IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 180 of 2019 (O&M)
Date of decision: 21.05.2019

Vijay Kumar Rajput

...Petitioner

Versus

Surmukh Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mrigank Sharma, Advocate,
for the petitioner.

Mr. S.S. Grewal, Advocate,
for the respondent.

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JAISHREE THAKUR, J. (ORAL)

This is a revision petition that has been filed seeking to challenge the assessment @ ₹ 12,000/- per month as mesne profit.

Learned counsel appearing on behalf of the tenant argues that the Appellate Authority has erred in holding mesne profit to be ₹ 12,000/- per month without considering the fact that the initial rate of rent was ₹ 200/- per month. It is argued that the Rent Controller himself by his order dated 29.08.2017 assessed the mesne profit @ ₹ 3,000/- per month and, therefore, there was no basis for the Appellate Authority to have arrived at a conclusion that rent for the booth would be ₹ 12,000/- per month. It is also argued that the landlord-respondent herein is not entitled to claim the said rent on account of the fact that booth in question now stands acquired by

GMADA and if rent has to be paid, it should be deposited with GMADA so that the petitioner is not fastened with the liability for the use and occupation of the booth till actual physical possession is taken by GMADA.

Learned counsel appearing on behalf of the respondent vehemently opposes the instant revision petition by arguing that the Rent Controller has rightly assessed the market rent based on two rent notes which had been produced on the record as is reflected in the impugned order. It is further contended that even though GMADA has acquired such premises, he is still the landlord and is entitled to retain rent which is payable by the petitioner, who is a tenant under him. It is further contended that as on date GMADA has not taken the possession of the booth from the respondent.

I have heard learned counsel for the parties and have gone through the pleadings of the case.

Admittedly, the Rent Controller had assessed rent in the month of August, 2017 at ₹ 3,500/- per month and, therefore, there is no justification of enhancing the said rent to ₹ 12,000/- per month. The rent deeds as relied upon by the respondent can not be a basis to determine the correct market value since they are not of the same vicinity. It appears that the Appellate Authority held that ₹ 3,500/- was the initial rent and then allowed the enhancement whereas the initial rent was ₹ 200/- per month. It is settled law that at best, in any case there is no comparable evidence available, the Rent Controller can assess the rent on the last known rent by giving an addition of 5% every three years and, therefore, enhanced rate of rent @ ₹ 12,000/- per month is not justified.

The petitioner herein would be liable to be evicted in case he does not comply and deposit the rate of rent as assessed at ₹ 3,500/- per month within a period of four weeks including all arrears thereto.

Since booth in question already stands acquired and the apprehension of the petitioner is genuine that he might have to pay a double amount in case GMADA claims ownership and possession from him, let rent/mesne profit including the arrears of rent/mesne profit be deposited in the Court of Rent Controller within a period of four weeks. Since the appeal is pending decision and the Appellate Authority is already seized with this question that GMADA has acquired the said booth, let rent/mesne profit remain deposited till the decision is taken by the Appellate Authority as who would be entitled to the same.

The revision stands disposed of.

21.05.2019 **(JAISHREE THAKUR)**
Satyawan **JUDGE**

Whether speaking/reasoned	Yes.
Whether reportable	No.