238 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CM-932-CII-2023 IN/AND CR-2814-2019 (O&M)

Competition Cell ..... Petitioner

Versus

Harpreet Singh and others ...... Respondents

2. CR-4537-2019 (O&M)

Competition Cell ..... Petitioner

Versus

Harpreet Singh and others ...... Respondents

3. CR-1952-2019 (O&M)

Harpreet Singh and others ..... Petitioners

Versus

Competition Cell ...... Respondent

Date of Decision: 19.05.2023

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ashish Aggarwal, Senior Advocate, with
Mr. B.S.Jolly, Advocate, and
Mr. Karan Singla, Advocate,
for the petitioner (in CR-2814 & 4537-2019)
for the respondent (In CR-1952-2019).

Mr. Surinder Gandhi, Advocate,
for the petitioners (In CR-1952-2019)
for the respondents (in CR-2814 & 4537-2019).

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RAJBIR SEHRAWAT, J. (ORAL)

This shall dispose of three civil revision petitions, i.e. CR-2814-

2019 filed by the tenant questioning the amount of mesne profits fixed by the Appellate Authority, Chandigarh, for the period during the pendency of the appeal while granting stay, CR-4537-2019 filed by the tenant questioning the condition of deposit of the amount of mesne profits by FDRs in the nationalized bank with a further prayer that the FDRs be ordered to be created in the ICICI Bank; and CR-1952-2019 filed by the landlord for enhancement of the amount of mesne profits from the one determined by the Appellate Authority. However, for the purpose of these civil revision petitions, the parties would be referred to as they were described in the original petition filed before the Rent Controller, Chandigarh, for the sake of convenience.

The brief facts, as involved in the case, are that the tenant is occupying the SCO No.83-84, Sector 17-D, Chandigarh, since the year 2008. The landlord filed an eviction petition on the ground of non-payment of rent and the personal necessity. After considering the respective assertions and the evidence; the Rent Controller, Chandigarh, ordered the eviction of the tenant on the ground of personal necessity. The ground of non-payment of rent was rendered irrelevant because the rent was tendered by the tenant. Challenging the said eviction order, the tenant filed the statutory appeal before the Appellate Authority, Chandigarh. In the said appeal, the Appellate Authority has stayed the execution of the eviction order and also determined the rate of mesne profits at the rate of Rs.1,50,000/- per month, for the period during the pendency of the appeal.

It is with reference to the said order that all the aforesaid three civil revision petitions have been filed.

Arguing the case, learned Senior counsel for the tenant has submitted that the Appellate Authority has not considered the relevant material for coming to the conclusion about the rate of mesne profits ordered in favour of the landlord. To buttress his argument that the rate of mesne profits should be much less as compared to the claim made by the landlord, the tenant had submitted six lease deeds, including the one of an adjoining property. The said lease deeds reflected that the market rent of the premises in the similar area was about Rs.60,000/- to Rs.70,000/- per month. Therefore, the Appellate Authority has gone totally wrong in assessing the excessive amount only by taking a cue from the documents produced by the landlord. However, even the documents produced by the landlord were not found to be completely reliable. Therefore, the order passed by the Appellate Authority deserves to be modified and the amount of mesne profits deserves to be reduced. Still further, it is submitted by the learned Senior counsel that since the tenant is having an account in the ICICI Bank, therefore, he had made a prayer for creation of Fixed Deposits in the same bank, however, the Appellate Authority has ordered creation of FDs with a nationalized bank. Learned Senior counsel has further submitted that both the banks are being governed as per the guidelines of the Reserve Bank of India. Therefore, it does not matter as to in which bank the FDs would be created by the tenant. The convenience of the parties demands that the FDs should be permitted to be created with the ICICI bank.

On the other hand, learned counsel for the landlord has submitted that the rate of mesne profits determined by the Appellate Authority is not commensurate with the market rent commended by the property in the area. The landlord had placed on record registered lease deeds; including the lease deeds for the year ranging from 2012 to 2016, which categorically show that the rent for similar and even of less advantageous properties is from Rs.2,00,000/- to Rs.4,00,000/- per month. Therefore, the Appellate Authority should have granted the mesne profits at an average rate of about Rs.3,50,000/- per month.

Having heard learned counsel for the parties and having perused the record, this Court does not any substance in the arguments of either of the learned counsel for the parties. Of course the learned counsel for the landlord has referred to the rent deeds of the properties situated in the same sector and showing much higher rate of rent, however, since Sector 17, Chandigarh, is exclusively a commercial sector and the rent commended by the properties even within this sector vary as per the situation and location of the property, therefore, the lease deed produced by the landlord could not have been taken by the Appellate Authority at their face value. None of the lease deed produced by the landlord pertains to any property adjoining to the property involved in the present case. Same rationale applies to the rent deeds produced by the tenant.

