IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: October 17, 2022.

Date of Pronouncement: November 7, 2022

1. **CR-6461-2014 (O&M)**

Naresh Kumar Jain .... Petitioner

Versus

Deepak Jain and another .... Respondents

2. **CR-6502-2014 (O&M)**

Deepak Jain and another .... Petitioners

Versus

Naresh Kumar Jain .... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Vikas Jain,Advocate for the petitioner
in CR-6461-2014 and
counsel for the respondent in CR-6502-2014.

Mr. Divanshu Jain, Advocate for the respondents
in CR-6461-2014 and
counsel for the petitioners in CR-6502-2014

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<u>HARKESH MANUJA, J.</u>

CM-2508-CII-2018

Application for exemption from filing certified copies of annexures AX1 to AX8 and placing on record typed copies of Annexures AX-1, AX5 & AX6 as well as photocopies of annexures AX-2 to AX-4 is allowed as prayed for subject to all just exceptions.

CM-2509-CII-2018

This is an application seeking permission to lead additional evidence in the shape of lease deeds and orders passed by this Court as well as Hon'ble Supreme Court.

The documents sought to be brought on record are registered lease deeds as well as the orders passed by the this Court and Hon'ble Supreme Court and as such the authenticity thereof cannot be doubted upon. The documents are even relevant for the purpose of determination of the matter in issue and would even help this Court to adjudicate upon the same in more effective manner.

In view of the above, the application is allowed. Documents appended thereto are taken on record.

Registry to tag the same at appropriate place.

MAIN CASE:

This order of mine shall dispose of the two revision petitions i.e. CR-6461-2014 filed at the instance of petitioner/ tenant and CR-6502-2014 filed at the instance of respondents/ landlords.

For convenience, the facts are taken from CR-6461-2014.

By way of present revision petition, challenge has been made to order dated 0.09.2014 passed by the Appellate Authority , Chandigarh, directing the petitioner/ tenant (hereinafter referred to as 'the petitioner') to pay mesne profits @ Rs.1.15 lacs from the date of eviction order dated 06.05.2014 passed by the learned Rent Controller.

The facts of the case in hand are that an eviction petition came to be filed at the instance of respondents/ landlords (hereinafter referred to as 'the respondents) against petitioner regarding tenanted premises comprising of half portion (area measuring 1050 sq. ft.) on the ground floor of SCO 835, NAC, Chandigarh-Kalka Road, Mani Majra, UT Chandigarh. As per the eviction petition, the rate of rent was Rs.10325/- per month excluding water and electricity charges. Eviction was sought on the ground of personal bonafide need of the respondents.

The Rent Controller vide its order dated 06.05.2014 ordered eviction of petitioner, who challenged the same by way of filing an appeal before the learned Appellate Court, Chandigarh. In the said appeal, respondents moved an application dated 12.08.2014 for awarding mesne profits. The petitioner filed objections dated 25.08.2014 to the said application. Both the parties produced on record material in the shape of lease deeds in support of their respective stands. The Appellate Authority vide its impugned order dated 01.09.2014 directed the petitioner to deposit mesne profits @ Rs.1,15,000/- per month from the date of passing of the eviction order dated 06.05.2014. The aforesaid order dated 01.09.2014 passed by the Appellate Authority which has now been impugned by way of two separate revision petitions i.e. CR-6461-2014 at the instance of petitioner praying for reduction of mesne profits and CR-6502-2014 at the instance of respondents seeking enhancement thereof.

Notice of motion was issued in both the Civil revisions. Thereafter, vide order dated 07.10.2014, this Court ordered payment of 60% of the mesne profits i.e. Rs.69,000/- per month, as an interim measure till the final adjudication of the matter.

Learned counsel for the petitioner submits that the respondents were having good financial status and have been at a better position as compared to petitioner who is fetching normal income from his business and the mesne profits fixed by learned first Appellate Court has been extremely on higher side. Learned counsel also submits that in case any enhancement was to be made, the same was required to be on the basis of fair rent and not on the basis of current prevailing market rent and the same, if any, has to be reasonable. Learned counsel also submits that there has been reduction of rent in the years from 2014 to 2017. In support, learned counsel refers to the lease deeds annexures AX9 to AX12, besides AX5 & AX6 as well.

On the other hand, learned counsel for the respondents while seeking enhancement of mesne profits submits that the revision petition having been filed under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949, the scope of interference by this Court is very limited. On merits, he submits that the mesne profits should be at the same rate at which the landlords would have been able to let out the premises after eviction and the Court should not be over-protective to the rights of the petitioner. Besides referring to certain lease deeds, learned counsel for the respondents places special emphasis upon R-2 i.e. the lease deed dated 26.11.2012 pertaining to SCO No.832, Mani Majra, Chandigarh for an area measuring 1000 sq. ft. rented out at the rate of Rs.1,47,000/- per month for a period of 8 years and 3 months.

