IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

112 CR-4793-2019 (O&M)
Date of Decision : 22.08.2019

Giani Ajit through attorney Pritpal Singh .... Petitioner

Versus

Maninder Pal Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Puneet Jindal, Sr. Advocate with
Mr.Tejinder Singh, Advocate
for the petitioner.

Mr. Kunwar Sood, Advocate
for the respondent/caveator.

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RAMENDRA JAIN, J. (ORAL)

Through this revision, the petitioner has laid challenge to order dated 16.03.2019 (Annexure P-5) of the Appellate Authority, fixing mesne profit of the demised shop @ Rs.30,000/- per month w.e.f. 24.09.2018.

Briefly, the respondents filed an eviction petition under Section 13 of the Punjab East Rent Restriction Act (for short, “the Act”) for eviction of the petitioner from demised shop. The same, after contest and holding trial was accepted by the Rent Controller vide order dated 24.09.2018.

Being aggrieved, the petitioner preferred an appeal.

During its pendency, respondents-landlords moved an application for fixation of mesne profits, which after taking reply of the petitioner and hearing both the sides, was accepted, thereby fixing the mesne profits @ Rs.30,000/- per month payable by the petitioner-tenant w.e.f. 24.09.2018.

Learned counsel for the petitioner-tenant relying upon the judgment of this Court in ***Inderjit and another vs. Kamal Kishore, 2017(1) Rent R, 280*** contends that lower Appellate Court has erred in relying upon an unregistered rent agreement produced by the respondents-landlords for fixation of mense profits. The lower Appellate Court failed to appreciate that the demised shop has not much commercial potentiality, because of its situation, on a narrow road not easily accessible to the general public. It also failed to appreciate that the petitioner-tenant was paying Rs.1364.08 to the respondents-landlords as rent, duly fixed by the Rent Controller, with increase of 10% after four years.

Refuting above submissions, learned counsel for the respondents-landlords submits that the petitioner-tenant in his application along with a rent note moved before the Appellate Court tried to prove that rent agreement produced by the respondents-landlords was a forged and fabricated document, pertains to one portion of a shop consisting of two portions. Whereas the petitioner-tenant had produced rent agreement of its second portion. Therefore, the learned Appellate Court rightly relying upon both the agreements of a single shop consisting of two portions fixed mesne profits to the tune of Rs.30,000/- per month.

Having given thoughtful consideration to the rival submissions, this Court finds this revision merits dismissal for the reasons to follow.

It is not necessary that a registered rent note only should be made the basis to fix mesne profits. The Rent Controller or the Appellate Authority is always at liberty and vesting with powers to take into consideration various factors like valuations reports, reliable estimates of buildings rentals in the surroundings areas, type of construction of the rental property, its location, accessibility to the main road, parking space facilities etc. for fixation of use and occupation charges.

According to rent agreement relied upon by respondents-landlords prevalent rent in the near vicinity, where the demised shop is situated, is Rs.70,000/- per month. Contrary to the same, the appellant also produced a rent agreement of the same property showing prevalent rent @ Rs.15,000/- of half of its portion. However, the petitioner-tenant did not produce any document to negate or prove that agreement relied upon by the respondents-landlords was forged one. Thus, in the absence of any rebuttal to the rent agreement relied upon by the respondents-landlords from the side of the petitioner-tenant, this Court is of the considered view that the Appellate Authority has rightly relied upon the same, inasmuch as, for same property, the petitioner-tenant produced rent agreement vide which half portion of it was let out on monthly rent of Rs.15,000/-.

The area of the shop pertaining to rent note relied upon by respondents-landlords is measuring 8' x 16' only let out @ Rs.70,000/- per month, whereas the area of demised shop is around one marla, which is approximately double the area of shop of which rent agreements have been produced and relied upon by both sides. Therefore, fixation of mesne profits by the learned Appellate Court, doubling the amount of Rs.15,000/- at Rs.30,000/-, is held justified and genuine.

The Appellate Court had relied upon judgment of the Supreme Court in ***Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd., 2005(1) RCR (Civil), 212*** wherein it was held that after termination of tenancy by the Rent Controller, the landlord is not bound to accept the contractual rate of rent for the period preceding the date of the decree. Doctrine of merger does not have the effect of postponing the date of termination of tenancy, merely, because the decree of eviction may merge in decree passed by the superior forum at a later date.

This court has no dispute with the above referred judgment in ***Inderjit and another's case (supra)*** relied upon by learned counsel for the petitioner-tenant, but with due respect would like to add here that the same is only a guiding factor and not a rule of thumb. Since, in the earlier part of this judgment, it is held that Rent Controller and the Appellate Authority are always at liberty to fix mesne profits, keeping in view the location of the rented premises, besides various other factors, therefore, no benefit of the above referred authority can be given to the petitioner.

In view of the discussion made above, this instant revision petition is dismissed.

August 22, 2019 (RAMENDRA JAIN)
anju JUDGE

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No