

R-325

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

**RSA-1609-1991 (O&M)
Reserved on : 25.01.2023
Date of Decision : 03.02.2023**

Rattan Paul Jagga and Others

....Appellants

VERSUS

Sadhu Ram & Co. and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aalok Jagga, Advocate for the appellants.

Mr. Ajay Jain, Advocate for the respondents.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellants aggrieved by the judgment and decree of the First Appellate Court holding that the plaintiff-appellants are entitled to recover Rs.1500/- per month as *mesne* profits for use and occupation of the demised premises from the date they are in arrears upto the date the actual physical possession of the demised premises is delivered.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for ejectment and recovery of *mesne* profits to the extent of Rs.4060/- in respect of SCO No.3019, Sector 22-D, Chandigarh.

The plaintiff-appellants claimed rent for the period from 01.07.1981 to 08.08.1981 amounting to Rs.1900/-, damages/*mesne* profits from 09.08.1981

to 04.09.1981 amounting to Rs.2160/-. In addition, they also claimed damages @ Rs.80/- per day. The suit was decreed by the Trial Court vide judgement and decree dated 11.11.1989 and the defendant-respondents were directed to vacate and hand over the vacant possession of the demised premises within two months and further the plaintiff-appellants were held entitled to damages from 01.04.1981 @ Rs.1500/- per month, from 01.04.1984 @ Rs.2250/- per month and from 01.04.1989 @ Rs.4500/- per month. Aggrieved by the judgement and decree passed by the Trial Court, an appeal was preferred by the defendant-respondents while cross-objections were preferred by the plaintiff-appellants. The First Appellate Court vide judgment and decree dated 23.03.1991 dismissed the cross-objections. However, the appeal of the defendant-respondents was partly allowed and the finding regarding the grant of *mesne* profits was modified and the plaintiff-appellants were held entitled to recover *mesne* profits/damages @ Rs.1500/- per month from the date they were in arrears of rent upto the date of actual physical possession of the demised premises.

It is an admitted case of both the counsel that the premises has since been vacated and the possession stands handed over to the landlord plaintiff-appellants. The only grievance of the plaintiff-appellants is qua the modification of the *mesne* profits made by the First Appellate Court. The First Appellate Court in para 28 of it's judgment held as under :

“28. It is the admitted case of the parties that initially the rent of the demised premises was Rs.1200/- p.m., that it was increased to Rs.1350/-p.m. later and w.e.f. 1.4.81 the rent of the demised premises was fixed at Rs.1500/- p.m. within less than six months of the

enhancement of that rent to Rs.1500/-p.m. the landlord filed the present suit for ejectment. It is correct that the rent in the urban areas have been increased manifold for the past few years. The case of old tenants or of those persons who are entitled to the protection of statute cannot be at par with the cases of new tenants. In the circumstances of the case. I would allow the mesne profits/damages for use and occupation of the demised premises by the defendants at the agreed rate of rent i.e. Rs.1500/-p.m. The increase allowed by the learned trial court over the agreed rent between the parties is simply arbitrary and without any basis. To that extent, the findings of the learned trial court on issue No.7 cannot be sustained and are modified holding that the plaintiffs are entitled to recover mense profits/damages @ Rs.1500/- p.m. till the delivery of actual physical possession.”

Thus, the *mense* profits were allowed at the agreed rate of rent @ Rs.1500/- per month. It was held that the increase allowed by the Trial Court over the agreed rent was arbitrary and without any basis.

Learned counsel for the plaintiff-appellants would vehemently contend that there was sufficient evidence on the record to show that the current market price at that point of time was much higher. Per contra, learned counsel for the defendant-respondents has contended that the present appeal is only academic in nature inasmuch as the possession already stands delivered to the plaintiff-appellants.

In the present case, an amount of Rs.1500/- has been granted towards *mesne* profits by the First Appellate Court holding that the assessment of *mesne* profits by the Trial Court was arbitrary and without any basis. There is no evidence on the record to show the rate of rent prevailing in the locality at that point of time. Thus, without any evidence there could not have been an increase. Further, the possession of the demised premises already stands delivered to the plaintiff-appellants.

In view of the above, I do not find any ground to interfere in the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal, which is wholly devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

03.02.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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