I have heard learned counsel for the parties and gone through the paper-book as well as records of the case. The principles enunciated in the judgments rendered by the Hon'ble Supreme Court as well as this Court in the cases of **R.K. Bansal Vs. Jag Pravesh Sharma**, 2012 (4) RCR (Civil) 395; **Vardhman Holdings Ltd. Vs. Ranbir Singh and others**, 2015 (2) RCR (Civil) 164; **Surinder Singh Vs. Dr. Davinder Mohan**, 2006 (2) RCR (Rent) 26; **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd.**, 2005 (1) RCR

(Rent) 1; **Anderson Wright and Co. Vs. Amar Nath Roy and others,** 2005 (2) RCR (Civil) 831; and **Angoori Devi and others Vs. Smt. Satya Bhama**, 2016 (5) RCR (Civil) 1043; can be culled out in the following manner:-

i) Determination of mesne profits has to be made by way of summary manner without there being any detailed trial;

ii) It has to be based on cogent and reliable material placed on record on behalf by both the sides, primarily by way of recent registered lease deeds pertaining to the locality concerned including any judicial determination;

iii) While making assessment, Court needs to consider, age of building; construction of building; its accessibility with main road; parking space, facilities inside and outside the premises; advantages and dis-advantages attached to the premises; date of termination of tenancy; & change of market condition.

iv) Though, it has to be akin to market rent at which the landlord would have been able to let out the premises, if a tenant would have vacated the same; yet a balance has to be drawn between the claims of the landlord and the tenant, making the assessment as reasonable so as not to be oppressive which in a given case, if tenant fails to pay, has no option; but to suffer the execution of the ejectment decree/ orders.

Even in a latest judgment-***M/s. Martin & Harris Private Limited & Anr. Vs. Rajendra Mehta & Ors.,*** **(2022) 8 SCC 527**, the Hon'ble Supreme Court reiterated the earlier view and relevant paras 18 & 19 thereof, are reproduced hereunder for reference:-

> "18. *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 the 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.*
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> *19. 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."*

Based on the principles delineated hereinabove and considering the documents relied upon by both sides; rather than relying upon the lease deeds, I deem it appropriate to rely upon the judicial determination made by Hon'ble Supreme Court in the case of **M/s Jewellers Sons Vs. Naresh Mittal and others**, Civil appeal No. 4189/2016, decided on 09.05.2016; wherein the tenant was directed to deposit a sum of Rs.50000/- as mesne provides w.e.f. 24.09,.2009 regarding the demised premises consisting of half portion of ground floor of SCO No.814 measuring 1000 sq. yards, Chandigarh-Kalka Road, Manimajra, Chandigarh.

The premises in question as well as the premises subject matter of determination made before the Hon'ble Supreme Court, both pertain to the same locality and thus, having same kind of facilities, advantages and disadvantages. Accordingly the determination made by Hon'ble Supreme Court is the most appropriate to be relied upon in these facts. Still further, from the lease deeds produced on record by both the sides one thing which can be taken note of is that in most of these instruments, a condition has been incorporated regarding increase of rent at the rate ranging between 6% to 12% per annum.

Taking into account the fact that the premises in question has been leased out for a commercial purpose being situated in a locality having accessibility with the main road, besides having sufficient parking space etc., I deem it appropriate to apply an increase of 10% per annum over the determination made by Hon'ble Supreme Court (@ Rs.50000/- per month) w.e.f. 24.09.2009 regarding SCO No.814, Mani Majra, Chandigarh. Accordingly, the mesne profits, on the date of eviction in the present case i.e. 06.05.2014, would comes to around Rs.76865/- per month.

In the facts and circumstances of the present case as well as in order to draw a balance between the claims of petitioner and respondents, in my view the compensation/ mesne profits assessed hereinabove would be just equitable and reasonable.

I may also point out here that the learned first Appellate Court while passing the impugned order determined the mesne profits @ Rs.1,15,000/- per month, failed to record any reason in support which enables me to interfere in the revisional jurisdiction.

Accordingly, the aforementioned revision petitions are disposed of by modifying the impugned order dated 01.09.2014 passed by first Appellate Court by determining mesne profits @ Rs.76865/- pm payable by the petitioner in favour of respondents w.e.f. the date of eviction i.e. 06.05.2014.

Pending miscellaneous application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

November 7, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*