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

**CR No.2649 of 2021(O&M)
Date of Decision: 07.12.2021**

M/s Yogpathy and others ......Petitioners
Vs
M/s Fabmark Exports and another .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Divanshu Jain, Advocate
for the petitioners.

Mr. M. S. Sachdev, Advocate
for the caveators.

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RAJ MOHAN SINGH, J.

[1]. The present revision petition has been preferred by the petitioners against the order dated 17.09.2020 passed by the Appellate Authority and order dated 21.10.2021 in review application No.3/2020 passed by the Appellate Authority, wherein application moved by the respondents has been disposed of and mesne profit has been assessed @ Rs.85,000/- per month.

[2]. Learned counsel for the petitioners submits that the petitioners and respondent-Rajan Gupta were partners in M/s Yogpathy, which was a partnership firm. The property in question was purchased by pooling of the sale consideration by

the partners for use of partnership concern. Rajan Gupta being the dominant partner, got the sale deed executed in his name by saying that the sale deed could not be executed in the name of firm. Respondents being landlord filed ejectment petition against the petitioners and ejectment order was passed against the petitioners on 30.11.2019. Petitioners have denied the relationship of landlord and tenant between the parties.

[3]. Petitioners filed an appeal before the Appellate Authority, wherein the respondents filed an application for mesne profit @ Rs.1,00,000/- per month from 03.11.2019. Respondents have pleaded that the relationship of landlord and tenant is proved on record. As per rent agreement executed between the parties, rate of rent was Rs.50,000/- per month. The property is a palatial house, which is being used for commercial purposes. As per condition of the rent note, the rent was to be increased every year by 10%. The tenancy started w.e.f. 01.03.2013 vide rent note dated 07.03.2013.

[4]. The Rent Controller has passed the order of ejectment on the ground of non-payment of rent as the petitioners had not paid anything with regard to arrears of rent. The legality and validity of the order of ejectment would be gone into by the Appellate Authority in pending appeal.

[5]. In the instant application, the respondents have prayed

for assessment of mesne profit and direction to the petitioners to pay the same @ Rs.1,00,000/- per month as the similarly situated properties are fetching more than Rs.1,00,000/- per month in the vicinity. The property is a palatial house which is being used as commercial property.

[6]. The application has been contested by the petitioners. They have denied even rent agreement, which was executed between the parties and also rate of rent to be Rs.50,000/- per month. Petitioners/tenants have claimed that in fact, no such agreement was ever executed and there was no relationship of landlord and tenant between the parties. The property in question is situated about 6 kms away from heart of the city and the prevailing rate of that area is not even more than Rs.10,000/- per month.

[7]. Respondent No.2 Rajan Gupta filed an application for placing on record the documents for the purposes of deciding the application of mesne profit. The application along with documents was taken on record vide order dated 17.09.2020 passed by the Lower Appellate Court.

[8]. The Appellate Authority has accepted the application and fixed mesne profit to the tune of Rs.85,000/- per month on the premise that the ejectment petition filed by the respondents has been allowed by the Rent Controller vide order dated

30.11.2019 and the present petitioners have been ordered to be evicted from the tenanted premises by upholding the relationship of landlord and tenant between the parties.

[9]. The issue of mesne profit is to be decided during pendency of the appeal when the appeal is pending for disposal. During pendency of the appeal, the petitioners are liable to pay charges towards use and occupation with regard to premises in question.

[10]. Admittedly, the petitioners are continuing in possession. The ejectment order has not been set aside by any Court, rather the appeal is pending before the Appellate Authority against the judgment/order of eviction dated 30.11.2019. Respondents have claimed fixation of Rs.1,00,000/- towards mesne profit.

[11]. The tenancy stands terminated with the passing of order of eviction with effect from that date. Tenant is liable to pay mesne profit 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. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the order and there cannot be any merger as the same does not have the effect of postponing the date of termination of tenancy merely because the order of eviction is to be merged in the order of

superior authority/Court at a later stage.

[12]. In the instant case, even as per contractual rate of Rs.50,000/- per month, the increase at the rate of 10 % per annum has been applied to make the figure of Rs.85,000/- per month and that shall be the lawful criteria for claiming mesne profit. Though the landlord has claimed enhanced mesne profit to the tune of Rs.2,50,000/- on the basis of documents attached with the application before the Lower Appellate Court, but the Court has granted only an amount of Rs.85,000/- per month towards mesne profit. The right of the tenant came to an end with the passing of order of ejectment. For any period subsequent thereto, the tenant becomes liable to pay damages for use and occupation at the rate at which the landlord would have let out the premises on being vacated by the tenant.

