IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3051 OF 2017(O&M)
Date of decision: 25.05.2018

Darshana Wati and ors. .. Petitioners

vs.

Dinesh Kumar Verma .. Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Karanvir Singh Khehar, Advocate
for the petitioners.

Mr. Nitin Thatai, Advocate
for the respondent.

Harinder Singh Sidhu, J.

The petitioners have filed the present revision petition impugning the order dated 09.12.2016 of the learned Appellate Authority, Ludhiana, whereby, the mesne profits in respect of the premises has been assessed at Rs.15,000/-.

The demised premises comprises a shop measuring 23 sq. yds having two shutters forming part of property bearing Municipal Unit No.B-IX-1270, situated in Roopa Mistry Street, Ludhiana.

The primary contention of learned counsel for the petitioners is that in assessing the mesne profits, learned Appellate Authority has mainly relied on Annexures R-1 and R-2, which are unregistered rent deeds. He relies on decisions of this Court in ***Baljit Kaur vs. Daljit Singh and another, 2017(1) Rent L.R.*** 334 and ***Inderjit and another vs. Kamal Kishore, 2017(1) Rent L.R. 280*** to contend that unregistered rent deeds could not have been made the basis for assessment of mesne profits. He further argued that the mesne profits assessed are highly exorbitant and excessive considering that the contractual rate of rent is

Rs.1000/- per month.

Ld. Counsel for the respondent, on the other hand, contended that the lease deeds relied on, were for a period of eleven months, registration thereof was not compulsory and hence the same have rightly been relied on by the Appellate Authority. The lease deeds in respect of premises in the same locality as the demised premises, were the most reliable piece of evidence to determine mesne profits. He further argued that rent was fixed at Rs.1000/- per month in the year 1988 and even if the rent deeds relied on by the petitioners were not to be taken into consideration, considering that rents have multiplied manifold, the mesne profits as assessed are still less than the prevalent market rent and have been correctly fixed.

Heard Ld. Counsel for the parties.

The first question that needs to be considered is whether the unregistered lease deeds could at all be relied upon. Ld. Counsel for the petitioner has relied on Inderjit's case.(supra). In that case, the following observations from Surender Kumar Vs. Rattan Lal 2006 (2) PLR 200 were extracted :

> *"9. The other question that requires consideration is the mode of determination of the mesne profits or compensation payable. In this respect, it is appropriate to note that the same is to be done on the basis of materials placed on record by the parties. The parties would be at liberty to place cogent evidence by way of recent registered lease deeds of the locality to show their amount of rent which is payable. It is on the basis of such convincing material that a provisional assessment of the compensation/damages which the tenant is liable to pay the landlord pending his appeal or revision against an order of ejectment, can be determined. This provisional assessment that has been made would be subject to adjudication at the time of final disposal of the appeal or revision as the case may be. If the final adjudication by the appellate or revisional Court in respect of the damages or compensation payable by the tenant is at variance with the provisional order, the landlord would be liable to reimburse or refund the excess amount deposited by the tenant and in case of deficient deposit, the tenant shall be liable to make good the deficient amount. In fact in Atma Ram Properties case (supra), the Hon'ble Supreme Court held that reversal of interim orders passed at the interim stage due to final decision going against the party securing the interim order in its favour would entitle the successful party to demand (a) restitution of benefit earned by the opposite party under the interim orders or (b) compensation for what it has lost. It was observed that to grant such relief is the inherent*

