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

-:-

CR-522-2019 (O&M)

Date of Decision : 19.07.2022

Congress Committee (I) (Rural) and Another

...Petitioners

versus

S. Brahmgyan Singh Majithia (since deceased)
through his LRs and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Narang and Mr. Rajiv Malhotra, Advocates
for the petitioners.

Mr. Sahil Sharma, Advocate for LRs of respondent No.1.

Mr. Brij Mohan Vinayak, Advocate for respondent No.2.

ALKA SARIN, J. (Oral)

CM-8543-CII-2022

This is an application for impleading the legal representatives of respondent No.1 namely, S. Brahmgyan Singh Majithia, who is stated to have died.

For the reasons stated in the application, the same is allowed and the legal representatives of respondent No.1 namely, S. Brahmgyan Singh Majithia, mentioned in para No.3 of the application are impleaded as a party. Amended memo of parties is taken on record. Vakalatnama signed by the LRs of respondent No.1 is already appended along with the application.

CR-522-2019

The challenge in the present civil revision petition under Article 227 of the Constitution of India is to the impugned order dated 27.08.2018

(Annexure P-4) whereby the application filed by the petitioner for stay of judgement and decree dated 20.11.2017 has been allowed subject to payment of Rs.90,000/- per month as mesne profits. The impugned order disposes off two applications - one moved by the petitioners herein for staying the operation of judgment and decree dated 20.11.2017 and the other application moved by the respondents for fixing the mesne profits.

Learned counsel for the petitioners would contend that mesne profit cannot be ordered once the same has not been prayed for in the plaint. Learned counsel has referred to the provisions of Order 20 Rule 12 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). Further reliance has been placed upon the judgment of the Supreme Court in the case of **Ganapati Madhav Sawant (dead) Through his LRS Vs. Dattur Madhav Sawant [2008(2) RCR (Civil) 175]** and **Union of India and Others Vs. M/s Banwari Lal & Sons (P) Ltd. [2004(2) RCR (Civil) 580]** to contend that a procedure has been prescribed under Order 20 Rule 12 CPC for the passing of a decree for possession and mesne profits. It is further the contention that the procedure as laid down in Order 20 Rule 12 CPC has not been followed in the present case. It further argued that no enquiry was made and an order fixing the mesne profit has been passed sans the enquiry. Learned counsel would further contend that there is no relationship of landlord and tenant in the present case and the case is based on the premise that there existed a relationship of licensor and licensee.

Per contra, learned counsel for respondents have contended that the mesne profits have been assessed by the Court while conditionally staying the judgment and decree dated 20.11.2017. Learned counsel for the respondents have relied upon the judgment of the Supreme Court passed in

the case of **State of Maharashtra & Anr. Vs. M/s Super Max International Pvt. Ltd. & Ors. [2009(2) RCR (Rent) 246]**; **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd. [2005 (1) RCR (Civil) 212]** and **M/s Martin & Harris Private Limited & Anr. Vs. Rajendra Mehta & Ors. [Civil Appeal Nos.4646-47 of 2022]** to contend that after the passing of a decree of eviction, the landlord would be entitled to mesne profits or compensation for depriving him of the use of the premises.

Heard.

In the present case vide judgment and decree dated 20.11.2017 the defendant-petitioners have been directed to vacate the suit property in question and to deliver its vacant possession to the plaintiff-respondents within a period of two months. In appeal preferred by the defendant-petitioners, the lower Appellate Court stayed the operation of the judgement and decree dated 20.11.2017 subject to payment of Rs.90,000/- per month as mesne profits on the basis of the lease deeds produced by the plaintiff-respondents and on the basis of the fact that the suit property measuring 4 kanal 18 marlas is situated at main Albert Road, near Railway Station, Amritsar, which is a commercial area. The lower Appellate Court, relying upon the judgment in the case of **M/s Super Max International Pvt. Ltd. (*supra*)**, directed that the stay would be conditional to the payment of Rs.90,000/- per month as mesne profits. Aggrieved by the said order, the present revision petition has been preferred by the defendant-petitioners.

The argument raised by the learned counsel for the defendant-petitioners that no mesne profit could have been directed to be paid by the Appellate Court as no prayer was made in the plaint qua the grant of mesne

profits is wholly misplaced. The provisions of Order 20 Rule 12 CPC come into play in case the suit is for grant of mesne profits. In the present case a perusal of the plaint, which has been appended with the petition, clearly reveals that no mesne profits were sought. The suit was for declaration, permanent injunction and mandatory injunction. The provisions of Order 20 Rule 12 CPC reads as under :

12. Decree for possession and mesne profits - (1)

Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the court may pass a decree -

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree holder,

(ii) the relinquishment of possession by the judgment debtor with notice to the decree holder through the court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne

profits shall be passed in accordance with the result of such inquiry.”

