

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4213 of 2019 (O&M)

Date of decision :10.7.2019

Brij Lal

...Petitioner

Vs.

Swarn Jindal

...Respondent

CORAM: HON'BLE MR.JUSTICE RAMENDRA JAIN

Present: Mr.Amar Vivek, Advocate for the petitioner.

RAMENDRA JAIN, J. (ORAL)

The tenant has come up before this Court by way of the instant revision petition assailing the order of the Appellate authority dated 23.5.2019 whereby he has been directed to pay mesne profits @ ₹4000/- per month during the pendency of his appeal.

In nutshell, the respondent-landlord filed eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 which after the trial was accepted vide order dated 21.5.2018 directing petitioner to hand over the vacant possession of demised shop within two months.

Being aggrieved, the petitioner-tenant approached the first Appellate Authority. During the pendency of the appeal, respondent-landlord moved application to grant him mesne profits, whereupon vide impugned order dated 23.5.2019, the petitioner was directed to make payment of mesne profits @ ₹4,000/- p.m. during the pendency of the appeal.

Learned counsel for the petitioner contends that the Appellate

Authority has not mentioned any criteria as to how it arrived at a conclusion to fix mesne profits of the demised shop at ₹4000/-. The Appellate Authority has failed to consider two rent receipts (Annexures P-4 and P-5) depicting monthly rent at ₹3500/- and ₹2182/- situated near the vicinity of the demised shops shown in the site plan Annexure P-6.

In support of his contention, he has relied upon judgment of the Supreme Court in **Mohammad Ahmad Versus Atma Ram Chauhan (SC) 2011(7) SCC 755** and a judgment of this Court in **CR No.6248 of 2011 (O&M) Angoori Devi and others Versus Smt.Satya Bhama** decided on 6.4.2016.

Having given thoughtful consideration to the submissions made by the learned counsel for the petitioner, this Court finds the instant revision petition completely devoid of any merit for the reasons to follow:

1. The observations made by the Apex Court in **Mohd.Ahmad's case (supra)** and a Coordinate Bench of this Court in **Angoori Devi and others's case** are reproduced herein for ready reference:

Mohd.Ahmad's case

According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rent, to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of litigation, so as to minimise landlord-tenant litigation at all levels:-

- (i) The tenant must enhance the rent according to the terms of the agreement or at least by then percent, 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 rate 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.

- (vii) The rent so fixed should be just, proper and adequate, keeping

in mind, location, type of construction, accessibility with 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.”

Angoori Devi's case

“A perusal of the above judgment indicates that the Courts have drawn a balance between the two competing claims by fixing mesne profits at a rate between the contractual rent and the market rent. In the circumstances, it has to be held that there could be no straight jacket formula while fixing the amount of mesne profits in such cases and the Courts would have to be guided by the facts of each case and the judgments extracted above. “

From the above observations, the only irresistible conclusion which can be drawn is that there cannot be a straight jacket formula for fixing the amount of mesne profits for which various factors enumerated above have to be taken into consideration. In case, if the tenancy is quite old i.e. more than 20-25 years, in that case the present market rate should be worked out, either on the basis of valuation report or reliable estimates of rentals in the surrounding areas. In the instant case, considering the above observations, overall facts and circumstances, this Court is of the view that the mesne profits fixed by the Appellate authority needs considerable increase over and above the mesne profits awarded by the Appellate Authority.

However, at this stage, counsel for the petitioner prays for withdrawal of the instant petition.

Dismissed as withdrawn.

10.7.2019
Meenu

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No