> *jurisdiction of the Court and application of the above principle by analogy to support imposition of conditional or periodical deposit of reasonable sum in Court is the pre-condition for grant of stay of execution of decree for eviction. Therefore, in case the party filing the appeal or seeking revision of the order is successful, it would be entitled to restitution of the interim benefit which has been granted to the respondent in the appeal or the revision. Insofar as the objection of Shri M.L. Sarin, Senior Advocate as regards the inadmissibility of documents on account of the lease deed being inadmissible for want of registration, it is appropriate to note that there is no dispute the said proposition that an un-registered lease deed signed by the lessor and lessee is inadmissible in evidence, as has been held in several decisions, c.f.* ***Satish Chand Makhan v. Govardhan Das Byas, 1984(1) R.C.R.(Rent) 264 : AIR 1984 Supreme Court 143****;* ***M/s. Bajaj Auto Limited v. Behari Lal Kohli, 1989(2) R.C.R.(Rent) 320 : AIR 1989 Supreme Court 1606*** *and* **Anthony v. K.C. Ittoop and Sons and others, (2006)6 S.C.C. 394.** *It has already been held that the provisional assessment is to be made on the basis of cogent and credible evidence which would necessarily mean that inadmissible evidence like un-registered lease deeds which are required to be registered compulsorily in terms of Section 17(1)(d) of the Registration Act, 1908 are not taken into account. It was contended on behalf of the tenants-petitioners that the question whether personal necessity as a ground for eviction is applicable in Union Territory of Chandigarh is pending before the Hon'ble Supreme Court and, therefore, this matter should be kept in abeyance till such decision. However, this would now no longer be available as the Hon'ble Supreme Court in* ***Rakesh Vij v. Dr. Raminder Pal Singh and others, 2001(1) R.C.R.(Rent) 110 : (2005-3) 141 P.L.R. 676 (S.C.)*** *has held that the around of bonafide requirement of the landlord for seeking eviction of his tenant is applicable in Union Territory of Chandigarh."*

In Surender Kumar's case, it has been held that assessment of mesne profits is to be made on the basis of cogent and credible evidence. It is in that context that relying on various decisions of the Hon'ble Supreme Court it was held that inadmissible evidence like unregistered lease deeds which are required to be compulsorily registered in terms of Section 17(1)(d) of the Registration Act, 1908 are not be taken into account for determination of mesne profits.

The Hon'ble Supreme Court in ***Anthony v. K.C. Ittoop & Sons,*** **(2000) 6 SCC 394** considered the question of admissibility of a lease deed which was required to be compulsorily registered but had not been registered. It was held that in view of the three fold statutory interdict namely : Section 107 of the Transfer of Property Act, 1882 (which requires a lease of immovable property for any term exceeding one year to be by way of registered instrument), Section 17(1)(d) of the Registration Act (as per which leases of immovable property from year to year, or for any term exceeding one year are compulsorily registrable), Section 49 Registration Act (as per which no document which is compulsorily registrable in terms of Section 17 of the Registration Act shall be received as evidence of any transaction affecting such property) the Court is disabled from using such an instrument as evidence. The relevant observations are as under:

> ***"8.****The lease deed relied on by the plaintiff was intended to be operative for a period of five years. It is an unregistered instrument. Hence such an instrument cannot create a lease on account of three-pronged statutory inhibitions. The first interdict is contained in the first paragraph of Section 107 of the Transfer of Property Act, 1882 (for short "the TP Act") which reads thus:*
>
> > *"107. A lease of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent, can be made only by a registered instrument."*
>
> *(emphasis supplied)*
>
> ***9.*** *The second inhibition can be discerned from Section 17(1) of the Registration Act 1908 and it reads thus: (only the material portion)*
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> *"17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:*
>
> *(a)-(c)****
>
> *(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent;"*
>
> ***10.*** *The third interdict is contained in Section 49 of the Registration Act which speaks about the fatal consequence of non-compliance of Section 17 thereof. Section 49 reads thus:*
>
> *"49. Effect of non-registration of documents required to be registered.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—*
>
> *(a) affect any immovable property comprised therein, or*
>
> *(b) confer any power to adopt, or*
>
> *(c) be received as evidence of any transaction affecting such property or conferring such power,*
>
> *unless it has been registered.*
>
> *Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."*
>
> *No endeavour was made by the counsel to obviate the said interdict with the help of the exemptions contained in the proviso.*
>
> ***11.*** *The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Shantabai v. State of Bombay [AIR 1958 SC 532 : 1959 SCR 265], Satish Chand Makhan v. Govardhan Das Byas [(1984) 1 SCC 369]*

and Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806].”