A perusal of the above-reproduced rule clearly reveals that it is only when a decree has to be passed for recovery of possession of immovable property and for mesne profits then the procedure as laid down in Order 20 Rule 12 CPC would have to be followed.

In the present case the Appellate Court in appeal, while staying the judgement and decree directing the handing over of vacant possession of the suit property, has assessed the mesne profits to be paid by the defendant-petitioners for the use and occupation of the premises during the pendency of the appeal.

The contention raised by the learned counsel for the defendant-petitioners that the judgments relied upon by the plaintiff-respondents are not applicable to the present case inasmuch as the present is not a case of landlord and tenant but is of a licensor and licensee, also deserves to be rejected. The defendant-petitioners were held to be in permissive possession. Once the Trial Court had held that license stood revoked in the year 2013 and a decree was passed directing the defendant-petitioners to handover vacant possession of the suit property, the Appellate Court, in view of the judgments laid down by the Supreme Court in the case of **Atma Ram Properties** (*supra*), **M/s Super Max International Pvt. Ltd.** (*supra*) and **M/s Martin & Harris Pvt. Ltd.** (*supra*), was well within its jurisdiction to fix the mesne profits for use and occupation of the suit property by the defendant-petitioners. In the case of **M/s Martin & Harris Pvt. Ltd.** (*supra*) the Supreme Court, while considering various judgments, held as under :

“10. Now, reverting on the issue of determination of the amount of mesne profits @ Rs.2,50,000/- per month is concerned, the guidance may be taken from the judgment of Marshall Sons & Co. (I) .Ltd. and Another - (1999) 2 SCC 325, in which this Court held that once a decree for possession has been passed and the execution is delayed depriving the decree holder to reap the fruits, it is necessary for the Appellate Court to pass appropriate orders fixing reasonable mesne profits which may be equivalent to the market rent required to be paid by a person who is holding over the property. In the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors (P) Ltd. – (2005) 1 SCC 705, this Court held that Appellate Court does have jurisdiction to put reasonable terms and conditions as would in its opinion reasonable to compensate the decree holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent Court, the tenant is liable to pay mesne profit or compensation for use and occupation of the premises at the same rate at which the landlord would have able to let out the premises in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of

pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a later date.

11. Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of premises. The view taken in the case of Atma Ram (supra) has been reaffirmed in the case of State of Maharashtra Vs. Super Max International Pvt. Ltd and Others – (2009) 9 SCC 772 by three Judges bench of this Court. Therefore, looking to the fact that the decree of eviction passed by Trial Court on 03.03.2016 has been confirmed in appeal; against which second appeal is pending however, after stay on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just equitable and reasonable.

12. The basis of determination of the amount of mesne profit, in our view, depends on the facts and circumstances of each case considering place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential are and the rate of rent precedent on which

premises can be let out are the guiding factor in the facts of individual case. In the case at hand, the High Court in the impugned order observed that the tenanted property is located on the main road of New Colony near Panch Batti which is a commercial area in the heart of Jaipur City. The said finding has been arrived considering the voluminous documentary record dispelling the plea taken by the Appellants. However, the Court in the facts and circumstances found it reasonable to determine Rs.2,50,000/- per month as mesne profits As per the discussion made hereinabove so far as the area of the tenanted premises and the location of the property is concerned, the findings of fact have been recorded by the High Court, in our considered opinion, those findings are based on the material brought on record which are neither perverse nor illegal. The amount of mesne profit as fixed @ Rs.2,50,000/- is also just and proper looking at the span of time i.e. 10 years from the date of fixing of the standard rent and six year from the date of passing of the decree of eviction. Therefore, the amount of mesne profit has rightly been decided by the High Court while passing the order impugned.

In view of the law laid down by the Supreme Court as well as the fact that there is a decree against the defendant-petitioners to handover the vacant possession of the suit property which decree has been

conditionally stayed, the impugned order passed by the Appellate Court fixing the mesne profits to be paid by the defendant-petitioners during the pendency of the appeal cannot be faulted with. The impugned order does not suffer from any error of law or jurisdiction.

In view of the above, the present revision petition is dismissed.

Pending applications, if any, also stand disposed off.

July 19, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO