

267 and 280

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

CR-3463-2021

Date of decision: 02.03.2022

NIRMAL KUMAR AND ANR ...Petitioners

V/S

NARINDER MOHAN MITTAL ...Respondents

CR-628-2022 (O&M)

SURINDER MOHAN MITTAL AND ORS ...Petitioners

V/S

NIRMAL KUMAR AND ANR ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Gaurav Chopra, Senior Advocate with
Mr. Divanshu Jain, Advocate,
for the petitioners-landlords in CR-3463-2021.

Mr. Puneet Bali, Senior Advocate with
Mr. Sanjeev Ghai, Advocate, Mr. Sachin Jain, Advocate
and Mr. Satyam Aneja, Advocate
for the petitioners-tenants in CR-628-2022 and
for the respondents-tenant in CR-3463-2021.

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ARUN MONGA, J. (ORAL)

Both the aforementioned two revisions petitions are being disposed of vide this common order as they arise out of the same impugned order.

2. Vide impugned interlocutory order dated 13.12.2021 (Annexure P-7), the learned Appellate Authority has assessed mesne profits qua the shop in question. The occupants, who though claim that they are not tenants, have been directed to pay mesne profits @ Rs.5 Lakh per month w.e.f. 29.10.2020 i.e. date of passing of eviction order. On one hand occupant is aggrieved averring that the mesne profits are highly inflated, on the other the landlord grievance is that it is a very low rate as compared to the prevalent market rate of rent. Same is sought to be

enhanced at least to the tune of minimum Rs.7,50,000/- per month, same

being the alleged rental being currently received by the occupant-respondent himself of his own adjacent shop.

4. I have heard learned Senior counsel for the parties and perused the paper books.

5. Ordinarily, this Court would not have interfered in either of the petitions, since impugned order is merely interlocutory and subject to final outcome of the pending appeal. But for the the argument of Mr. Puneet Bali, learned Senior Advocate that the mesne profits determined by the appellate authority during pendency of the appellate proceedings are highly oppressive. If the payment is to be made as per the ad interim impugned order along with the arrears, same would also amount to shutting down the business of the petitioner (partnership firm and running the business of sale of LG electronic goods). Not only that, livelihood of all the work force, which is currently deployed and employed by the partnership firm is also at stake. He contends that during pandemic, there has been a sharp decline in the sales of electronic goods.

6. Per contra, learned Senior counsel for the petitioner-landlords in CR No.3463-2021 argues that financial incapacity being projected is complete moonshine. Partnership firm/occupant owns an adjoining shop premises, which has four levels and each level has been rented out to a different tenant fetching an aggregate monthly income of Rs.7.5 lakh.

7. Confronted, learned Senior counsel Mr. Puneet Bali under instructions submits that said rental income of Rs. 7.5 lakh is merely symbolic in the current scenario, since the tenants are not only in default of arrears but are unable to pay the rent during the pandemic as their businesses have been shut down due to nature of business activities i.e.

first floor is a gymnasium and second floor lying vacant. As regards the ground floor and the basement where a Diagnostic Centre is being run, learned Senior counsel submits that the petitioner firm is receiving only Rs.2.75 lakh per month, though earlier its rental was Rs.4 lakh per month but was later reduced.

9. In the aforesaid premise, after hearing the rival contentions and in order to balance the equities, it is deemed appropriate that rent of Rs.2.75 lakhs being received by the petitioners in CR No.628-2022 for SCF No.10 qua ground floor and basement plus another Rs.25,000/- be remitted on monthly basis to the landlord-Respondent by way of mesne profits until final determination by the appellate authority on adjudication of the pending appeal .

10. Mesne profits are being reduced to Rs.3 lakh to allay the fear of the occupant/partnership firm that its business being run in demised would shut down during pendency of the appeal, in case impugned order is not modified.

11. Needless to say that the arrears of the mesne profits which are payable shall also be proportionally reduced on the basis of Rs. 3 lakh per month, with effect from the date, as already determined by the appellate Court. The arrears be paid within a period of 45 days.

12. Impugned order is modified to the aforementioned extent but rest of the terms shall remain same.

13. In the parting, if any of the factual assertions on the part of occupant, as noted above, are found incorrect, liberty is granted to the landlord to file appropriate application for modification of this order. It is

also made clear that the instant order is being passed as an interim

measure, de hors merits and appellate authority shall determine the rental/mesne profits without being influenced by this order.

- 14. Disposed of accordingly.
- 15. A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

March 2, 2022
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No