

243(2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CR-1035-2018

Date of Decision: September 06, 2019

Davinder Singh Dhaliwal and others

.....Petitioners

Versus

Kawaljit Singh

.....Respondent

2.

CR-8469-2017(O&M)

Kawaljit Singh

.....Petitioner

Versus

Davinder Singh Dhaliwal and others

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.M.L.Sarin, Sr.Advocate with
Ms.Himani Sarin, Advocate
for the petitioners-landlord in CR-1035-2018
and for the respondents in CR-8469-2017.

Mr.Akshay Bhan, Sr.Advocate with
Mr.Santosh Sharma and Mr.Saurabh Arora, Advocates
for the petitioner-tenant in CR-8469-2017 and for the
respondent in CR-1035-2018

.....

NIRMALJIT KAUR, J.

Both the revision petitions shall stand decided by this common
order as they arise out of a common order.

C.R.No.1035 of 2018 is filed by the landlord for enhancement
of *mesne* profit as fixed by the Appellate Authority @ ₹90,000/- per month
for the premises in dispute comprising of ground floor and the first floor
area of SCF No.54, Phase 5, SAS Nagar, Mohali.

While praying for enhancement of the *mesne* profit, Mr.M.L.Sarin, learned Senior Advocate for the petitioners-landlord submitted that the first floor fetches a much higher rent and is commercially more viable than the basement. The premises in dispute would definitely fetch a market rent of ₹1,50,000/- per month, but the Appellate Authority has over looked the fact that even as per the lease-deed, relied upon by the tenant (Annexure P-6), dated 03.07.2015, the rent for the ground floor and basement of SCF No.51, Phase-V, Mohali measuring 1584 sq.ft. was let out for ₹75,000/- per month (Rs.47.35 per sq.ft.) with an enhancement of 15% every five years, whereas the premises in dispute is much larger, i.e. 1904.625 sq.ft. and, therefore, the market rent for the premises in dispute cannot be the same. Secondly, the premises in dispute is the ground floor and the first floor, which can fetch higher rent vis-a-vis the lease deed, relied upon by the tenant, which pertain to the basement and ground floor and hence, the same cannot be equated with the rent of the basement. The Appellate Court took into consideration the lease-deed, Annexure P-3, as placed on record by the landlord wherein the rent was of ₹85,000/- per month (Rs.54.17 per sq.ft.) with service tax and with enhancement @10% every five years of an area of 1569.14 sq.ft. relating to SCF No.54, Phase V, Mohali. In spite of the same, the rent was fixed merely ₹90,000/- even though the premises in dispute is of larger area.

Learned counsel for the tenant while opposing the present revision petition has also filed a separate petition, i.e. CR No.8469 of 2017 seeking setting aside of the same order on the ground that the *mesne* profits were on the higher side. Reliance was placed on the various judgments

rendered by the Apex Court in the cases of **Atma Ram Properties(P) Ltd.**

vs Federal Motors (P) Ltd. 2005 (1) SCC 705, Anderson Wright and Co.
vs Amar Nath Roy, 2005 (6) SCC 489, State of Maharashtra and another vs M/s Super Max International Pvt.Ltd. and others, 2009(9) SCC 772 to contend that the *mesne* profit should not lead to unjust enrichment of the landlord at the cost of the tenant. Further, while fixing the *mesne* profits, the rent being paid should be deducted as the *mesne* profit cannot be, in any case, more than the market rent and be levied as a pecuniary measure. Learned counsel for the tenant also disputed the area in occupation of the tenant, which he insisted was about 1580 sq.ft. and as such even if the actual market rate of rent is taken at Rs.40/- sq.ft., the same cannot be more than ₹63,000/- per month and after deducting the rent already being paid, the tenant, if at all, is liable to deposit the balance amount only. Learned counsel further submitted that even if the rent was taken at ₹50/- per sq.ft., the same would be only for an area of 1580 sq.ft.

Learned counsel for the parties were heard at length.

It is admitted that all the lease-deeds pertain to Phase 5, Mohali and are almost in the same line. The argument of learned counsel for the tenant that the area of the premises in his occupation is 1580 sq.ft. and not 1904.625 is not substantiated by any document on record except the assertion of the tenant. On the other side, the land-lord has placed on record Annexure P-8, which is the sanctioned plan of the premises in dispute showing the area as 1904.625 sq.ft.. Presently, the determination of *mesne* profits are only summary proceedings. Therefore, as of now, there is nothing really to doubt the site plan Annexure P-8. As per the lease-deed relied on by the Appellate Authority, dated 10.09.2014, (Annexure P-3)

the rate of rent works out to Rs.47.35 per sq.ft. as per lease-deed, dated 03.07.2015 (Annexure P-6) relied upon by the tenant. Therefore, taking the rent of both the registered sale-deeds produced by the respective parties, this Court deems it proper to calculate the same @ Rs.50 per sq.ft. Therefore, taking the area as 1904.625 and applying the rate @ Rs.50/- per sq.ft, the *mesne* profits works out to Rs.95,231.25. However, taking into account that there can still be some marginal variation in the area in occupation, this Court does not deem it proper to interfere in the rate of *mesne* profits fixed by the Appellate Court, i.e. Rs.90,000/- per month.

Further, this Court is also not convinced with the argument of learned counsel for the tenant that the amount of Rs.35,000/- already deposited towards rent should be deducted. Judgment rendered by the Hon'ble Apex Court in the case of **M/s Atma Ram Properties (P) Ltd. vs M/s Federal Motors Pvt.Ltd.,** 2005(1) RCR (Rent) 1 is a complete answer to the same. The observations made in Para Nos.4 and 8 of the judgment are relevant, which read as under:-

“4.....Landlord-tenant litigation constitutes a large chunk of litigation pending in the Courts and Tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. If the plea raised by the learned senior counsel for the respondent was to be accepted, the tenant, in spite of having lost at the end, does not lose anything and rather stands to gain as he has enjoyed the use and occupation of the premises, earned as well as lot from the premises if they are non-residential in nature and all that he is held liable to pay is damages for use and occupation at the same rate at which he

would have paid even otherwise by way of rent and a little amount of costs which is generally insignificant.

8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in the Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the appellate Court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the appellate Court is that in spite of the appeal having been entertained for hearing by the appellate Court, the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is pitted and weighed against the order paramount consideration: why should a party having succeeded from the Court below be deprived of the fruits of the decree of order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum.....”

In view of the safeguards provided with respect to deposit of the *mesne* profits by the various judicial pronouncements to deposit the same before the Court and thereafter to be disbursed to the party that finally succeeds as well as the reasoning rendered in the case of **M/s Atma Ram Properties (P) Ltd.**(supra), this Court finds that the *mesne* profits awarded above for rent is justified. Accordingly, both the petitions are dismissed with a clarification that the amount of *mesne* profits, so fixed by the Appellate Court, shall be deposited within two months from the date of receipt of a certified copy of this order by calculating the same from three years

preceding to the date of application for *mesne* profits and arrears shall be deposited before the Executing Court, who is directed to keep the same in a fixed deposit in a Nationalised Bank and the future *mesne* profits be put in a Recurring Deposit and the amount so accrued, shall be disbursed to the party, who finally succeeds. The rent shall, however, be paid directly to the land-lord.

September 06, 2019
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(NIRMALJIT KAUR)
JUDGE

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