

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

CR-3215-2016 (O&M)

Date of decision : 15.3.2018

Prem Dass

..... Petitioner

Versus

Sandeep Kumar Verma

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vivek Aggarwal, Advocate for the petitioner.

Mr. Anmol Verma, Advocate for respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 11.2.2016 (Annexure P-4), passed by learned Civil Judge (Junior Division), Ambala, vide which it was held that decree holder is not entitled to recover the *mesne profit* at the rate of Rs. 50 per day w.e.f. 1.1.2001 till the vacation of the shop by defendant-judgment debtor. Therefore, request of the decree holder to recover the *mesne profits* from defendant/judgment debtor was declined and the execution was dismissed.

Heard.

It comes out that in a suit filed by the plaintiff-petitioner following order was passed: -

“In view of my findings on the above mentioned issues, the suit of the plaintiff is hereby decreed with costs against the defendant. The plaintiff is entitled to possession of the shop bearing No. 4103/3, situated in Bhagwati Market, Sarafa

Bazar, Ambala Saddar, Ambala Cantt. by way of ejectment of the defendant and the plaintiff is also entitled to recover the amount of Rs. 8750/- as arrears of rent alongwith mesne profits at the rate of Rs. 50/- per day w.e.f. 1.1.2001 till the vacation of the shop by the defendant. The defendant is also directed to hand over the vacant physical possession of the shop in dispute to the plaintiff within four months from today. The detail of the suit property be incorporated in the decree sheet.”

Aggrieved against the said order, defendant-appellant preferred an appeal. Learned District Judge, Ambala vide its order dated 26.3.2013, affirmed the findings of the trial Court and passed the following order: -

“It is ordered that the appeal fails and is hereby dismissed with costs against the appellant/defendant and in favour of the respondent/plaintiff. The appellant/defendant is directed to hand over the vacant physical possession of the suit property to the respondent/plaintiff within two months from the date of this judgment, failing which the respondent/plaintiff shall be entitled to recover the possession thereof by execution of the decree.”

The plea of the judgement debtor which prevailed before the Executing Court is that decree of the trial Court has merged in the decree of the Appellate Court and the Appellate Court has not granted any *mesne profits*, therefore, *mesne profits* are not recoverable. A perusal of the judgment and decree of the lower Appellate Court shows that findings of the trial Court on the issue regarding mesne profits were affirmed. Neither the findings nor the order of the trial Court granting *mesne profits* was set aside and it was ordered that appeal is hereby dismissed with costs. To add something extra, a direction was issued to the defendant to hand over the vacant possession of the shop within two months from the date of passing of judgment failing which plaintiff shall be entitled to recover the possession

thereof by way of execution of the decree. That does not mean that part of the decree of the trial Court granting *mesne profits* was set aside. Rather, the direction of the lower Appellate Court is in addition to the decree passed by the trial Court. Since the decree of the trial Court was upheld, therefore, it is to be faithfully executed with additional direction given by the lower Appellate Court.

As such, impugned order 11.2.2016 (Annexure P-4), passed by learned Civil Judge (Junior Division), Ambala is set aside and it is held that decree holder is entitled to *mesne profits* @ Rs. 50 per day w.e.f. 1.1.2001 till the vacation of the shop by the defendant. The execution is restored, learned Executing Court shall expeditiously execute the same.

Needless to say that if judgment debtor has paid some amount on account of *mesne profits* that will be adjusted in the arrears.

Revision is allowed accordingly.

Since, the main petition stands allowed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

15.3.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No