IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CR-3168-2018 (O&M)

Hans Raj @ Hans Raj Aggarwal

...Petitioner

Versus

Dr.Aruna Bansal @ Aruna Mahajan and others

...Respondents

(ii) CR-3426-2018 (O&M)

Dr.Aruna Bansal @ Dr.Aruna Mahajan

...Petitioner

VERSUS

Sh.Hans Raj and others

...Respondents

Date of Decision: February 23, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Sushant Kareer, Advocate
for the petitioner (in CR-3168-2018) and
for respondent No.1 (in CR-3426-2018).

Mr.K.R.Dhawan, Advocate
for the petitioner (in CR-3426-2018).

Mr.A.K.Chopra, Senior Advocate with
Mr.Vidul Kapoor, Ms.Gurpreet Kaur Bhatti and
Mr.Aditya Anand, Advocates
for respondent No.1 (in CR-3168-2018).

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<u>ARCHANA PURI, J.</u>

These are two revision petitions filed by the landlady and tenant against the order dated 13.04.2018 passed by learned Appellate Authority, while assessing the 'mesne profits' for the entire basement and the ground-floor of the demised premises i.e. SCO No.167, Sector-37C, Chandigarh @ Rs.85,000/- per month.

For the convenience of discussion, the parties are referred to landlady and tenant.

During the pendency of the appeal filed by the tenant to challenge the eviction order passed against him, the landlady had filed an application for issuance of direction before learned Appellate Authority to order payment of mesne profits, at the market rate, during the pendency of the appeal. There is specific averment of the landlady that the present market rate of rent of ground-floor is Rs.1,57,500/- per month, as per registered lease deed dated 06.10.2016 of the adjoining SCO No.164, Sector-37C, Chandigarh, which is Annexure A-1 and rent of basement is Rs.48,400/- per month, as per the registered lease deed dated 16.03.2016, attached as Annexure A-2.

The application was contested by the tenant, while submitting that he is a statutory tenant and he cannot be penalized by mesne profits, as appeal is in continuation of the eviction petition. Moreover, it was asserted that even if mesne profits are to be assessed, then in that eventuality, proper enquiry had to be conducted. Various factors, such like condition of the building, locality, amenities provided in the building, nature of construction, condition of flooring etc., are to be considered. However, it is denied that the rent of similarly situated premises is Rs.1,57,500/- as alleged by the landlady. The old tenancy, as such, cannot be compared with newly inducted tenant. It is denied that SCO in question is having same area and facilities, as compared to the demised premises. In fact, SCO No.164 is newly constructed and renovated building, having maximum covered area, at the ground-floor, as per the latest building bye-laws and permissible covered area. It is further submitted that the basement of SCO No.164 is lying vacant, which fact has been concealed by the landlady and as such, cannot be taken into consideration. Moreover, the rent varies from the class of accommodation, quality of construction and interiors.

It is submitted that SCO No.167, ground-floor was let out vide lease deed dated 27.03.2014, for a period of five years, w.e.f. 01.04.2013, at a monthly rent of Rs.50,000/-, with annual increase of 5%. The present rent of the said premises is Rs.60,775/- per month. The tenant in the said premises is running the business of jewellery. Copy of the lease deed is Annexure A-1. Also, further SCO No.171, ground floor was let out vide deed dated 18.03.1998, for a period of 25 years, w.e.f 15.03.1998 to 14.03.2023, at the monthly rent of Rs.18,000/- with annual increase of Rs.800/- upto 14.03.2013 and thereafter, annual increase, at the rate of Rs.1000/- every year, upto 14.03.2023. The present rate of said premises is Rs.34,200/- per month. The tenant in the said premises is running a *chakki*. Copy of the sale deed dated 18.03.1998 is Annexure A-2.

Further, it has been submitted that this Court had ordered in the case of SCO No.162, Sector-37C, Chandigarh, to pay rent/mesne profits at rate of Rs.15,000/-per month, during the pendency of the revision petition and the said tenant was paying the rent @ Rs.15,000/- per month.

Moreover, it is submitted that reasonableness has to be seen from both sides, while making an assessment of mesne profits. The actual market rent cannot be assessed as mesne profits and the same can only be assessed, keeping in view the condition of the building and continuous possession of the tenant.

After hearing learned counsel for the parties, learned Appellate Authority, vide impugned order dated 13.04.2018, affixed the mesne profits to the tune of Rs.85,000/- per month.

