IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1948 of 1999(O&M)
Date of Decision: 13.05.2019

Lt. Col. S. S. Randhawa (since deceased) through his LRs and others ...Appellants

Versus

State of Punjab and another .....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. O.P. Hoshiarpuri, Advocate
for the appellants.

Mr. A.K. Singla, Sr. DAG, Punjab.

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RAJ MOHAN SINGH, J.

CM No.6576-C of 2019

Prayer in this application is for bringing on record legal representatives of deceased Lt. Col. S.S. Randawa appellant No.1 who has died on 16.09.2018.

For the reasons mentioned in the application, the same is allowed. Legal representatives of deceased appellant No.1 as shown in para No.2 of the application are ordered to be brought on record subject to all just exceptions.

Amended memo of parties is also taken on record.

Main case

[1]. Plaintiffs/appellants have preferred the present regular second appeal against the judgment and decree dated 29.01.1999 passed by District Judge, Chandigarh thereby modifying the judgment and decree dated 28.01.1998 passed by the trial Court .

[2]. Plaintiffs filed a suit for ejectment of the defendants from Ist floor, 2nd floor, 3rd floor and 4th floor of showroom-cum-office No.142-143, Sector 34-A, Chandigarh and for recovery of arrears of rent and damages, amounting to Rs.1,75,223.60 paise w.e.f. 01.09.1992 to 10.01.1993. Future damages w.e.f. 11.01.1993 onwards @ Rs.75,000/- per month were also claimed. Plaintiffs claimed that they are owners of showroom-cum-office No.142-143, Sector 34-A, Chandigarh. Defendant No.2 took the aforesaid showroom i.e. all the four floors on rent @ Rs.26,517.60 excluding electricity and water charges. Defendant No.2 paid rent upto 31.08.1992. The tenancy was monthly and terminable by issuing 15 days notice. The tenancy was terminated vide registered A.D post and UPC notices dated 26.09.1992. Notice was duly served upon the defendants, but no reply was filed by them. Building was exempted under Section 3 of the East Punjab Urban Rent Restriction Act as the sewerage connection was granted by the competent authority

on 24.04.1989. The tenancy was terminated, but the premises in question were not vacated by the defendants. Again notice was issued on 28.10.1992 under Section 80 CPC to the defendants, but the defendants did not respond to the said notice. The plaintiffs claimed that defendants were liable to pay damages/mesne profit @ Rs.75,000/- per month till the delivery of the possession of the property in question. Plaintiffs calculated the damages w.e.f. 01.09.1992 to 10.01.1993 i.e. rent/damages from 01.09.1992 to 15.10.1992 @ Rs.26,517.60 per month equal to Rs.39,776.40, damages w.e.f. 16.10.1992 to 10.01.1993 @ Rs.75,000/- per month equal to Rs.2,15,000/- minus an amount of Rs.79,552.80 as received through cheques. Balance amount of Rs.1,75,223.60 was claimed.

[3]. Defendants contested the suit.

[4]. Both the parties went to trial on the following issues:-

> *"1. Whether the defendants are liable to be ejected from the premises in dispute? OPP*
> *2. Whether the plaintiffs are entitled to recover the arrears of rent and damages as prayed for? OPP*
> *3. Whether the plaintiffs are entitled to claim future damages as prayed for? OPP*
> *4. Relief."*

[5]. Plaintiffs examined S.S. Randhawa as PW 1, Gopal Singh as PW 2, Sandeep Sandhu as PW 3, Bodh Raj as PW 4 and thereafter, closed their evidence. On the other hand,

defendants examined K.N. Parsad as DW 1, Amarjit Singh as DW 2 and thereafter, closed their evidence.

[6]. Trial Court decided issues No.1 and 2 with reference to material on record and held that the tenancy was terminated, therefore, plaintiffs were entitled for ejectment of the defendants from the premises. Under issue No.3, future damages were assessed @ Rs.55,000/- per month till the premises is vacated by the defendants and vacant possession is delivered to the plaintiffs. In this manner, the suit was decreed with costs. Plaintiffs were held entitled for recovery of Rs.39,776.40 as arrears of rent from 01.09.1992 to 15.10.1992 and damages @ Rs.55,000/- per month from 16.10.1992 to 10.01.1993. After 10.01.1993, the plaintiffs were held entitled to the damages @ Rs.55,000/- per month till actual delivery of possession by the defendants.

