

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

**CR no.769 of 2019 (O&M)
Date of Decision: 18.03.2019**

Harbans Singh through LR ...Petitioner

VS.

Bharti Devi @ Sarita and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Aayush Gupta, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the learned appellate court, dated 17.12.2018, by which, on an application filed under Order 41 Rule 5 of the CPC by respondents no.1 to 6 herein (appellants before that court), the operation of the judgment and decree in favour of the present petitioner passed by the learned trial court (Civil Judge, Sr. Divn.), Kurukshetra, has been stayed during the pendency of the appeal.

Vide the said judgment and decree, the respondents (defendants in the suit) had been directed to hand over vacant possession of the suit property, with mesne profit of Rs.8,000/- per month to be also paid by them to the petitioner (plaintiff) from the date of the filing of the suit by him till the delivery of vacant possession of the suit property.

The learned appellate court vide the impugned order has stated that since the controversy even with regard to mesne profits payable is yet to be gone into by the court, it would be appropriate to stay the operation of

the impugned judgment and decree passed by the trial court.

Learned counsel for the petitioner relies upon a judgment of the Supreme Court in **M/s Atma Ram Properties (P) Ltd. v. M/s Federal Motors Pvt. Ltd.**, 2005(1) RCR (Rent) 1, from which he points to the conclusion passed by their Lordships, which reads as follows:-

“18. To sum up, our conclusions are:-

- (1) While passing an order of stay under Rule 5 Order 41 of the Code of Civil Procedure, 1908, the appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonable compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and in so far as those proceedings are concerned. Such terms, needless to say, shall be reasonable;
- (2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree;
- (3) the doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.”

He thus submits that the mesne profits being a money decree in favour of the petitioner, even if possession of the suit property is not to be delivered to the petitioner during the pendency of the appeal, at least such profits as have been ordered by the trial court to be paid, should be deposited by the respondents in the appellate court for eventual

disbursement/refund depending upon the outcome of the appeal.

Having considered the matter, in my opinion, the issue of mesne profits being payable at all or not, being dependent upon the decision with regard to title to the property, and the suit in the present *lis* not being one pertaining to rented property, with it not even the stand of the respondents that they are tenants of the petitioner, a direction for deposit of mesne profits would not be equitable at this stage, and in fact it would be appropriate to direct the trial court to decide the appeal within a specified time frame, that also specifically so because learned counsel for the petitioner submits that the respondents' counsel is not arguing the appeal itself before the appellate court, in view of the stay granted in favour of the respondents (appellants before that court).

Without making any comment on the last contention, it is yet considered appropriate that while declining the direction sought by the petitioner for deposit of the mesne profits, this petition be disposed of with a direction to the learned appellate court to positively decide the appeal within a period of four months from today.

Ordered accordingly.

18.03.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes