram Chauhan 2011(2) R.C.R.(Civil) 972.** The guidelines are as under:-

> 21. According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels. These are as follows:-
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> (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 rentals in the surrounding

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 5 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, location, type of construction, accessibility with the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord."

Counsel for the State has also justified in the extent that the market value changes with time and in the present stage, the rents have not gone up rather have decreased and therefore, there can be no straight jacket formula which view was also taken by a coordinate Bench of this Court in **Angoori Devi's case** (Supra). It is also to be kept in mind the premises were leased out as noticed to the petitioner in the year 1977 for running the office of Chief Architect whereas the exemplar which has been relied upon was off commercial venture and that the Appellate Authority has relied upon a registered lease deed but these facts have not been kept in mind. Therefore, this Court is of the opinion that the amount fixed on account of mesne profits is at higher level and needs to be suitably reduced and the sum of ₹ 7662/- per month was a pittance which had never been increased.

Resultantly, keeping in view the above, this Court is of the opinion that a sum of ₹ 5 lakh per month towards mesne profits for the period petitioner-State had remained in occupation i.e. from 24.4.2012 to 30.5.2016 would be just, fair and proper.

Accordingly, the revision petition is partly allowed to that extent. Needless to say that the amount of mesne profits paid @ ₹ 1,75,000/- per month as per interim order dated 18.2.2013 shall be adjusted. The petitioner-State shall deposit the said amount with the Rent Controller, Chandigarh within a period of three months from the date of receipt of certified copy of this order.

March 22, 2018 **(G.S.SANDHAWALIA)**
Pka **Judge**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No