[7]. Feeling aggrieved against the judgment and decree dated 28.01.1998 passed by Sub Judge, Ist Class, Chandigarh, defendants went in appeal before the Lower Appellate Court.

[8]. Lower Appellate Court party accepted the appeal on the premise that award of damages/mesne profit by the trial Court @ Rs.55,000/- per month was not on the basis of any cogent evidence. The figure was held to be arbitrary as the defendants did not receive any profit after determination of tenancy.

Defendants are Government Department and a public undertaking or instrumentality of the State. Lower Appellate Court also held that the property was not put to any commercial use by the defendants and defendants did not earn any profit by holding over after the date of determination of tenancy of the plaintiff. On the aforesaid premise, it was held that award of future mesne profit should be on contractual rate instead of Rs.55,000/- per month. Lower Appellate Court thus held that amount from 16.10.1992 to 30.06.1993 is the amount for mesne profit. The claim of the plaintiffs from 01.08.1992 to 30.06.1993 has already been satisfied. Decree for mesne profit @ Rs.26,517.60 per month from 01.07.1993 till the date of actual delivery of possession was passed in modification of the judgment and decree passed by the trial Court.

[9]. The question arises for consideration is “whether the period during which the defendants remained as holding over could have been considered/assessed on the basis of contractual rate of rent or could have been assessed on the basis of market rental value of the similarly situated building in the vicinity of the suit property.” Lower Appellate Court has awarded contractual rate of Rs.26,517.50 per month w.e.f. 01.07.1993 till the date of actual possession of the premises in question.

[10]. On the basis of assistance rendered by learned counsel for the parties and on the basis of material on record, I proceed to consider the following substantial questions of law:-

> (1). Whether the plaintiffs are entitled to mesne profit at the rate over and above the contractual rate from 01.07.1993 till the date when the appellants were delivered vacant possession of the demised premises by the respondents?
>
> (2). Whether judgment and decree dated 29.01.1999 passed by the Lower Appellate Court is the result of misreading of evidence or suffered with perversity?

[11]. Admittedly, the defendants remained in possession of the premises in question despite termination of tenancy. The question arise whether market rental value of the demised premises including all the four floors was Rs.55,000/- per month or not. PW 3 Sandeep Sandhu has deposed that he is tenant of SCO No.148-149, Sector 34-A, Chandigarh. The said SCO is situated in the very close proximity of the suit property. PW 3 was paying Rs.12,500/- as monthly rent for first floor of SCO No.148-149, Sector 34-A, Chandigarh. Monthly rent of second floor, third floor and fourth floor of the said SCO was Rs.11,000/-, Rs.11,725/- and Rs.13,000/- respectively. The said witness has also proved that the said rent was paid by him to his

landlord. The factum of aforesaid rate of rent could not be rebutted by the defendants. DW 1 K.N. Parsad has proved lease deed bearing signature of Brig. Sandeep Sandhu. DW 2 Amarjit Singh has also stated that as per lease deed dated 01.08.1994, rate of rent in respect of SCO No.148-149, Sector 34-A, Chandigarh was Rs.12,562/- per month w.e.f. 01.08.1994 to 31.07.1996 and thereafter, it was to be increased by 5%. Therefore, monthly rent from 01.08.1996 onwards was @ Rs.14,446/- per month. The said SCO is situated near to the property in question.

