

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.576 of 2019 (O&M)

Date of Decision : 17.05.2023

Ashok Fruit Co. through its Proprietor and Another

....Petitioners

VERSUS

Chander Mohan Khanna

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Divanshu Jain, Advocate for the petitioners.

Mr. Mohit Kakkar, Advocate for

Mr. Bhupinder Ghai, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition was preferred by the tenant-petitioners challenging the fixation of mesne profits. On 25.01.2019 the following order was passed :

“Learned counsel for the petitioners herein contends that there are no recent lease deeds which would be comparable to the accommodation which is in possession of the petitioner herein i.e. portion of the fore with a gaddi, one room and a store on the first floor of SCF-03, Sector 26, Grain Market, Chandigarh. It is contended that as per the judgment rendered in 'Mohammad Ahmad vs. Atma Ram Chauhan 2011AIR(SC)1940' wherein it has been held that in case there is no lease deed, the formula which is to be applied would be an increase of 10% after every three years, therefore, at best the mesne profit that could have been assessed would be Rs.6272/- and that the amount assessed as Rs.25000/- is highly excessive.

Notice of motion for 06.03.2019.

In the meantime, amount of mesne profit beyond a sum of Rs.7000/- per month is stayed.”

2. Thereafter, the tenant-petitioners continued to deposit a sum of Rs.7,000/- per month towards mesne profits. On 29.03.2023 the following order was passed :

“Learned counsel for the petitioners states that the present petition was preferred by the petitioners against the assessment of mesne profits @ Rs.25,000/- per month. Vide order dated 25.01.2019 the mesne profits beyond an amount of Rs.7000/- per month was stayed by this Court. Learned counsel for the petitioners would further contend that in the meantime the ejectment application was allowed vide order dated 12.07.2018, which order was affirmed by the Appellate Authority vide order dated 28.08.2019. Against the said order of the Appellate Authority, CR No.5669 of 2019 was preferred wherein on the statement of the landlord-respondent, he was permitted to withdraw the eviction petition itself with liberty to file afresh on the same cause of action. The said revision petition was disposed off vide order dated 10.12.2019 in view of the statement made by counsel for the landlord-respondent therein and accordingly the order of eviction was set aside.

*Learned counsel for the petitioners would contend that in view of the law laid down in cases of **State of Maharashtra & Anr. vs. M/s Super Max International Pvt. Ltd. & Ors. [2009 (2) RCR (Rent) 246]** and **M/s Atma Ram Properties (P) Ltd. vs. M/s Federal Motors Pvt. Ltd. [2005 (1) RCR (Civil) 212]**, the amount of mesne profits so deposited would have to be refunded to the petitioner.*

Since a written request for an adjournment has been circulated by learned counsel for the respondent

on the ground that he is in personal difficulty, adjourned to 27.04.2023.

It is made clear that no further adjournment shall be granted.

To be taken up immediately after the urgent list.”

3. Learned counsel for the respondent is not in a position to dispute the law as laid down in cases of **M/s Atma Ram Properties (P) Ltd. vs M/s Federal Motors Pvt. Ltd. [2005 (1) RCR (Civil) 212]** and **State of Maharashtra & Anr. vs. M/s Super Max International Pvt. Ltd. & Ors. [2009 (2) RCR (Rent) 246]**.

4. In view of the above, the present revision petition is disposed off as having been rendered infructuous. However, the amount deposited towards mesne profits is directed to be released to the petitioner – Ashok Kumar – in view of the law laid down in above referred cases.

5. Pending applications, if any, also stand disposed off.

17.05.2023
jk

(ALKA SARIN)
JUDGE

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