Although, learned Senior counsel for the tenant has submitted that the lease deeds produced by the tenant have not even been considered by the Appellate Authority, however, the same have been perused by this Court. A perusal of the said lease deeds show that the said lease deeds pertain to the year 2016 to 2019; and even that; not regarding the properties adjoining to the property involved in the present petitions. Although, there is one lease deed, which has been produced before this Court, and which pertains to, allegedly, the property adjoining the property involved in the present case, however, the said lease deed was not even produced before the Appellate Authority and the same is even of a date after the date of passing of the order by the Appellate Authority. Otherwise; the lease deed produced by the tenant also cannot be taken at the face value, for the same reason for which the lease deeds produced by the landlord could not be.

In view of the above situation, the Appellate Authority has adopted a right approach by assessing the mesne profits at a reasonable rate considering the over all effect of all the documents produced by the parties to the *lis*. Hence, keeping in view the situation of the property, market value and the rent which can be commended by the property at present, it cannot be said that the mesne profits assessed by the Appellate Authority are either exorbitant or on lesser side. Accordingly, the order passed by the Appellate Authority qua determination of the mesne profits is upheld.

So far as the argument of the learned Senior counsel for the tenant qua creation of the FDs in the ICICI bank is concerned, the said order itself has lost significance as of now; because during the pendency of the present petition, this Court had ordered that instead of creation of FDs, the amount be deposited with the Registrar General of this Court. Accordingly, the learned Senior counsel for the tenant has also submitted that the said amount, as determined by the Appellate Authority, stands deposited through demand drafts in favour of the Registrar General of this Court for the period upto May, 2023; and some of the amount is also stated to have been deposited with the Executing Court for the period from November, 2018 to November, 2019. It is further submitted that the amount of contractual rent at the rate of Rs.50,500/- is otherwise being paid separately in the account of the landlord-Harpreet Singh Gill. In view of the above, the order of creation of FDs, as such, itself is rendered nugatory.

Although, the Appellate Authority has determined the amount of mesne profits and the tenant has even paid the same, however, the landlord has not received the said amount because that is deposited with this Court. Learned counsel for the landlord has submitted that since the tenant has been ordered to be evicted and hence, the landlord would have got the market rate of rent for the property, therefore, the amount of mesne profits should be disbursed to the landlord.

On the other hand, learned Senior counsel for the tenant has submitted that the said amount is deposited by the tenant only as a security for the liability in case the same arises on account of dismissal of his appeal. Therefore, the said amount is liable to be kept with this Court; lest the tenant should be made to suffer in case his appeal is allowed. Learned Senior counsel has cited the Supreme Court judgment rendered in **M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd., 2005(1) R.C.R. (Civil) 212**, to buttress his arguments that the deposit of the amount of mesne profits with the Court is only by way of security for the money decree.

Having considered the aspect, this Court finds that it is of no use to keep the money deposited by the tenant with the High Court and the Executing Court. Strictly speaking the order of deposit of the money with this Court and with the Executing Court cannot even be treated as a security, in tenancy cases. Once the tenant is ordered to be evicted, had the landlord got the possession of the property, he would have enjoyed the market rate of rent qua the said property. There cannot be any legal warrant for depriving the landlord of such right to get market rent of the property even during the pendency of the appeal. Even if appeal of the tenant is allowed, still he would not be irreparably prejudiced; because excess payment of rent, if any, can very well be adjusted against the future rent. In any case, the tenant would be having possession of property of landlord to ensure recovery of any excess amount even if tenancy is abruptly terminated for some other reason. So far as the judgment cited by the learned Senior counsel for the tenant is concerned, even that judgment does not expressly says that the amount deposited by the tenant shall not be disbursed to the landlord. Rather, in that case, the Hon'ble Supreme Court has held that the award of amount was rightly granted by the rent authority and it was only by way of extra caution that it was kept in the Court Deposits. Therefore, that judgement is of no help to the cause of the tenant qua the right of the landlord to receive the rent at market rate, even during the pendency of the appeal.

Hence, the amount of mesne profits lying deposited with this Court or with the Executing Court is ordered to be disbursed to the parties. However, since an amount of Rs.50,500/- per month is being separately paid by the tenant to the landlord, therefore, it is ordered that out of the amount deposited with the High Court and the Executing Court, the amount at the rate of Rs.1,00,000/- per month, for the entire duration of the deposit with the High Court and the Executing Court, be reimbursed to the landlord and the remaining amount be returned to the tenant.

Since, the appeal itself is pending for final decision since the year 2018, therefore, it would be appropriate to direct the Appellate Authority, Chandigarh, to take a final decision on the appeal within a time bound frame and by continuing this arrangement of making payment of mesne profits at the rate of Rs.1,50,000/- per month till the date of decision of the appeal. Accordingly, the Appellate Authority is directed to take a final decision on the appeal within a period of four months from today. However, the petitioner-tenant is directed to continue to pay the mesne profits at the rate of Rs.1,50,000/- per month during the pendency of the appeal. But this arrangement is ordered to be subject to any adjustments of the amounts as per the result of the appeal.

As a result, the civil revision petitions, i.e. CR-2814-2019 and CR-1952-2019 filed by the tenant and the landlord, respectively, qua challenge to the amount of mesne profits determined by the Appellate Authority, are dismissed and the CR-4537-2019 which is also filed by the tenant is disposed of in above-said terms.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

19.05.2023
adhikari

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No