[12]. By taking note of prevailing rate of rent with reference to adjoining SCO No.148-149, Sector 34-A, Chandigarh and on the basis of testimony of PW 3 Sandeep Sandhu, prevailing rate of rent was assessed to be Rs.55,000/- per month for future damages. Trial Court awarded decree for recovery of Rs.39,776.40 as arrears of rent from 01.09.1992 to 15.10.1992 and damages @ Rs.55,000/- per month from 16.10.1992 to 10.01.1993. After 10.01.1993, plaintiffs were held entitled to the damages @ Rs.55,000/- per month till delivery of possession. The aforesaid findings were recorded by the trial Court on the basis of unrebutted evidence of PW 3 which in fact could not be diluted by the statements of DW 1 and DW 2, rather rate of rent of SCO No.148-149, Sector 34-A, Chandigarh for the relevant

period was proved to the hilt. Contractual rate of rent would prevail only during currency of the tenancy. Defendants holding over after determination of tenancy has no equities in its favour. Lower Appellate Court has observed that the claim of the plaintiffs from 01.08.1992 to 30.06.1993 has been satisfied. Decree for mesne profit was passed at the contractual rate of Rs.25,517.60 per month w.e.f. 01.07.1993 till the date of delivery of demised premises.

[13]. This Court is left to adjudicate whether for the period in question i.e. 01.07.1993 till the date of delivery of possession, the plaintiffs are entitled to escalate the amount of rent over and above the contractual rate of rent in view of prevailing rate of rent in the vicinity. The evidence in respect of SCO No.148-149, Sector 34-A, Chandigarh has gone unrebutted. The calculation of the market rate of rent for the period in question comes out to be Rs.48,225/-. The conjoint reading of statements of DW 1 and DW 2 would show that rent in respect of SCO No.148-149, Sector 34-A, Chandigarh was to be increased to the extent of 5% on the previous monthly rent, therefore, from 01.08.1996 onwards, rate of rent in respect of floor of said SCO was to be @ Rs.14,446/- per month. Till 31.07.1996, rate of rent was Rs.12,562/-. It was the case of the defendants that at the most, the plaintiffs could have claimed Rs.42,000/- per month in

respect of property in dispute. The claim of the plaintiffs @ Rs.75,000/- per month was discarded by the trial Court as well as by the Lower Appellate Court. Rent in respect of SCO No.148-149, Sector 34-A, Chandigarh comes out around to be Rs.48,000/- to Rs.49,000/- per month.

[14]. Rent of premises is dependent upon bilateral understanding between the tenant and the landlord. The settlement is dependent upon bargaining power of the parties. Even if, rate of rent to the tune of Rs.55,000/- per month was held to be on the higher side by the Lower Appellate Court, still on the basis of evidence on record, rate of rent to the tune of Rs.49,000/- per month for the demised premises w.e.f. 01.07.1993 till the date of delivery of actual possession cannot be lost sight of as the aforesaid amount has been proved to be a market rate of rent of the adjoining property. A tenant holding over cannot compel the landlord to accept contractual rate of rent despite determination of tenancy. Tenant cannot compel the landlord to suffer due to its own conduct in not vacating the premises after determination of the tenancy. The concept of earning any profit by holding over cannot arise inasmuch as after determination of tenancy, the landlord/plaintiffs would have earned market rate of rent at par with rent fetched by the adjoining property i.e. SCO No.148-19, Sector 34-A,

Chandigarh. Even there was possibility of fetching more rent, but the same was dependent upon bargaining power of the plaintiffs.

[15]. In view of aforesaid facts and circumstances, I deem it appropriate to fix the rent @ Rs.49,000/- per month for all the floors w.e.f, 01.07.1993 till delivery of actual physical possession of the demised premises to the plaintiffs by the defendants. It would be in consonance with the market rental value of the demised premises at the relevant time.

[16]. In view of aforesaid reasoning, the substantial questions of law are answered. The mesne profit at the contractual rate of Rs.26,517.60 per month w.e.f. 01.07.1993 is held to be the result of misreading of evidence. Plaintiffs are entitled to market rate of rent on the basis of evidence on record.

[17]. For the reasons recorded hereinabove, this appeal is partly accepted by modifying the judgment and decree passed by the Lower Appellate Court. Appellants are held entitled to mesne profit @ Rs.49,000/- per month w.e.f. 01.07.1993 till actual delivery of possession by the defendants.

13.05.2019 **(RAJ MOHAN SINGH)**

Prince **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No