IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. Civil Revision No.3965 of 2016 (O&M)
Date of Decision:28.08.2018

Suraj Bhan Gulati ......Petitioner
Vs
Harleen Kaur Sandhu ....Respondent

2. Civil Revision No.4024 of 2016 (O&M)

Sanjeev Kuar ......Petitioner
Vs
Harleen Kaur Sandhu ....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Naresh Jain, Advocate
for the petitioner(s).

Mr. Vikas Mohan Gupta, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.

[1]. Vide this common order, Civil Revision Nos.3965 and 4024 of 2016 (O&M) are being decided.

[2]. In CR No.3965 of 2016, petitioner has challenged the order dated 03.05.2016 passed by the Appellate Authority, Chandigarh vide which *mesne* profits has been granted to the respondent to the tune of Rs.22,000/- per month in respect of first floor of SCF No.204, Sector 24 Chandigarh, whereas in CR No.4024 of 2016, the amount assessed by the Appellate

Authority to the tune of Rs.50,000/- per month towards *mesne* profits in respect of ground floor of SCF No.204, Sector 24 Chandigarh is under challenge. Both the revision petitions have arisen from the proceedings relating to one building.

[3]. Since common issue is involved in both the revision petitions, therefore, for brevity the facts are being culled out from CR No.3965 of 2016.

[4]. The Rent Controller vide order of ejectment dated 05.02.2016 has evicted the petitioner from the demised premises on the ground of *bona fide* personal need of the respondent. Petitioner was directed to hand over the vacant possession of the premises within two months. Against the order dated 05.02.2016, passed by the Rent Contoller, the petitioner went in appeal. The Appellate Authority assessed the *mesne profits* for use and occupation of the premises during pendency of the appeal before the Appellate Authority @ Rs.22,000/- per month for the first floor and Rs.50,000/- for the ground floor of SCF No.204, Sector 24, Chandigarh. While doing so, the Appellate Authority has taken note of ratio of ***State of Maharashtra and another vs. M/s Super Max International Private Limited and others, 2009(2) R.C.R. 246 (SC)*** by holding the tenant liable to pay *mesne* profits for the use and occupation at the rate on which the landlord would have given

the premises on rent and fetched the rental. The landlord is not bound by the contractual rate of rent effective for the period preceding to the date of ejectment. In fixing the amount, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

[5]. The Appellate Authority while assessing the prevailing rate of rent took notice of prevailing rate of rent in respect of prevailing rate of rent in the same locality. Undisputedly the premises in question is a commercial property situated near Panjab University and Dental College of Panjab University. A reference was made to the lease deed dated 22.06.2012 in respect of SCO No.158, Sector 24-D, Chandigarh which is in the same building as that of the demised premises. As per the aforesaid lease deed, the rental for the aforesaid SCO was Rs.1,40,000/- per month with increase clause of 10%.

[6]. Taking judicial notice of the aforesaid prevailing rate of rent for similar building in the same locality, the Appellate Authority assessed the *mesne profits* @ Rs.22,000/- per month for the first floor and Rs.50,000/- per month for the ground floor of SCF No.204, Sector 24, Chandigarh.

[7]. At the time of issuance of notice of motion on 03.06.2016, the petitioner was directed to deposit the mesne

profits on provisional basis to the tune of Rs.10,000/- per month.

[8]. Learned counsel for the petitioner submitted that even while assessing *mesne profits*, the Appellate Authority cannot assess the amount by approximation or by random approximation without there being any material. For assessing the amount towards *mesne profits* during pendency of the first Appeal, the entire burden lies upon the landlord to prove his case regarding reasonable compensation/mesne profits to be paid by the tenant. The Court was required to consider the principle as enshrined under Order 20 Rule 12 CPC for determining the mesne profits.

[9]. Learned counsel by relying upon ***Chandrakant Dhannu vs. Sharmila Kapur*** i.e. ***Writ Petition No.6858 of 2008 decided by the Bombay High Court on 07.01.2009*** contended that the principles as enshrined in ***M/s Atma Ram Properties (P) Ltd. vs. M/s Federal Motors Pvt. Ltd., 2005(1) R.C.R. (Rent) 1*** have to be adhered to while assessing the amount of *mesne profits* after giving notice to the tenant.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. There is no dispute with the proposition as per ratio of ***M/s Atma Ram Properties (P) Ltd.'s*** case (supra). The

quantification of the amount is only a tentative opinion formed by the Court on the basis of such evidence. It is equally important that the amount assessed by the Court should not be punitive in nature. It is also important to take note of rising price index for rental in respect of adjoining property of the demised properties. The Appellate Authority has taken cognizance of similar building situated in the same complex i.e SCO No.158 Sector 24-D, Chandigarh where the demised premises SCF No.254 Sector 24, Chandigarh is situated.

[12]. As per rent note/lease deed dated 22.06.2012, SCO No.158, Sector 24-D, Chandigarh was having rental of Rs.1,40,000/- per month with increase clause of 10%. The Appellate Authority has only assessed the rental of Rs.22,000/- per month for the first floor and Rs.50,000/- per month for the ground floor of SCF No.204, Sector 24, Chandigarh. If the increase of @ 10% in the rental of cited premises is taken into consideration, the assessment made by the Appellate Court for the demised premises would be on lower side.

[13]. At the time of passing of the impugned order, the Appellate Authority has decided the issue of *mesne profits* with reference to SCO No.158, Sector 24-D, Chandgiarh on the basis of lease deed dated 22.06.2012 in the presence of both the parties. Even as per the assessment done on the basis of

said instance, the *mesne profits* have been calculated with due care and caution if the principle of increase to the tune of 10% is applied to the aforesaid premises, the rate of rent per month would be escalated and the proportionate assessment in terms of ground floor and first floor would go beyond the amount as assessed by the Appellate Court for the demised premises. In para No.3 of the application for *mesne* profits, instance of SCO No.158, Sector 24 Chandigarh was specially pleaded. Said application was evasively replied by he tenant. In view of aforesaid it cannot be believed that the assessment of *mesne* profits was without following principles of natural justice.

[14]. In my considered opinion, the assessment made by the lower Appellate Court is just and appropriate and needs no interference at the hands of this Court.

[15]. In view of above, both the revision petitions are hereby dismissed. The amount of *mesne* profits @ Rs.10,000/- per month if deposited by the petitioner(s) would be adjusted in the total amount payable by the petitioner(s) on the basis of assessment done by the Appellate Authority in the impugned order. The Appellate Authority shall proceed to decide the appeal on merits in accordance with law.

August 28, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No