

CR No.5603 of 2019 (O&M)

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

CR No.5603 of 2019 (O&M)
Date of decision: 10.09.2019

The Jind Central Cooperative Bank Ltd.

.....Petitioner

versus

Rajiv Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Kuldip Singh, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Petitioner bank in financial business has filed instant revision petition against order of the Appellate Authority dated 27.03.2019, whereby, it fixing use and occupation charges upon the application of respondent-landlord at ₹20,000/- per month directed the petitioner to pay the same.

Briefly, eviction petition of respondent against petitioner was accepted by the Rent Controller dated 23.07.2018.

Being aggrieved petitioner filed appeal before the Appellate Authority. During its pendency, respondent landlord moved an application for fixation of use and occupation charges. After hearing both the sides, the Appellate Authority accepting application of respondent-landlord directed the petitioner to pay ₹20,000/- per month as use and occupation charges (mesne profits) vide order impugned herein.

Learned counsel for the petitioner *inter alia* contends that two

CR No.5603 of 2019 (O&M)

petitions filed by respondent-landlord against petitioner i.e. one for its eviction and another for fixation of mesne profits were accepted by the Rent Controller vide separate orders on a single day i.e. 23.07.2018.

Being aggrieved against its eviction, the petitioner filed appeal before the Appellate Authority, Jind. However, neither the petitioner nor respondent-landlord challenged the fixation of mesne profits to the tune of ₹5211/- per month by the learned Rent Controller. During the pendency of appeal of the petitioner, respondent moved an application for re-fixation of mesne profits, which was hotly contested by petitioner, filing reply. Appellate Authority has erred in not taking into consideration the order of the Rent Controller, whereby he fixed use and occupation charges at the rate of ₹5211/- per month. Use and occupation charges fixed by the Appellate Authority at ₹20,000/- per month are quite excessive. In support of his contentions, learned counsel relied upon the judgment in *M/s Atma Ram Properties (P) Ltd. v. M/s Federal Motors Pvt. Ltd.* 2005(1) R.C.R.(Rent) 1.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds the same completely mis-conceived and not worth-considerable inasmuch as *M/s Atma Ram's case* (supra) relied upon by him was delivered by the Apex Court on 10.12.2004 i.e. around 14 years ago from the impugned order. Therefore, reliance of learned counsel for the petitioner on it, is completely baseless. Appellate Authority has rightly assessed mesne profits at ₹20,000/- taking into consideration the property tax of the Municipal Committee, whereby annual rental value of the demised premises for the year 2014-15 was assessed at ₹1,42,000/- i.e. approximately ₹12,000/- per month. Mesne

CR No.5603 of 2019 (O&M)

profits has been fixed in the year 2019. Therefore, increase of around ₹8,000/- in the aforesaid rental value of premises is quite genuine. Rather in the considered view of this Court, it is on lower side for fixation of mesne profits.

This Court while exercising its revisional powers has very 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 impugned order.

No question of law much less substantial has been raised in this revision.

In view of discussion made above, revision is dismissed on merits and on the point of limitation as well.

(Ramendra Jain)
Judge

September 10, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No