

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-17.01.2018

CR No.2672 of 2016(O&M)

Vijay Mahajan @ Vijay Kumar Gupta & Anr.

.....Petitioners.

Versus

Amrit Sagar Puri.

.....Respondent.

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CR No.3288 of 2016(O&M)

M/s Krishna Book Depot Main Bazar, Pathankot & Ors.

.....Petitioners.

Versus

Mr. Amrit Sagar Puri.

.....Respondent.

AND

CR No.4011 of 2016(O&M)

M/s Inder Hotel & Anr.

.....Petitioners.

Versus

Amrit Sagar Puri & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Sanjay Majithia, Senior Advocate assisted by
Mr. Vishal Munjal, Advocate for petitioners
(in CR No.2672 of 2016).

Mr. Avnish Ahlawat, Advocate,
Mr. Shaurya Sharma, Advocate &
Mr. Anuj, Advocate for the Petitioner(s)
(in CR No.3288 of 2016).

Mr. Munish Puri, Advocate for the Petitioner(s)
(in CR No.4011 of 2016).

Mr. M.L. Sarin, Senior Advocate assisted by
Ms. Himani Sari, Advocate for the Respondents.

JASWANT SINGH, J.

This common order shall dispose of all the aforesaid three revision petitions, as common questions of law and facts are involved therein. For the sake of convenience, facts are being taken from CR No.2672 of 2016.

Three different tenants of a common landlord are in revision aggrieved against the order dated 01.12.2016 passed by the learned Appellate Authority, Pathankot whereby the Appellate Authority has dismissed the appeal, on the ground that the conditional order of stay of dispossession granted by it, while assessing mesne profits/clearance of arrears of rent, has not been complied with and, therefore, instead of deciding the appeals on merits, deemed it appropriate to dismiss the same on account of the said default.

From the record it is apparent that on 04.03.2014, Appellate Authority, Pathankot had passed the following order:-

“ This appeal was presented on 03.03.2014 and is taken up today. Fairly arguable points are involved in the appeal and hence, it is admitted for hearing. It be registered. Notice to the respondent be given on PF, RC/AD and copies of memorandum of appeal for 12.05.2014. Notice to Shri J.C. Shukla, Advocate, who represented the respondent before learned trial Court, be also issued for that date. Trial Court file be also requisitioned for that date. In the meanwhile impugned order of eviction be kept in abeyance subject to the condition that the appellant-tenant shall keep on depositing the rent in the Court of Rent Controller in advance by 10th of

each calendar month. In case, there are arrears, the same be also cleared by 10th of March.”

Thereafter, the respondent-landlord had filed application for assessment of mesne profits, whereby mesne profits were assessed to the tune of Rs.12,000/- per month and the petitioners-tenants were directed to pay the same w.e.f. 13.4.2014 onwards till the disposal of the appeal. However, it was made clear that in case the payment is not made by the petitioners(tenants) by 10th of each calendar month, then the stay on execution of the ejectment order shall come to an end. For necessary reference, the relevant part of the order dated 20.05.2015 passed by the Appellate Authority, Pathankot is reproduced as under:-

“So keeping in view the situation of the shop in the main market and the rate of inflation mesne profits are assessed to the tune of Rs.1200/- per month and thus the appellants-tenants are directed to pay mesne profits to the tune of Rs.1200/- per month from 13.04.2014 onwards, the date which was given to him to vacate the premises by the learned Rent Controller, till disposal of the present appeal. Arrears of such amount be deposited within a period of three months and the appellant shall keep on depositing such amount in advance before the Rent Controller before 10th of each calendar month for payment to the respondent-landlord failing which the interim order dated 04.03.2014 regarding stay of execution of ejectment order shall come to an end. ”

However, tenant was not able to pay the assessed amount of mesne profit and consequently, an application for extension of time to deposit the part of the arrears of rent/mesne profits was moved by the tenant. The said application was contested tooth and nail by the contesting respondent (landlord) on the ground that the conditional order passed by the

extended. It is on the adjudication of the said application, the Appellate Authority came to a conclusion that a default has been made by the petitioners (tenants) and since the amount was not tendered by them on the first date of hearing, after the assessment of mesne profits, the appeal cannot proceed further and thus, same was dismissed by relying upon **Manik Lal Majumdar Vs. Gauranga Chandra Dey AIR 2005 Supreme Court 1090**

Learned Counsel for the petitioners (tenants) has vehemently argued that under the said circumstances, Appellate Authority could have vacated the conditional stay order passed by it, by dismissing the application for extension of stay but could not have dismissed the statutory appeal filed by the tenants without deciding the same on merits. As per him, the jurisdiction of Rent Controller and that of an Appellate Authority is completely different and the parameters for assessment of provisional rent and its subsequent default are not comparable with the parameters to assess mesne profits and the consequences of its default. However, it is argued that the Appellate Authority has assumed itself to be a Rent Controller and in view of the default made by the tenants, has erred in law by dismissing the appeal not on merits. In any case, it is argued that after passing of the impugned order, the tenants have cleared the entire arrears of rent/mesne profits and thus, they are entitled for protection of stay.

