

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.120

CR No.4413 of 2022 (O&M)
Reserved on 14.10.2022

Date of Decision: 01.11.2022

Anil Thukral

.... Petitioner

Versus

Resham Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Anil Chawla, Advocate
for the petitioner.

Mr. Prateek Sodhi, Advocate
for the caveator-respondent No.1.

TRIBHUVAN DAHIYA, J.

This revision petition has been filed under Article 227 of the
Constitution of India for setting aside the order dated 14.09.2022
(Annexure P-1) passed by lower appellate Court allowing the application to
stay operation of the impugned judgment and decree of the trial Court dated

04.03.2022 (Annexure P-4), subject to the payment of mesne profits at the rate of Rs.25,000/- per month.

2. The facts of the case in brief are, two suits filed by each of the parties were decided by a consolidated judgment of the trial Court dated 04.03.2022 (Annexure P-4). The petitioner-Anil Thukral filed a suit for declaration and permanent injunction against the respondents and one Neelu. The respondents, Resham Singh and another, on the other hand, filed a suit for declaration and permanent injunction against Anil Thukral (petitioner). Both the suits were filed with respect to first floor of double storey house bearing No.148, Anand Avenue, Amritsar. The petitioner's suit for declaration that the alleged transfer deed dated 08.11.2011 executed by Baij Nath in favour of Neelu/defendant no.1 with respect to the suit property, as also the alleged sale deeds with respect the property dated 25.01.2013 executed by Neelu in favour of defendants no 2 and 3 (the respondents herein) were illegal, was dismissed by trial Court, vide judgment dated 04.03.2022. Whereas the respondents' suit for possession of first floor of the suit property was decreed. The judgment of the trial Court is under challenge by the petitioner before lower appellate Court, whereupon the impugned order dated 14.09.2022 (Annexure P-1) has been passed.

3. The petitioner sought stay of the impugned judgment and decree, whereas the respondents by filing another application sought assessment of mesne profits with respect to the suit property, since the petitioner's possession therein has been held to be unauthorized by the trial Court.

4. The respondents filed the suit seeking four reliefs; (i) possession of suit property, (ii) recovery of Rs.5 Lakh for use and occupation of the suit property w.e.f. 25.01.2013 to 25.02.2015, (iii) suit for mesne profits from the date of filing of the suit till delivery of possession of first floor of the house in question, and (iv) restraining the defendants from causing any damage in any manner to any part and portion of the suit property. The prayer made in the suit is reproduced hereunder:

Suit for possession of first floor out of the double storey kothi shown in red colour in the site plan bearing no. 148 Anand Avenue Amritsar constructed in an area measuring 460 square yard comprised in old khasra number 242 min now khasra no. 20164/333 min (New) situated at Tung Bala Urban, Anand Avenue Tehsil and District Amritsar which is owned by the plaintiff and is in possession of the defendant without having any legal right and suit for recovery of Rs.5,00,000/- (Rs. Five lakhs) for use and occupation of the aforesaid property w.e.f. 25.01.2013 till 25.02.2015 and also suit for mesne

profit from the date of filing of the suit till the delivery of possession of the first floor of the Kothi No. 148 Anand Avenue, Amritsar with consequential relief of permanent injunction restraining the defendant from causing any damage in any manner to any part and portion of the aforesaid Kothi illegally, forcibly and without any due course of law. (Hereinafter "Main Suit").

5. The trial Court by the consolidated judgment dated 04.03.2022, while decreeing the respondents' suit, granted the relief of possession of first floor of the house in dispute by directing the petitioner to hand over vacant possession within a period of two months from the date of the judgment. Further, the respondents were also granted the relief of permanent injunction restraining the petitioner from causing any damage to first floor of the property in any manner. The respondents were also granted the relief of recovery and the petitioner was directed to pay Rs.5 Lakh as usage and occupation charges of the property in dispute to the respondents. However, the fourth relief claimed by the respondents in the suit, i.e., grant of mesne profits from the date of filing of the suit till the delivery of the possession of first floor of the house in question, was not granted.