[13]. Evidently, the tenant has not cleared the arrears of rent @ Rs.50,000/- per month. Mere filing of appeal does not operate order of stay on the order of eviction. The order has to be specifically passed and that would lie under the discretion of the Lower Appellate Court to grant or not to grant the stay. Even for granting stay by the Lower Appellate Court, the Court can put the parties to terms and conditions, the enforcement whereof would satisfy the demand for justice of the parties found successful at the disposal of the appeal. The ratio laid

down in ***M/s Atma Ram Properites (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd., 2005(1) RCR (Civil) 212*** can be relied to mean that the tenant continues to be in operation after termination of the contractual tenancy by way of order of ejectment, therefore, in such an eventuality, the tenant becomes a wrongly occupant in the absence of interim protection by the Appellate Authority. The landlord is entitled for mesne profit at the rate at which the landlord would have rented out his premises at the prevailing rate of rent. Even if, stay regarding dispossession is granted by the Lower Appellate Court, the claim with regard to mesne profit cannot vanish away. The ratio of ***M/s Atma Ram Properties (P) Ltd.' case (supra)*** has been consistently relied upon by different Courts including this Court in ***Surinder Kumar Vs. Rattan Lal, 2006(3) RCR (Civil) 291, Inderjit and another Vs. Kamal Kishore, 2018(1) RCR (Rent) 660*** and ***M/s Jewellers Khanna Vs. Dr. Naresh Mittal, 2009(2) RCR (Civil) 567.***

[14]. During pendency of the appeal, the respondents have also moved an application for enhancement of mesne profit from Rs.1,00,000/- to Rs.2.50,000/-. However, the said plea was rejected by the Appellate Authority on the ground that the respondents have pleaded in the rent note dated 07.03.2013, the rate of rent to be Rs.50,000/- per month along with increase

@ 10% per annum. The rent agreement dated 07.03.2013 has been upheld by the Rent Controller. Till, the Appellate Authority decides the appeal on merits, the findings cannot be diluted merely on the assertion made by the petitioners on the basis of non-execution of rent note. The plea based on partnership deed and other documents in the present revision petition viz. judgment dated 04.04.2019 passed in the complaint under Section 138 of the Negotiable Instruments Act and other orders passed in collateral proceedings would also to be of no consequence as any observation made on those documents may prejudice the case before the Appellate Authority.

[15]. Appeal before the Appellate Authority has to be decided on the basis of material on record of Rent Controller and any other material that may be adduced by the parties before the Appellate Authority in accordance with law. Any observation made by this Court on the material additionally produced by the petitioners in this revision petition, may prejudice the case of either of the parties during appeal. Even otherwise, this Court does not wish to make any opinion on any other collateral proceedings between the parties, which are still to be commented upon by the Appellate Authority. The plea of the petitioners as regards signing of cheques and blank papers by the partners during course of partnership and for use of

partnership concern retained by respondent No.2 and thereafter, misuser of the same, would not be the area where this Court has to give any such opinion, *lest* it may prejudice the case of either of the parties.

[16]. It is a settled principle of law that mesne profits are to be decided during pendency of the appeal. Admittedly, in the present case, the petitioners are continuing in possession of the tenanted premises and order/judgment of ejectment has been passed against them. Petitioners have not paid the arrears of rent till date. The plea with regard to enhanced mesne profit to the tune of Rs.2,50,000/- on the basis of documents attached with the application, cannot be gone into. Rent agreement specifically prescribes rate of rent to be Rs.50,000/- per month with an increase of 10% per annum. Since the rent agreement has already been relied by the Rent Controller while ejecting the petitioners, therefore, rate of rent @ Rs.50,000/- per month with an increase of 10% per annum would bring the tally to Rs.85,000/- per month. The petitioners have not paid any arrears of rent till date.

[17]. In my considered opinion, the Appellate Authority has rightly calculated the amount of Rs.85,000/- per month towards mesne profit. This Court also deems it appropriate to confirm the same without looking into other aspects of the case as the

same may lead to some opinion on merits, which may prejudice the case of either of the parties during appeal.

[18]. In view of above, the impugned orders are found to be fully justified in the facts and circumstances of the case. There is no ground to interfere in the present revision petition. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

07.12.2021
Prince

Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**