

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.8117 of 2018 (O&M)

Date of Decision: January 08, 2019

Munshi Ram (since deceased) through his LRs

..... Petitioner(s)

Versus

Satish Sharma

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Aayush Gupta, Advocate
for the petitioner(s).

SUDIP AHLUWALIA J. (ORAL)

1. Mr. Vivek Chauhan, Advocate has put in appearance and filed *Power of Attorney* on behalf of the respondent today in the Court; Be kept on record.

2. This Revisional Application is directed against the Order passed by Ld. Appellate Authority, Ludhiana dated 15.11.2018, whereby the application of the respondent-Landlord for fixing mesne profits payable by the petitioner-Tenant during the pendency of the appeal was disposed off along with the petitioner's own application seeking stay of operation of impugned judgment of eviction passed against him by the Ld. Rent Controller, Ludhiana on 24.01.2018.

3. 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.15,000/- 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 the petitioner that no Lease Deed of any nearby premises has been placed on record by the respondent-Landlord who had made bald assertions to the effect that the petitioner had subsequently taken two shops on lease in the vicinity at a rent of Rs.10,000/- and Rs.30,000/- per month, respectively. The petitioner in his reply had denied having taken any shop on lease for a rent of Rs.30,000/- per month, and had further contended that he could not retain even the other shop for which he was unable to pay a rent of Rs.10,000/- per month and therefore had also vacated the same. It was further contended on behalf of the petitioner that in any event the covered area of the demised shop in the present case is only 5 Sq. Yards, while other shop which he had taken and subsequently vacated at a rent of Rs.10,000/- per month was much large in area, being approximately 100 Sq. yards.

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

5. 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.”

6. 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 29th of January, 2019.

7. 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 30.04.2019. For this purpose, no unnecessary adjournments to the parties, particularly the Petitioner/Appellant shall be allowed by the Appellate Authority.

January 08, 2019
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(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No