IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-4517-2018 (O&M)
Date of Decision: 10.09.2018

Baldev Raj ... Petitioner

Versus

Nirmal Singh & another ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Akhilesh Vyas, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner/tenant has filed the instant revision petition assailing the order dated 23.05.2018 (Annexure P-1) passed by the Additional District Judge-cum-Appellate Authority, Amritsar deciding an application moved by the landlord and assessing mesne profit at the rate of Rs.7000/- per month for the demised shop.

2. Brief facts of the case are that the respondents/landlords filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the petitioner/tenant and such ejectment petition was allowed vide order dated 22.11.2017. Tenant challenged the order before the Appellate Authority and it is during pendency of proceedings before the Appellate Authority that an application was moved by the landlords for assessing of mesne profit and which has been decided in terms of impugned order dated 23.05.2018.

3. Learned counsel representing the petitioner/tenant has argued that the assessment of mesne profit at the rate of Rs.7000/- per month is on

the higher side and inequitable. It is submitted that the size of the demised shop is 12 sq. yards only whereas the Appellate Authority has been influenced by a lease deed dated 19.01.2017 that had been furnished by the landlord reflecting monthly rent at the rate of Rs.35,000/- per month in relation to a shop of the size of 70 sq. yards. Further argued that the Appellate Authority has completely overlooked two rent notes that had been relied upon by the tenant and executed by Ashok Kumar S/o Sham Dass and Atam Parkash S/o Dev Parkash and which were in regard to shops in the same locality and wherein rate of rent had been mentioned as Rs.500/- and Rs.1200/- per month respectively. Yet another argument raised is that the shop in question is situated in a side gali in Hari Singh Market, Katra Jaimal Singh whereas the lease deed furnished by the landlord and which has been taken into account by the Appellate Authority is pertaining to a shop which was on the main Katra Jaimal Singh market and as such, had a better commercial potential.

4. I have heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that no basis for interference is warranted in the impugned order dated 23.05.2018 in exercise of the revisional jurisdiction of this Court.

5. In the case of **M/s Marshall Sons & Co. (I) Ltd. v/s M/s Sahi Oretrans (P) Ltd., 1999 (1) RCR (Rent) 251**, the Hon'ble Supreme Court had held that once a decree for possession has been passed and execution is delayed depriving the decree holder of the fruits of the decree, it is necessary for the Court to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is

holding over the property.

6. In **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Limited, 2005 (1) RCR (Rent) 1**, the Apex Court observed that while ordering stay, the Appellate Court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order of eviction.

7. There would be no dispute with the proposition that no straightjacket formula has been worked out while fixing the amount of mesne profit. The Courts would have to be guided by the facts of each case.

8. Adverting to the facts of the present case, the landlords/respondents had then relied upon the registered sale deed dated 19.01.2017 reflecting a monthly rent of Rs.35,000/-. Per contra, the petitioner had placed reliance upon two rent notes which relate back to the years 2010 and 1991 and which reflected a monthly rent of Rs.1200/- and Rs.500/- per month respectively.

9. This Court does not find any patent infirmity as regards the Appellate Authority having taken a view to be guided by a recent registered lease deed which was dated 19.01.2017 and which had been adduced on behalf of the landlord/respondents. Undoubtedly, the rent in such lease deed was mentioned as Rs.35,000/- per month but for shop covering 70 sq. yards. The demised shop is measures 12 sq. yards. and while assessing the mesne profit, the amount has been proportionally scaled down.

10. Even though, the Appellate Authority was not bound to blindly follow the registered sale deed dated 19.01.2017 relied upon by the respondents/landlords, yet the same can certainly be used as a guiding factor

and particularly when the petitioner/tenant had placed reliance upon rent notes which were not of recent times.

11. Even as regards the locational advantage of the shop for which the registered lease deed dated 19.01.2017 had been relied upon by the landlords, suffice it to observe that the site plan placed on record at Annexure P-11 along with instant revision petition by the tenant has been perused and which would show that even demised shop is not at any inherent disadvantage inasmuch as it has clear accessibility and is in close proximity to the main Katra Jaimal Singh market. Under such circumstances, it was certainly open for the Appellate Authority to have assess the mesne profit by way of approximation and a certain guess work.

12. Keeping in view the entire conspectus of facts, assessment of mesne profits at the rate of Rs.7000/- cannot be construed as being a bonanza for the landlord.

13. There is no merit in the instant petition and the same is dismissed.

10.09.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No