Feeling aggrieved by the aforesaid order, the rival parties had filed the revision petitions, the detail whereof, has been given as aforesaid.

As culled out from the paperbook, the inception of tenancy, at first instance, by the previous owner, relating to the demised premises was vide rent deed dated 01.04.1991 @ Rs.4800/- per month. However, landlady Dr.Aruna Bansal had purchased the entire SCO No.163, Sector-37C, Chandigarh, from the previous owner in the year 2004. Since then, till 31.12.2007, the tenant started paying rent to the respondent-landlady @ Rs.5808/- per month. However, it is assertion of the landlady that the tenant did not pay rent w.e.f 01.01.2008, till the filing of the petition i.e. 11.02.2015. The petition under Section 13 of the *ibid* Act was filed for seeking eviction on the ground of personal use, occupation and bonafide requirement. Vide order dated 05.02.2018, learned Rent Controller had directed the tenant to vacate the demised premises and handover the vacant possession to the landlady, within two months. This eviction was challenged further by way of appeal. During the pendency of the appeal before the Appellate Authority, an application was filed by the landlady for issuance of direction to the tenant to pay mesne profits @ Rs.2,05,900/-. Reply was sought, wherein, it was submitted by the tenant that mesne profits should be fixed @ Rs.16,000/- per month. Vide impugned order dated 13.04.2018, after hearing both the parties, mesne profits were assessed to the tune of Rs.85,000/- per month.

At the very outset, learned counsel for the tenant has submitted that mesne profits have been assessed, at an exorbitant rate of Rs.85,000/- per month (minus agreed rent). It is submitted that lease deed dated 06.10.2016 relied upon by the landlady is not relevant for assessment of the mesne profits, as location, construction and other conditions are totally different. It is submitted by learned counsel for the tenant that reasonableness is the basis for making an assessment of the mesne profits. It is submitted that no determinative factors such like location, construction and other conditions have been looked into. The terms settled should be reasonable, which should not prevent the tenant from pursuing the appeal further.

To strengthen his arguments, learned counsel for the tenant has placed reliance upon various case laws. At first instance, reference has been made to ***M/s Atma Ram Properties (P) Ltd. vs M/s. Federal Motors Pvt. Ltd., 2005(1) RCR (Civil) 212***. It is submitted that in the said case, the case under consideration in the aforesaid authority, was non-residential commercial premises, measuring about 1000 sq. feet and situated in Connaught Circle, New Delhi. The rent fixed was Rs.371.90 per month, vis-a-vis, the tenancy, which commenced in the year 1944. It is submitted that adjoining premises, belonging to the same landlord, having same measurement, was recently let out @ Rs.3.5 lakh per month. Despite the same, the term of payment of Rs.15,000/- per month, as charges, for use and occupation, during the pendency of the appeal, as held by the Rent Controller, was not interfered with.

Further, reference has also been made to the decision rendered in ***Angoori Devi and others vs. Smt.Satya Bhama, 2016(5) RCR (Civil) 1043***, on the basis whereof, it is submitted that tenanted premises having been situated in the posh area of City Narnaul, the contractual rent was @ Rs.500/- per month and qua the same, mesne profits were fixed @ Rs.6,000/- per month. Also, by making reference to the decision rendered in Haryana State Cooperative Apex Bank Ltd. vs. Anil Syal, 2015(31) RCR (Civil) 509, it is submitted that while fixing the amount of mesne profits, the Court has to exercise restraint and would not fix any excessive, fanciful or punitive amount, as mesne profits. Considering the same, there was modification of mesne profits, as assessed by the Appellate Court as Rs.3 lakhs, which was reduced to Rs.2 lakh per month (minus agreed rate of rent). Further, it is submitted by learned counsel for the tenant that in pursuance of the Notification No.201711/2/70-UTFI(4)-2017/6994 dated 25.07.2017, the use of basement has been reduced to a great extent and consequently, the rate of rent has also reduced considerably regarding the occupation of the basement. Even, learned counsel has made reference to the lease deed, to emphasize about the rent, having been settled on lower side, qua the properties existing in the vicinity of the demised premises. Thus, summing up his arguments, learned counsel for the tenant submitted that rent fixed by the Appellate Authority, is not a reasonable amount. It is an exorbitant amount, which restrains the tenant from pursuing the appeal. Rather, the tenant is supposed to quit his claim, prior to the decision of the appeal on merits.