On the other hand, learned Counsel for the respondents (landlords) has argued that the order passed by the Appellate Authority does not suffer from any legal infirmity because at the time when the impugned order was passed, the tenants were admittedly in arrears of rent/mesne profits and without clearing the same, the appeal could not have proceeded further. It is argued that as on today also, one of tenant has not cleared the

arrears of rent/mesne profits, which speaks volumes about the conduct of such tenant. Further, it is submitted that merely tendering the rent/mesne profits after the stipulated date, cannot entitle the tenants for protection from dispossession.

After hearing learned Counsel for the parties and perusing the paper books with their able assistance, this Court is of the considered view that the present revision petitions deserves to be allowed.

Factually, it has to be noticed that after the dismissal of the appeal on 12.01.2016, two of the tenants have already cleared the arrears of rent as also mesne profits by April, 2016 i.e. In CR Nos.2672 and 3288 of 2016. Thus, it is contended that the said tenants are not in arrears of rent and mesne profits as on today. However, the third tenant, namely, M/s Inder Hotel in CR No.4011 of 2016 has allegedly not paid mesne profits, which is disputed by the tenant. Without going into the said controversy as to whether the mesne profits/arrears of rent have been paid or not, this Court is inclined to decide the question of law only and feels that the matter is required to be relegated back to the Appellate Authority for fresh decision of the appeals filed by the tenants on merits.

The question, thus, which arises for consideration in the present revisions is “whether for non compliance of a conditional interim order qua deposit of mesne profits the statutory appeal filed by the tenant against his order of eviction can be dismissed?”

The entire approach of the Appellate Authority by dismissing the appeals for non payment of mesne profits is erroneous, much less sustainable in the eyes of law. The Appellate Authority had assumed as if it is exercising the jurisdiction of a Rent Controller, after assessment of

provisional rent and not as an Appellate Authority, exercising powers under Section 15(5) of The East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 1949 Act). In case of **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation** 2002(1) RCR (Rent) 514 the Hon'ble Supreme Court had the occasion to discuss the relevant provisions dealing with the assessment of provisional rent and the consequent default on part of the tenant to pay the said amount, on the first date itself. The observations made by the Hon'ble Supreme Court in ***Rakesh Wadhawan's case (supra)*** were based upon the statutory provisions governing the assessment of the provisional rent. However, there is no such provision made in the entire 1949 Act which would deal with the situation where the mesne profits, as assessed by the Appellate Authority, are not paid by the tenant on the first date. In fact, the principle of passing a conditional order came into existence only to balance the equities amongst the parties and was devised as a method to safeguard the interest of the landlord during a long drawn litigation with his tenant, till the time he is able to obtain the actual physical possession of his property. However, it has to be kept in mind that the assessment of mesne profits cannot be co-related with the hypertechnical principles governing the provisional assessment of arrears of rent and it's subsequent default.

The judgment that has been relied upon by the Appellate Authority while dismissing the appeal(s), is completely not applicable to the facts of the case. The judgment of **Manik Lal Majumdar's case (supra)** deals with the case of Tripura Rent Act, having specific provisions for a default committed by the tenant on account of non payment of assessed mesne profits. There is no such provision in the Rent Act, 1949 whereby

the Appellate Authority could have assumed such a jurisdiction and pass the impugned order.

Although both the sides are at loggerhead as to what is the amount that is due to be paid, however, this Court is not inclined to go into such a question at this stage. It is for the Appellate Authority to determine the said fact and not this Court. However, it has to be observed that the tenants had indeed violated a conditional order passed by the Appellate Authority and in such a situation, the correct approach should have been to decide the application for extension of time, after considering its merits and demerits, and in case the Appellate Authority was not inclined to extend the time, it should have vacated the stay order and thereafter the landlord could have filed an execution application for getting the possession of the demised premises. In any case, it is again for the Appellate Authority to decide the question as to whether the stay has to be granted/extended to the tenants who have defaulted in payment or not.

The contention of learned Counsel for the petitioners (tenants) that they have allegedly cleared the arrears of rent/mesne profits after dismissal of the appeals and, therefore, they are entitled for stay as a matter of right, does not impress this court. By depositing the amount after the stipulated date, the tenants have not done any charity to either the landlord or to the court. Even if the tenants had not deposited the said amount, landlord was entitled to recover the same by filing a separate suit for recovery. Grant of stay in appeal is a matter of discretion and in cases relating to money, always dependent upon deposit of such amount assessed.

Consequently, all the aforesaid revision petitions are allowed and the impugned orders passed by the Appellate Authority are set aside.

All the aforesaid revision petitions are relegated back to the Appellate Authority, with a direction to decide afresh the application of the petitioners (tenants) for extension of time, if any, or in the alternative pass a detailed speaking order allowing or declining the applications for stay. However, the Appellate Authority is bound to decide the appeals on merits and not dismiss the same on account of default of non payment of mesne profits/arrears of rent. In case the Appellate Authority does not extend the time for payment of amount of mesne profits or declines to extend the stay order, in such a situation, the landlord would be at liberty to move an appropriate application for execution of the eviction decree passed in his favour and get the same executed through the process of the Court.

Disposed off in the aforesaid terms.

The parties are directed to present themselves before the Appellate Authority, Pathankot on **05.02.2018** and the Appellate Authority is directed to decide the aforesaid applications for extension of time within thirty (30) days from the date of appearance of the parties and thereafter decide the main appeal(s) within next sixty (60) days.

(JASWANT SINGH)
JUDGE

January 17th, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>