

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

**CR No.4169 of 2018(O&M)
Decided on. 05.07.2018**

Krishan Chand Thakur

.....Petitioner

Versus

Tapinder Singh Bajwa

.....Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Divanshu Jain, Advocate
for the petitioner.

LISA GILL, J. (Oral)

The petitioner is aggrieved of order dated 22.05.2018 passed by learned Appellate Authority, Chandigarh, whereby he has been directed to pay mesne profits at the rate of ₹40,000/- per month from the date of eviction order i.e. 09.01.2018 till date and further deposit the said amount by the 10th of every month. Subject to the said deposit, execution of the eviction order was stayed.

Eviction of the petitioner-tenant was ordered by the learned Rent Controller, Chandigarh, vide decision dated 09.01.2018 (Annexure P-7) from the demised premises i.e. SCO No. 49, Sector-28-C, 1st Floor, Chandigarh.

Two applications i.e. one for *mesne* profits filed by the respondent-landlord and one by the petitioner-tenant for stay of operation

of judgment and order dated 09.01.2018 passed by the learned Rent Controller, Chandigarh, were decided vide order dated 22.05.2018.

Learned counsel for the petitioner submits that the amount assessed by the learned Appellate Authority i.e. at the rate of ₹40,000/- per month is highly excessive. The prevailing market rent of similar premises is not more than ₹12,000/- per month. Learned counsel further relies upon decision dated 24.01.2017 in CR No. 8339 of 2015, whereby mesne profits at the rate of ₹12,000/- have been held to be valid in respect to the first floor of SCO No. 30-31, Sector-28-C, Chandigarh i.e. the premises which are in the neighbourhood itself. It is further contended that the learned Lower Appellate Court has rightly rejected the lease deeds on which the landlord had placed reliance to suggest that rent of the premises in question is about ₹2,35,000/-. The said lease deeds were rightly rejected on the ground that those premises were being used for commercial purposes. The petitioner is using the present premises for residential purpose. The demised premises are a shop-cum-flat (SCF) and not a shop-cum-office (SCO), therefore, the rate of ₹40,000/- fixed by the learned Appellate Authority, Chandigarh, is required to be reduced.

I have heard the learned counsel for the petitioner and have gone through the file with his able assistance.

Learned Appellate Authority, Chandigarh, specifically observed that from the documents/photographs produced by the petitioner himself in revision petition No. 2545 of 2012, before this Court as well as in an application dated 17.08.2016 before the learned Rent Controller, Chandigarh for grant of police help, it prima facie appears that he is using

the portion for conducting coaching classes. The observations of the Appellate Authority, Chandigarh, read as under:-

“18. Considering the various documents produced on the file and contentions advanced by learned counsel for the parties, I am of the opinion that the premises in question is prima facie being used for commercial purpose as material produced on the file by applicant-landlord amply reveals that the tenanted premises is being used for the purpose of running coaching classes. It becomes so evident from the own documents (photographs) of the appellant Krishan Chand Thakur which have been produced by him along with the revision petition No. 2545 of 2012 filed before the Hon'ble High Court and an application filed on 17.08.2016 before learned Rent Controller, Chandigarh for grant of police help. Further, as discussed above, FIR No.17 dated 15.01.2013 got lodged by none-else but daughter of appellant also shows that the rear portion of ground floor of the tenanted premises is being used by appellant Krishan Chand Thakur for running coaching classes. Still further, during proceedings of the application filed on 17.08.2016 for grant of police help, appellant Krishan Chand Thakur has himself taken a stand that on account of electricity connection having been disconnected by the landlord, fans in the tenanted premises could be run only with the help of inverter and as such, students studying in the coaching center were being put to undue harassment. In this view of the matter, I find considerable substance in the arguments of learned counsel for applicant-landlord that the premises in question is being used for commercial purpose.”

Learned counsel for the petitioner on a pointed query submits that coaching is being provided only in the rear portion of the premises to

commerce students. The address of the petitioner in the memo of parties reads as SCO No. 49, Ist Floor, Sector-28-C, Chandigarh. Reliance by learned counsel for the petitioner on order dated 24.01.2017 in CR No. 8339 of 2015, is accordingly unjustified and of no avail to the petitioner. The amount of ₹40,000/- per month fixed by the learned Appellate Authority as mesne profit to be deposited by the petitioner is not fanciful, excessive, whimsical or unjustified. Same has been assessed in a correct manner.

It is further noticed that the learned Appellate Authority, Chandigarh specifically directed that the respondent-landlord shall give an undertaking that in case the appeal of the petitioner(tenant) is accepted, the landlord shall be bound to refund the mesne profits minus rent of the premises or to adjust the same in future rent.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 22.05.2018, passed by the learned Appellate Authority, Chandigarh, which calls for interference by this Court in exercise of revisional jurisdiction.

Petition is accordingly dismissed.

July 05, 2018
s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No