

CR-5199 of 2019 (O&M)

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

CR-5199 of 2019 (O&M)
Date of decision: 29.08.2019

Rajinder Pal Garg

.....Petitioner

versus

Ajaib Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Ashish Grover, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Tenant has laid challenge to order dated 05.08.2019, whereby Appellate Authority has directed him to make payment of use and occupation charges (mesne profits) at the rate of ₹10,000/- per month.

Briefly, respondent-landlord filed an eviction petition under Section 13 of the Punjab Rent Restriction Act, 1949 against the petitioner-tenant for his eviction from the demised shop.

After tooth and nail contest by the petitioner, learned Rent Controller accepted the eviction petition of the respondent vide order dated 18.02.2017.

Being dissatisfied, petitioner approached the Appellate Authority. During the pendency of appeal, respondent-landlord moved an application for fixation of mesne profits. The Appellate Authority after hearing both the sides, fixed ₹10,000/- per month towards mesne profits payable by the petitioner-tenant vide order dated 19.08.2017. The petitioner challenged the said order by way of Civil Revision No.6901 of 2017, which was disposed of by a Co-ordinate Bench of this Court vide order dated

CR-5199 of 2019 (O&M)

09.05.2019, directing the Appellate Authority to reconsider the matter and decide the application for mesne profits of the respondent afresh on the basis of material already on record or some additional evidence, if any, produced by the parties. It was also directed that in the meantime, the petitioner shall continue to deposit mesne profits at the rate of ₹5,000/- per month. Pursuant to the aforesaid order of this Court, the Appellate Authority vide impugned order again fixing mesne profits at the rate of ₹10,000/- per month, directed the petitioner to pay the same.

Learned counsel for the petitioner *inter alia* contends that the Appellate Authority has wrongly relied upon a compromise deed (Annexure P-7) in between Shri Sanatan Dharm Sabha (Regd.) and Ashwani Bansal, because property of the said compromise is a two storeyed building, whereas the demised property is a single storeyed shop. The Appellate Authority has also illegally held area of the demised shop as 270 sq. feet, including the area of staircase, which is under the possession of respondent-landlord. The nature of business has also not been considered by the Appellate Authority. In support of his contentions, learned counsel relied upon ***Inderjit and another v. Kamal Kishore***, 2018(1) R.C.R.(Rent) 660 (P&H) and ***Baljit Kaur v. Daljit Singh and another***, 2018(1) R.C.R.(Rent) 653.

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

No question of law much less substantial has been raised in this revision. Therefore, this revision is held not maintainable.

This Court while exercising its revisional powers has very

CR-5199 of 2019 (O&M)

limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such infirmities in the order of the Appellate Authority.

It is not disputed that the property pertaining to compromise deed (Annexure P-7) is situated nearby demised shop. Perusal of Annexure P-7 shows that tenant on the first floor considering the *bona fide* requirement of landlord Shri Sanatan Dharam Sabha, vacated half portion of the first floor and thereafter agreed to pay rent at the rate of ₹11,257/- per month w.e.f. 10.07.2017 with periodical increase of five per cent every year. Since the shop pertaining to agreement (Annexure P-7) is situated nearby the demised shop, therefore, this Court is of the considered view that Annexure P-7 has rightly been relied upon by the Appellate Authority.

As far as question of area of the demised shop taken by the Appellate Authority is concerned, the Appellate Authority has given a passing reference of the same and has not fixed the rent considering its area. The Appellate Authority, rather has fixed mesne profits considering various attending circumstances i.e. location, prevalent rent in the near vicinity, potentiality etc. of the demises shop, which is situated in Mehna Chowk, falling in the heart of the town. Since, rent of the shop pertaining to compromise (Annexure P-7) by this time has increased to ₹14645/- per month, therefore, fixation of mesne profits at the rate of ₹10,000/- per month by the Appellate Authority qua the demised shop cannot be said to be excessive inasmuch as while entering into compromise (Annexure P-7)

CR-5199 of 2019 (O&M)

which is now being used by him for ancillary purposes and ground floor for running his shop.

Facts and circumstances of the above-referred authorities relied upon by learned counsel for the petitioner are distinguishable from the facts of present case. Therefore, no benefit of the same can be granted to the petitioner.

In view of discussion above, revision is dismissed.

However, petitioner is granted one month's time from today to pay the arrears of mesne profits at the rate of ₹10,000/- per month fixed by the Appellate Authority, failing which his appeal shall be dismissed for want of prosecution.

(Ramendra Jain)
Judge

August 29, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No