IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7178 of 2018 (O&M)

Date of Decision: November 29, 2018

Mohan Lal .... Petitioner

Versus

Vinod Kumar .... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Ashish Gupta, Advocate for the Petitioner.

Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate for the Respondent.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the Order passed by Ld. Appellate Authority, Jind dated 05.09.2018, whereby the application of Petitioner for staying operation of impugned judgment of eviction dated 21.5.2018 of Ld. Rent Controller, Jind was disposed off.

2. Vide the impugned order, the Ld. Appellate Authority had directed the payment of mesne profits by the Petitioner-Tenant to the Respondent-Landlord at the rate of Rs.10,000/- per month from the date of eviction order passed by the Ld. Rent Controller. The Petitioner is aggrieved that such assessment by the Ld. Court below is highly exorbitant and oppressive in the given facts and circumstances. It has been highlighted by Ld. counsel

for Petitioner that both the contesting sides happen to be real brothers, and that as per their original Rent Agreement, the demised premises which is a Shop-room measuring 10 feet X 10 feet, was let out in favour of Petitioner way back in the year 1995 at a monthly rental of Rs.600/- only with the condition that such rent would be enhanced after expiry of every three years at the rate of 25% of the last paid amount. In this manner, over the years the rent lastly enhanced in terms of the Agreement in the year 2016 came to an amount of Rs.2,734/- per month only. Further, eviction in favour of Respondent-Landlord was granted by the Ld. Rent Controller on the ground that the demised premises is in a dilapidated condition, unfit and unsafe for human habitation and so getting it vacated for effecting the requisite repairs therein to make it safe and habitable is necessary. It has therefore, been urged on behalf of Petitioner that considering the admittedly dilapidated condition of the said Shop-room, the assessment of mesne profits for the same at a rate which is almost four times of the existing rental figure arrived at in pursuance of own Agreement of the parties whereby Escalation at the rate of 25% over the last rent paid for the immediately preceding block of three years is *ex facie* exorbitant.

3. The Application was initially opposed on behalf of Respondent-Landlord.

4. However, during the course of hearing, Ld. counsel for Petitioner cited the decision of a Coordinate Bench of this Court in **'Inderjit & another vs. Kamal Kishore' 2018(1) R.C.R. (Rent) 660** wherein it was mentioned -

"5. The Apex Court thereafter in ***Mohammad Ahmad and another v. Atma Ram Chauhan and others, 2011(1) R.C.R. (Rent) 394 : 2011(2) R.C.R. (Civil) 972 : 2011 (7) SCC 755*** *laid down the principle that the market rent shall be worked out on the basis of valuation reports or reliable estimate of building rentals in the surrounding areas let out on the rent recently. The rent which was to be fixed should be proper and adequate keeping in mind the location, type of construction, accessibility to the main road, parking space facilities and it should not end up being a bonanza for the landlord. The principles laid down read thus:-*

"(i) The tenant must enhance the rent according to the terms of the agreement or at least by ten per cent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rent should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

(ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges, then the same shall also be borne by the tenant only.

(iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv) But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If the present and prevalent market rent assessed and fixed between the parties is paid by the tenant then the landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5 years and the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind the location, type of construction, accessibility to the main road, parking space facilities available therein, etc. care ought to be taken that it does not end up being a bonanza for the landlord."

6. Faced with this situation, counsel for the respondent-landlord submits that he would be satisfied if the Appellate Authority is directed to decide the appeal, within a time-bound frame and at that point of time, the issue of mesne profits can also be decided along with the main appeal. He submits that the appeal is now listed for 06.02.2017."

5. In view of the aforesaid Citations and reliance placed on behalf of Petitioner, Ld. counsel for Respondent-Landlord in the present case submitted likewise that in the given circumstances, he would be similarly satisfied if the Appellate Authority is directed to decide the pending appeal within a time bound frame and that the issue of mesne profits at such stage can also be decided with the main appeal. Ld. counsel for Respondent further submitted that as of now the appeal is listed for 10th of January, 2019.

6. In the light of the above submission made on behalf of Respondent-Landlord, the present Revisional Application at this stage is disposed off after setting aside the impugned order with a direction to the Ld. Appellate

Authority to decide the pending appeal along with a *denovo* determination of the mesne profits to which the Respondent-Landlord might be entitled, as expeditiously as possible, but latest by 31.3.2019. For this purpose, no unnecessary adjournments to the parties, particularly the Petitioner/Appellant shall be allowed by the Appellate Authority.

(SUDIP AHLUWALIA)
JUDGE

November 29, 2018
AS

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No