

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

134

CR No.1948 of 2018 (O & M)
Date of Decision:12.10.2018

Vikas Singla

...Petitioner

Versus

Hari Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Anil Kumar Garg, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Only a limited issue arises in the present revision petition. The learned Appellate Authority after an order of eviction has fixed an amount of mesne profit payable before granting any injunction.

Learned counsel for the tenant-petitioner submits that the aforesaid amount of mesne profit determined and held to be payable, which is over and above the rent should be kept in a fixed deposit. Learned counsel has relied upon a judgment passed by this Court reported as in the case of **“Angoori Devi and others vs. Smt. Satya Bhama”** 2016 (5) RCR Civil 1043, which in turn relies upon a judgment passed by Hon'ble Supreme Court in the case of **“The State of Maharashtra vs. Super Max International Private Limited”** 2009(2) RCR (Rent) 246.

On careful reading of Para 48 of judgment passed by the Hon'ble Supreme Court, it is apparent that Hon'ble Supreme Court had only

observed that ordinarily the mesne profit should not be directed to be paid

to the landlord.

In the considered opinion of this Court, such observation made by the Hon'ble Supreme Court cannot be treated as ratio decidendi. A landlord, who even after having succeeded before the learned Rent Controller in getting the eviction order, is still being deprived of the possession because of an injunction order granted by the learned Appellate Authority.

In such circumstances, on the basis of equity and fair play, Courts have been empowered to fix mesne profit which can be over and above the agreed rent somewhere near the market rate of rent. Ultimately, if the tenant succeeds, the excess amount can always be adjusted towards future rent. Tenant being in possession would be entitled to retain the possession without payment of future rent unless the excess amount paid is adjusted. However, there is no equity in favour of the tenant, to insist that the amount should not be paid to the landlord.

Hence, there is no ground to interfere.

Revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

12.10.2018

sheetal

(ANIL KSHETARPAL)

JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No