6. Learned counsel for the petitioner has contended that the lower appellate Court has committed an error in passing the order dated 14.09.2022 by granting mesne profits to the respondents as the same stand

declined in the impugned judgment by trial Court dated 04.03.2022.

Besides, there is no evidence on record to establish rent of property in dispute. He has further argued that no enquiry under Order XX Rule 12 of the Code of Civil Procedure was conducted to determine mesne profits, which was a mandatory requirement.

7. *Per contra*, learned counsel for the caveator/respondent No.1 has argued that the impugned order is well reasoned. Once it has been held that the petitioner has unauthorized possession of the suit property, he is liable to pay the mesne profits. In support of his contentions, learned counsel has placed reliance upon judgment of the Supreme Court rendered in *M/s Atma Ram Properties (P) Ltd. v. M/s Federal Motors Pvt. Ltd.* [2005 (1) RCR (Civil) 212].

8. Learned counsel for the parties have been heard.

9. A perusal of the paper book establishes that undisputedly, the third prayer for grant of mesne profits from the date of filing of the suit till the delivery of the possession, has not been granted to the respondents by the trial Court vide its consolidated judgment dated 04.03.2022, which is the subject matter of appeal before the lower appellate Court. It has also been fairly disclosed by learned counsel for the caveator/respondent No.1 during the course of arguments that an application on behalf of the respondents has

been filed before the trial Court for correction of the decree dated

04.03.2022 in this regard and grant of mesne profits. Further, it has been recorded in the impugned order itself that no record was produced before the Court from which it can be ascertained that prevalent rate of rent of similar property near the locality where the property in dispute is situated, was Rs.1 Lakh per month as claimed by the respondents in their application for grant of mesne profits filed before the lower appellate Court. Still, the Court fixed mesne profits of the property at the rate of Rs.25,000/- per month.

10. It is, therefore, apparent that mesne profits have been fixed firstly in the absence of any material on record to establish rent of the property in dispute; secondly, it has been done despite the fact that mesne profits of the property were not fixed or awarded by the trial Court. And the respondents themselves have moved an application before trial Court for correction of the decree and granting of mesne profits. Thirdly, there is no provision for assessment of mesne profits in a suit for possession without an enquiry in terms of the Order XX Rule 12 of CPC. The procedure laid down has to be followed by the trial Court when a decree for possession and mesne profits is to be granted. It is not in dispute that no such enquiry has either been conducted by trial Court. In this situation, looking from any angle, there is no justification for the lower appellate Court to fix the mesne profits and direct the petitioner to pay the amount along with arrears.

11. *M/s Atma Ram Properties (P) Ltd. case (supra)* has no application to the facts of the instant case. In that case, the Supreme Court by relying upon provisions of the Delhi Rent Control Act, has 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, had it been vacated by the tenant. It is because the pendency of appeal does not have the effect of postponing the date of termination of tenancy. In the instant case, there is no termination of tenancy. The suit property was never rented out to the petitioner, nor had its rent been assessed. Therefore, the concept of depriving the landlord of rent during pendency of appeal does not apply. And the respondent cannot claim mesne profits based upon the law laid down by the Supreme Court in the case.

12. Accordingly, the impugned order dated 14.09.2022 is set aside to the extent it grants mesne profits at the rate of Rs.25,000/- per month for the property in dispute. The petition stands allowed.

13. Both the respondents have common interest and they jointly filed the suit in question. However, there is no representation on behalf of respondent No.2, as the caveat has been filed only by respondent No.1, therefore, the former is afforded an opportunity to seek recall of this order in

case he is aggrieved against the same, within fifteen days of the order having

been conveyed to him. The lower appellate Court is directed to convey this order to respondent No.2 Amit son of Tilak Raj.

14. The registry is directed to convey this order to the lower appellate Court for compliance of the direction.

(TRIBHUVAN DAHIYA)
JUDGE

01.11.2022
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes