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

**101** **CR No.5947 of 2019 (O&M)**
**Reserved on : 02.12.2022**
**Date of Decision : 06.12.2022**

Haryana Backward Classes and Economically
Weaker Section Kalyan Nigam ....Petitioner

VERSUS

Yashpal Malhotra ....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Vishal Gupta, Advocate for the petitioner.

**ALKA SARIN, J.**

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 06.08.2019 passed by the Appellate Authority, Chandigarh whereby mesne profits to the tune of Rs.1,00,000/- per month has been fixed for use and occupation of the property in dispute w.e.f. 10.10.2017 till disposal of the appeal. Aggrieved by the same, the present revision petition has been filed.

Learned counsel for the tenant-petitioner would contend that the amount assessed by the Appellate Authority is in excess and the market rate of rent is much lower. In support of his argument, he has also filed CM-24926-CII-2019 for placing on record certain lease deeds and orders in order to show the current market rate of rent. Annexure P-10 is a lease deed pertaining to the property in dispute. Annexure P-11 is the order dated 28.11.2017 fixing the mesne profits for SCF No.13, Sector 22-D, Chandigarh measuring 250 sq. ft. @ Rs.70,000/- per month. Annexure P-12 is an order passed in a revision petition challenging the order dated

28.11.2017 (Annexure P-11) whereby the said order was stayed and the tenant was directed to pay an amount of Rs.10,300/- per month as an interim measure. Annexure P-13 is an interim order dated 26.03.2019 fixing mesne profits @ Rs.80,000/- per month for a property in Chandigarh. Annexure P-14 is yet another interim order fixing Rs.45,000/- per month as mesne profits.

Learned counsel for the tenant-petitioner has further relied upon the judgments of this Court in the cases of **Angoori Devi & Ors. vs. Smt. Satya Bhama [2016 (5) RCR (Civil) 1043]; Rakesh Kumar & Anr. vs. Ashok Kumar Mehal & Ors. [2018 (2) PLR 346]; Onkar Singh & Anr. vs. Manpreet Kaur [2016 (4) RCR (Civil) 82]** and **Baljit Kaur vs. Daljit Singh & Anr. [2017 (1) RentLR 334]**.

Heard.

In the present case, as mentioned in the paper-book, the tenant-petitioner has been incorporated by the State of Haryana and is wholly owned and controlled by State of Haryana. The tenant-petitioner is occupying the entire first and second floors of SCO Nos.813-814, Sector 22-A, Chandigarh. The landlord-respondent filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against the tenant-petitioner. Vide order dated 10.10.2017 the eviction petition was allowed by the Rent Controller and the tenant-petitioner was directed to hand over vacant possession of the property in dispute within three months. Aggrieved by the said order, an appeal was preferred before the Appellate Authority. Dispossession of the tenant-petitioner was stayed. The landlord-respondent moved an application for grant of mesne profits during the pendency of the appeal from the date of passing of the eviction order i.e.

10.10.2017 till decision of the appeal. In the application, an amount of Rs.2,70,000/- per month was sought as mesne profits. The lease deed pertaining to SCO Nos.835-836, Sector 22-A, Chandigarh was relied upon wherein rent for the property was fixed @ Rs.2,50,000/- per month with 6.5% increase annually. The said application was contested by the tenant-petitioner. Admittedly, no lease deed was relied upon by the tenant-petitioner before the Appellate Authority to show the market rent in the vicinity. Vide the impugned order, the Appellate Authority found that the premises of SCO No.835-836, Sector 22-A, Chandigarh was being used to run a hotel and since the property in dispute was not a commercial property but a office space, it deemed it proper to assess the mesne profits @ Rs.1,00,000/- per month. Aggrieved by the same, the present revision petition has been filed.

Reliance by learned counsel for the tenant-petitioner on the documents Annexure P-10 to Annexure P-14 is wholly misplaced. Annexure P-10 is a lease deed pertaining to the property in dispute. Annexure P-12 is an interim order and hence cannot be relied upon for deciding the present *lis.* Similarly, Annexures P-13 and P-14 are also interim orders and neither the property nor the size of the same can be ascertained from the said orders. The Hon'ble Supreme Court in case of **M/s Martin & Harris Private Limited & Anr. vs. Rajendra Mehta & Ors. [2022 (2) RCR (Rent) 109]** has 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. v. Sahi*

*Oretrans (P) 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. v. 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.*
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> *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 the premises. The view taken in the case of Atma Ram (supra) has been reaffirmed in the case of State of Maharashtra v. 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."*

The property in dispute is a Shop-cum-Office situated in one of the prime commercial sectors of Chandigarh. The lease deed relied upon by the Appellate Authority pertains to SCO Nos.835-836, Sector 22-A, Chandigarh. The Appellate Authority, keeping in mind the fact that a hotel is running in SCO Nos.835-836, Sector 22-A, Chandigarh, while assessing the mesne profits of the property in dispute did not completely rely upon the same and assessed the mesne profit @ Rs.1,00,000/- per month. It is apt to note that the eviction order was passed in 2017 and since 2017 not a penny has been paid towards mesne profits. The tenant-petitioner in the present case is a Government organization and Government organizations are not expected to act in such a manner. The present revision petition itself was filed in 2019 and repeatedly the case was adjourned on one ground or the other at the request of learned counsel for the tenant-petitioner. On 19.09.2022 this Court directed that since the revision petition has been pending since 2019 and has repeatedly been adjourned on the request of learned counsel for the tenant-petitioner, hence before hearing the present revision petition the arrears of mesne profits be paid. Till today mesne profits have not been paid. There is no explanation forthcoming for not complying with the order.

The judgment relied upon by learned counsel for the tenant-petitioner in case of **Angoori Devi** *(supra)* also holds that once an eviction order is passed the mesne profits ought to be fixed. In the case of **Rakesh Kumar** *(supra)*, this Court has held that the lease deeds relied upon by the parties can only be a guiding factor. In the present case also the lease deed relied upon by the landlord-respondent has not blindly been followed but has only been used as a yardstick and guiding factor. In the case of **Onkar Singh** *(supra)*, relying on a lease deed, the mesne profits were fixed @ Rs.80,000/- per month. In the case of **Baljit Kaur** *(supra)*, the mesne profits assessed by the Appellate Authority were upheld by this Court. None of the judgments relied upon by learned counsel for the tenant-petitioner would come to the aid of the tenant-petitioner.

Keeping in view the location of the property in dispute and the fact that the premises in the vicinity are going on rent for an amount of Rs.2,50,000/- per month, I do not find the mesne profits as assessed by the Appellate Authority as being excessive.

In view of the discussion above, I do not find any illegality or infirmity in the order passed by the Appellate Authority. The present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**( ALKA SARIN )**
**06.12.2022** **JUDGE**
**jk**

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