Thus, the ratio of Inderjit's case which relies on the decisions of the Hon'ble Supreme Court including ***Anthony's case (supra)*** appears to be that a lease deed which is required to be compulsorily registered in terms of Section 17(1) (d) of the Registration Act, but is not so registered being inadmissible in evidence cannot be made the basis for determination of mesne profits.

Inderjit's case and the cases following that case cannot be held to be laying down a proposition that an unregistered lease deed for a period less that one year which is not compulsorily registrable would not constitute relevant material for determination of mesne profits merely for the reason that it is not registered.

As the lease deeds Annexures R-1 and R-2 relied on by the Ld. Appellate Authority were for a period of eleven months and their registration was not compulsory, they could be relied upon by the Appellate Authority as material for determination of mesne profits. No illegality can be found therewith.

The petitioner has relied on a rent-note of a shop measuring 9'x14', which was part of property of Thakurdwara Nauhria, which had been let out on 15.6.2013 at the rate of Rs.2000/- per month. He had produced another rent-note of shop measuring 9'x10' again situated in the area of Thakurdwara Nauhria, which had been let out at the rate of Rs.1500/- per month. The Ld. Appellate Authority held that these rent-notes could not be relied upon because Thakurdwara Nauhria is located far from the demised premises, which is situated on the main road.

The respondents had produced photocopies of rent agreement dated 16.2.2015 of shop measuring 7'x11' situated in the area of Nimwala Chowk, Ludhiana. The property had been taken on rent for a period of 11 months w.e.f.

1.2.2015 (Annexure R-1). The rent was fixed at Rs.5,250/- per month. Annexure R-2 was a rent agreement pertaining to shop measuring 7.5'x12' situated at Kishore Road, Ludhiana. The period of rent was 11 months commencing from 25.9.2014. The rate of rent was Rs.7,000/- per month.

The Ld. Appellate Authority held that these shops were situated close to the demised premises. Considering that the rent of a shop measuring 82.5 square feet on Kishore Road was Rs.7,000/- per month and a shop measuring 77 square feet was Rs.5,250/- per month, it was concluded that the demised shop which was measuring 203 square feet would fetch a market rent of not less than Rs.15,000/- per month and the mesne profits were assessed accordingly.

Thus , it appears that the Appellate Authority has assessed the mesne profits primarily keeping in view the prevailing market rate. This is contrary to what has been held by this Court in detailed order dated 18.08.2017 in **Civil Revision No.8293 of 2015 titled Avtar Singh vs. Kuldeep Singh and others** and the judgment in **Angoori Devi and others vs. Smt.Satya Bhama, 2016(5) RCR(Civil) 1043.** In the former case, after an extensive reference to the decided cases the Court fixed the mesne profits at approximately 1/4th of the rent of the neighbouring premises**.** In the latter case again, on a review of almost the entire case law, it has been held that while assessing the mesne profits a balance has to be drawn between the competing claims of the landlord and the tenant by fixing the mesne profits at a rate between the contractual rent and the market rent.

Considering that the contractual rent was Rs.1000/- per month and the market rent as per the lease deeds appears to be approximately Rs.15,000/-, in my view the mesne profits can be fixed at Rs.8,000/- per month i.e., a rate between the contractual rate and the market rent. It is so ordered.

Accordingly, this petition is allowed. The order of the Ld. Appellate Authority only to the extent of fixing the mesne profits @ Rs.15,000/- per month is set aside. The mesne profits are assessed @ Rs.8,000 per month. Let the entire arrears of mesne profits @ Rs.8000/- per month from the date of the order of eviction be deposited by the petitioners before the Rent Controller within two months. The Rent Controller in turn may deposit the same in a fixed deposit in any nationalized bank. Future deposits be put in a Recurring Deposit and the amount so accumulated would enure to the party who would be successful.

The petitioners would however pay the arrears of rent as per the order of the Appellate Authority.

Subject to the petitioner complying with the above terms, the order of eviction passed by the Ld. Rent Controller shall remain stayed till the decision of the Appeal.

The Appellate Authority is requested to endeavour to dispose of the Appeal expeditiously, preferably within a period of six months.

Revision petition is disposed of accordingly.

(Harinder Singh Sidhu)
Judge

25.05.2018
dinesh

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes/No