

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

CR-2801-2021 (O&M)

Date of decision: 16.11.2021

Harjit Kaur

...Petitioner

Versus

Narinder Kaur Behal (since deceased) through L.Rs and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S.Bal, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The First Appellate Court, while granting the interim protection against the execution of a decree for possession of the property located in a prime location at Amritsar, has passed a conditional order directing the appellant to deposit mesne profit for the use and occupation of the premises at the rate of Rs.5,000/- per month. Learned counsel representing the petitioner contends that the First Appellate Court could not have passed such an order in the absence of any evidence to that effect.

This Bench has considered the arguments. The First Appellate Court, on the basis of the material on record, has assessed the amount of mesne profit. These are to be paid only during the pendency of the appeal.

While determining the aforesaid amount, the court is not required to permit the parties to lead detailed evidence. The First Appellate Court, while exercising its discretion, has assessed the amount

of mesne profit. Learned counsel representing the petitioner has failed to show that such determination is arbitrary in any manner. Learned counsel further submits that for determination of the mesne profit, the parties were required to be permitted to lead evidence as per Order 20 Rule 12 of Civil Procedure Code, 1908. Order 20 Rule 12 of Civil Procedure Code, 1908, is only applicable if the mesne profits are being determined while finally deciding the suit. He further submits that since the trial court did not pass a decree for mesne profit, therefore, the First Appellate Court could not have ordered payment of compensation towards mesne profit. As already observed, the First Appellate Court, while granting interim protection, has exercised its discretion which is vested in the scope of its jurisdiction. The appellant has no right to claim unconditional interim protection. If the appellant does not wish to pay, the stay order shall be deemed to have been vacated.

Therefore, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

16.11.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE