IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6767 of 2019
Date of Decision: October 29, 2019

Narinder Kumar Pahuja and others
...... Petitioner(s)

Versus

Vidya Sagar
..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Raman Mahajan, Advocate
for the petitioners.

Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate
for the respondent/caveator.

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LISA GILL, J.(oral)

This revision petition has been filed by the tenants being aggrieved of order dated 03.09.2019, passed by the learned Appellate Authority, Chandigarh, whereby mesne profits @ Rs.1,71,600/- have been assessed for the premises in question. It has been directed that in case of compliance of the conditions mentioned in the impugned order, operation of the order of ejectment of the petitioners dated 01.04.2019, passed by the learned Rent Controller, Chandigarh, would remain stayed.

Brief facts necessary for the adjudication of the case are that ejectment of the petitioners was ordered by the learned Rent Controller, Chandigarh vide order dated 01.04.2019 in a petition under Section 13 of the East Punjab Urban Rent Restriction Act, filed by the respondent-landlord. Demised premises is an area measuring 17' x 17' with three show windows (Corner Portion) on the the ground floor of SCO Nos. 49-50-51, Sector 17-C, Chandigarh. It is a matter of record that the property in question is in one of the main commercial shopping areas in the city of Chandigarh. Landlord-respondent sought mesne profits and produced a registered lease deed dated 04.01.2012 pertaining to a built up area of 2400 square feet on the ground floor of SCO Nos. 123-124, Sector 17-C, Chandigarh, which is admittedly in the close vicinity of the demised premises. The term of the above said lease deed is 9 years and 11 months commencing w.e.f. 01.02.2012. The rate of rent was Rs.7,50,000/- per month with a revision of 5% increase per annum in the monthly rate of rent.

Admittedly, the present petitioners-tenants did not place on record any lease deed or any other evidence to rebut the claim set up by the respondent-landlord in respect to the rate of mesne profits sought. Dispute regarding the authenticity of the said lease deed was also not raised, which is in fact admitted. The only ground raised on behalf of the petitioners-tenants, even before this Court, is that they are not liable to deposit any mesne profits in the present case for the reason that the respondent-landlord is the owner of the demised property to the extent of 50% only. It is submitted that there are other co-owners, who have initiated proceedings against the present petitioner and that some of the co-owners have also received substantial amount towards rent, from the petitioners, who are being subjected to unnecessary harassment. It is submitted that initially the property i.e. SCO 49-50-51, Sector 17-C, Chandigarh was purchased by the respondent - Vidya Sagar and his brother Siri Ram in a public auction held by the Chandigarh Administration on 26.05.1968 as per allotment letter dated 05.06.1968. Litigation has multiplied amongst co-owners after the death of Siri Ram, the brother of the respondents. Particulars of the owners with their respective shares as per the estate office record is duly mentioned in para 4 of the revision petition. Learned counsel for the petitioners does not deny that the respondent-landlord Vidya Sagar is the owner of the property to the extent of 50% and it is not denied that the petitioners have accepted the respondent to be the landlord from whom the premises were taken on rent in the year 1978.

Learned counsel for the petitioner has vociferously argued that the learned Rent Controller has wrongly allowed the petition filed by the respondent-landlord and incorrectly ordered ejectment of the petitioners from the demised premises. It is submitted that in the wake of all the co-owners filing separate ejectment petitions, the present rent petition filed by the respondent-landlord, in any case, is not maintainable. Therefore, fixation of mesne profits by the learned Appellate Authority, Chandigarh in this case is unjustified and uncalled for. The other co-owners have also filed applications for fixation of the mesne profits. Mr. Raman Mahajan, Advocate for the petitioners submits that the appeal itself be directed to be heard by the learned Appellate Authority at the earliest and there should be no insistence on the deposit of mesne profits in this case. Learned counsel contends that the object of fixation of mesne profits is to ensure that no prejudice is caused to the landlord by the action of the tenants in trying to delay the proceedings. The petitioners herein, it is submitted, undertake not to delay the proceedings in any manner. Therefore, the impugned order be set aside to the extent that mesne profits @ Rs.1,71,600/- per month have been assessed. In the alternate, it is submitted that the mesne profits as assessed are excessive and should be reduced.

Learned counsel for the respondent-caveator, however, refutes the said arguments and prays for upholding the impugned order dated 03.09.2019, passed by the learned Appellate Authority, Chandigarh. Learned counsel submits that the respondent-landlord also undertakes that he shall not delay the hearing of the appeal before the learned Appellate Authority, Chandigarh in any manner.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding ejectment of the petitioners being ordered by the learned Rent Controller, Chandigarh vide order dated 01.04.2019, which is the subject matter of the appeal preferred by the petitioners before the learned Appellate Authority, Chandigarh. It is a settled position of law that once ejectment of the tenant is directed, the landlord is not bound by the contractual rate of rent, effective for the period preceding the date of the decree. The tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. Needless to say the mesne profits assessed cannot be excessive or arbitrary and especially to render the remedy of appeal to be ineffective. Fixation of such mesne profits is not to be arbitrary hence due care has to be exercised so that it should not end up being a bonanza for the landlord. Reference in this regard can gainfully be made to the judgments of Hon'ble Supreme Court in ***M/s. Atma Ram Properties (P) Ltdd. Vs. M/s. Federal Motors Pvt. Ltd. 2005(1) RCR (Rent)1*** and ***State of Maharashtra & another Vs. M/s. Super Max International Pvt. Ltd. and others2009(2) RCR (Rent) 246***.

Learned counsel for the petitioners has sought to argue on the merits of the case in as-much-as it is vehemently stated that the ejectment order dated 01.04.2019 itself is liable to be set aside and it is in this scenario that fixation of mesne profits should not be made and neither should the petitioners be subjected to payment of the same, during the pendency of the appeal. Needless to say, there is no weight in this argument, as the merits of the controversy are to be adjudicated upon by the learned Appellate Authority while taking into consideration the entire facts and circumstances of the case besides the evidence led by the respective parties. This Court is not to enter the domain of the Appellate Authority at this stage. It is not denied that the respondent-landlord is accepted to be the owner of the property to the extent of 50% and that he is also admitted to be the landlord from whom the premises were taken on rent in the year 1978. 50% of the rent is admitted to have been paid to the respondent-landlord. Learned Appellate Authority has rightly directed that the amount of mesne profits except the amount at which rent was payable by the petitioners i.e. @ Rs.2,625/- per month shall not be released till the decision of the appeal. Therefore, no prejudice what-so-ever shall be caused to the petitioners as is sought to be urged. All the pleas which are being raised in this revision petition addressing the merits of the controversy shall needless to say be considered by the learned Appellate Authority, at the appropriate stage. Learned counsel for the petitioner fairly states that mesne profits have not been assessed in any other pending proceedings.

Though, learned counsel for the petitioners has submitted that the rate of mesne profits assessed is excessive, he is unable to substantiate this argument. No objection has been raised in respect to the registered lease deed dated 04.01.2012, which has been relied upon by the learned Appellate Authority to assess the mesne profits and neither is learned counsel for the petitioners able to point out anything on record to indicate that the mesne profits assessed are excessive in any manner, for the demised property, admittedly situated in the heart of one of the main shopping areas in Chandigarh.

No other argument has been raised.

Revision petition is accordingly dismissed.

None of the observations in this order shall have any bearing on the merits of the appeal pending before the learned Appellate Authority, Chandigarh. Keeping in view the facts and circumstances of the case, it is expected that the learned Appellate Authority, Chandigarh shall decide the appeal expeditiously.

(Lisa Gill)
Judge

October 29, 2019

Sunil

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