

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CR No. 292 of 2019 (O&M)

Date of decision: 18.1.2019

Jai Parkash

...Petitioner

Versus

Ashok Kumar Sawhney

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mukesh Rao, Advocate,
for the petitioner.

Mr. Satyaveer Singh, Advocate,
for the respondent/Caveator.

JAISHREE THAKUR, J.

1. The short question involved in these proceedings is, whether the District judge has erred in assessing mesne profit at the rate of ₹12,000/- per month for the demised premises and whether the same is excessive?

2. In brief, the respondent Landlord (henceforth called '**the respondent**' for short) being the owner of the demised premises, filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act seeking eviction of the petitioner-tenant (henceforth called '**the petitioner**' for short) from tenanted premises, that is entire 1st floor of House No. 3158, 1st Floor, Sector 37-D, Chandigarh. It was contended that the petitioner herein took the premises on rent @ ₹3500/- per month in the month of March 2005, and the rent was increased from time to time. As per

mutual consent, at the present moment the rate of rent of the tenanted premises is ₹7,000/- per month. The eviction of the tenant was sought on ground of personal necessity as the respondent was detected with brain cancer and the necessity was felt to have his married son shift his residence from Panchkula to Chandigarh. The respondent expired during the pendency of proceedings. His legal representatives, namely, his wife and 2 sons were brought on the record before the Rent Controller. The Rent Controller allowed the eviction petition and directed the petitioner herein to hand over vacant possession of the demised premises that is entire 1st floor of House No. 3158, Sector 37-D, Chandigarh, within a period of 2 months. Aggrieved against the said order the petitioner herein, filed an appeal before the Appellate Authority which is pending consideration. During the pendency of the said appeal, an application was filed for assessment of mesne profit by the respondents herein claiming that the market rate of the tenanted premises would be prevailing from ₹24000/- to ₹25,000/- per month of similar type of accommodation and relied upon a registered lease deed dated 11.04.2017 of 1st floor of House No. 2515, Sector 37-C, Chandigarh, having the same area. The said application was contested on the ground that the rate of rent was not more than ₹2,000/- for the tenanted premises in the same locality. Reliance was placed upon a registered lease deed showing the rate of rent at ₹2,000/- per month for similar premises. The Appellate Authority, while considering all aspects, assessed the mesne profit at ₹12,000/- per month. Aggrieved the instant revision petition has been preferred.

3. Mr. Mukesh Rao, learned counsel appearing on behalf of the

Tenant Petitioner urges that the mesne profit is highly excessive, while arguing that the Appellate Authority has ignored the registered sale deed dated 12.1.2007 which was on the record showing the rate of rent for similar premises, in the same locality at ₹2,000/- per month. It is also argued that since the year 2011 the petitioner has been paying ₹7,000/- per month as rent, which was increased from ₹5,000/- with the promise that the same would not be increased for the next ten years.

4. A caveat has been filed on behalf of the landlord respondent, who accepts notice.

5. Mr. Satyaveer Singh, counsel appearing on behalf of the respondent, argues that the mesne profit has been rightly assessed. It is argued that in fact the Appellate Authority has considered both the rent deeds and fixed the mesne profit at ₹12,000/- per month ignoring the registered deed produced by the respondent showing the rent at ₹25,000/- per month.

6. I have heard both the counsel and have perused the pleadings and the law cited.

7. There is no dispute with the proposition that while assessing mesne profit, the registered lease deeds reflecting the rate of rent in the locality has to be looked into, as has been held in **Inderejit and another Versus Kamal Kishore 2017 (1) Law Herald 378** and **Surinder Kumar Versus Rattan Lal 2006 (3) RCR (Civil) 291**. However, in the instant case, the said judgments would not be applicable. There are three registered rent deeds on the record of the same locality. The registered lease deed as relied

Chandigarh, comprising of 3 bedrooms, drawing-cum-dining, kitchen, 2 washrooms, wherein the rate of rent has been settled at ₹23,760/- per month for the period 01.04.2018 to 31.03.2019. On the other hand, counsel for the petitioner has placed on record two registered lease deeds. The first lease deed is dated 29.12.2018 for five years at ₹2,000/- per month for accommodation on the 2nd floor in House No 3174 Sector 37-D Chandigarh, whereas in the second rent agreement dated 12.1.2017 the rent for a one room accommodation in House No 2187 Sector 37-C Chandigarh, been settled at ₹1000/- per month respectively. The reason for ignoring the said lease deeds, though recent, would be on account that the petitioner herein had agreed to pay rent @ ₹3500/- per month as far back as 2005 and had subsequently increased it to ₹4,500/- in the year 2007, to ₹5000/- in the year 2009 and subsequently to ₹7000/- in the year 2011 and the registered lease deed settling the rent do not reflect the correct market value. This court can also take judicial notice of the fact that Sector 37, Chandigarh, is a well developed sector with all facilities like schools, markets, community center etc. and the rent that is set up is definitely on the lower side. The argument raised that very often rent deeds are executed for the sole purpose of establishing residency in Chandigarh might have merit.

8. The appellate authority has discarded the mesne profit claimed by the respondent at ₹25,000/- per month by looking at the totality of the circumstances. The assessment of mesne profit at ₹12,000/- per month cannot be held to be excessive considering there was no increase from ₹7,000/- since the last 11 years when normally there is an escalation clause

each year.

9. In view of the above, this court finds no merit in the revision petition and dismisses the same. However on the request of the counsel for the petitioner time to deposit the mense profit and comply with the impugned order is extended till the 8th of February 2019.

18.1.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No