On the other hand, learned counsel for the landlady has assiduously refuted the claim of the tenant. In fact, it is submitted that no reliance can be placed upon the lease deeds, banked upon by the tenant, as they are unregistered lease deeds. It is submitted only lease deed, which is Annexure P-5, is a registered lease deed. However, it is submitted that it is not a recent lease deed. In fact, it relates to 27.03.2014 and that too, only of the ground-floor of SCO No.167. Further, it is submitted that no reliance can be placed upon the un-registered lease deeds. Reference was made to the decision rendered in ***Surinder Kumar vs. Rattan Lal, 2006(2) RCR (Civil) 291***, wherein, while considering the law on this aspect and after placing reliance upon ***M/s Atma Ram's case (supra)***, it was held that determination of mesne profits is to be done, on the basis of recent registered lease deeds of the locality, to show the amount of rent, which is payable. The reasoning was that the registered lease deeds were cogent and credible evidence, which would necessarily mean that inadmissible evidence like un-registered lease deed, are not to be taken into consideration, in view of the fact that registration was mandatory under Section 17(1)(d) of the Registration Act, 1908. Also, it has been submitted that aforesaid decision was further relied upon by this Court in the case of ***Vardhman Holdings Ltd. vs. Ranbir Singh and others, 2015(2) RCR (Civil) 164***.

Further, it is submitted by learned counsel for the landlady that so far as, Annexure P-5 is concerned, the same is also at variance from the case in hand, as in the said case, it was only ground-floor, which was rented out and that too, only for the period of five years. So, it cannot be considered to be at par with the present tenancy.

So far as, Notification dated 25.07.2017 is concerned, it is submitted that the rider placed, as such, is not applicable, as demised premises is SCO, which is to be used for non-habitable use. Even, qua Annexure P-4, which is order dated 19.05.2015 passed in CR-3146-2015, it is submitted that the same also cannot be taken note of, as it related to the payment of rent @ Rs.15,000/- per month and it was interim arrangement made. It was not based on the registered lease deed and furthermore, the above-said petition was also not decided on merits. It was the matter, in which, compromise had been effected and petition was disposed of, in terms of the compromise.

Learned counsel for the landlady has submitted that tenant is liable to pay mesne profits or compensation, for use and occupation of the premises, at the same rent, at which, the landlady would have been able to let out the premises and earn rent, if the tenant would have vacated the premises. It is further submitted that the landlady is not bound by the contractual rent, effective for the period, preceding the date of decree. Thus, summing up his arguments, learned counsel for the landlady has made a prayer for enhancement of the mesne profits, as so ordered by learned Appellate Authority.

A perusal of the judgments, so relied upon by the rival parties, do indicate that the Courts have to draw a balance between two competing claims, by fixing mesne profits, at a rate, between the contractual rent and the market rent. Of course, there cannot be any straight jacket formula, while fixing the amount of mesne profits. However, a lot depends upon the connecting circumstances like location, condition of the premises, nature and age of the construction, maintenance of the same, commercial viability etc. Even though, reliance has been placed upon various lease deeds of the properties, situated in the vicinity of the demised premises, but however, solely on account of the same, no specific assessment of the mesne profits, as such, can be made out. The age of the building, nature of construction and the extent of building to be user friendly, has to be taken into consideration. At the same time, prime location of these showrooms and of the demised premises, has also to be looked into.

The fact remains that eviction order has been passed against the tenant. It is well settled that mere preferring of an appeal, does not operate, as stay on the eviction order. However, till the decision of the appeal, the Courts are supposed to watch the interest of the landlord also, besides the tenant, who has knocked the door of the Appellate Authority. The Courts are required to strike a balance between the two and fix the extent of mesne profits, which should not be exorbitant, to such an extent that the tenant is forced to quit his claim and be deprived of the fruits of his success, in the event of appeal, being allowed. At the same time, the interest of landlord is also to be watched, while considering the fact of order of eviction, having been passed and he should not carry a feeling of pittance and remorse of having approached the Court.

In this backdrop, thus taking into consideration the documents, so relied upon by both the sides, as well as the location of the demised premises and also considering the circumstances, spelt forth, this Court is of the opinion that fixation of Rs.85,000/- per month, as mesne profits, is appropriate and precisely, on this account, the impugned order calls for no interference.

Resultantly, both the revision petitions filed by rival parties, are hereby dismissed.

February 23, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**