2023:PHHC:164722

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5845-2023 (O&M)
Date of Decision:22.12.2023

M/S.KANHIYA LAL MADHO RAM AND ORS
......PETITIONERS

VS

ARUN KUMAR AND ANOTHER
..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Gaurav Chopra, Senior Advocate with
Ms. Gauri C.Kaushal, Advocate for the petitioners.

Mr. Ashish Bansal, Advocate for respondent No.1-caveator.

Mr. Rikash Goel, Advocate for respondent No.2.

GURBIR SINGH, J.

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1. Challenge in this revision petition is for setting aside the impugned order dated 06.09.2023 passed by Appellate Authority whereby application moved by respondent No.1 for assessment of mesne profits w.e.f. 31.03.2022 has been allowed.

2. The brief facts as culled out from the petition are that the respondent/landlord filed a rent petition for eviction of the petitioners/tenants from the demised premises i.e. one half of front verandah with the open space/thara in front of SCF No. 88 including one front room and one big room on the backside of SCF and passage to go and come from the front room to back room adjoining SCF No.87 on the ground ground floor including the

common courtyard and two rooms on the front side on the first floor including kitchen and open courtyard of SCF No.88, Grain Market, Sector-26, Chandigarh. The said petition was allowed on 31.03.2022 and the petitioners/tenants have been directed to vacate the demised premises within a period of two months. They have filed the appeal in which petitioners/tenants have also sought stay of the ejectment order. The respondent/landlord moved an application for assessment of mesne profits which was allowed vide impugned order dated 06.09.2023.

3. The Appellate Court assessed the mesne profits @ Rs.90,000/- per month from the date of ejectment order and operation of the ejectment order has been stayed subject to the payment of arrears of mesne profits and future mesne profits at the same rate by 10^{th} of every month.

4. The relationship of tenant-landlord is not in dispute. The tenancy was created long time back. The landlord has claimed the rent @ Rs.550/- per month and has claimed arrears at the said rate w.e.f. 01.04.1999.

5. Learned counsel for the petitioners/tenants has argued that mesne profits have been assessed on the higher side. The learned Appellate Authority failed to take into account that mesne profits is not intended to be a bonanza for the landlord. The mesne profits are to be assessed in such a manner that these are reasonable and are not assessed in an arbitrarily manner. The purpose of assessment of mesne profits is that reasonable compensation is granted to the landlord during the pendency of the appeal. The petitioners/tenants pleaded throughout that partnership firm-M/s. Kanhiya Lal Kanshi Ram is the actual landlord and not the respondent No.1. The one half of front verandah with the open space/thara in front of the demised property and the passage to go and

come from the front room to back room adjoining SCF No.87 on the ground floor including the common courtyard in no way can be rented out to the petitioners/tenants as the landlord has no title, right and interest in the same and landlord is not entitled to receive any rent for the same. As per the revised site plan, petitioner are in possession of only two rooms of the demised premises that are not joined with each other and are actually in isolation of each other. It is further argued that the learned Appellate Authority relied on the three lease deeds but failed to take into account that the covered area mentioned in the aforesaid lease deed was much higher than the area of the demised premises. Even adjoining property does not fetch the same rent since various factors are relevant for determining the rental value of the property i.e. facilities provided by the lessor, infrastructure, type of business and condition of the premises etc. The petitioners/tenants relying upon the lease deeds dated 27.08.2021 executed in respect of SCF No.174, Grain Market , Sector-26, Chandigarh (Annexure P-14) whereby commercial area as a single shop comprising of 450 sq.ft with a better location has been assessed as Rs.54,022/- per month whereas the demised premises is segregated into two different rooms out of which only one can be commercially used whereas other part of the SCF No.85, Sector-26, Grain market, Chandigarh, 350 sq.ft on the ground floor has been leased out as Rs.50,000/- per month. A copy of lease deed is annexed as Annexure P-15.

6. Learned counsel for the respondent/landlord has argued that the petitioners/tenants are in occupation of demised premised @ Rs.550/- per month. They are in possession of one half of front verandah with the open space/thara in front of the SCF No.88 including one front room and one big room on the back side of the SCF and passage to go and come from the front

room to back room adjoining SCF No.87 on the ground floor including the common courtyard and two rooms on the front side on the first floor including kitchen and open courtyard of SCF No.88, Grain Market,Sector-26, Chandigarh. The petitioners/tenants can only be allowed to continue in possession during the pendency of appeal if the petitioners/tenants pay the mesne profits at the prevailing market rate. The learned Appellate Authority has rightly assessed the mesne profits. The ground floor of SCF No. 98 is leased for five years in December 2014 @ Rs.1,00,000/- per month with 5 percent increase every year. Learned counsel for the respondents has placed on the file photographs showing that verandah is covered and is being used for the commercial purpose by the petitioners/tenants.

7. I have heard the submissions made by learned counsel for the parties.

8. It is well settled that tenant is liable to pay the mesne profits to the landlord if operation of ejectment order is stayed by the Appellate Authority and said amount is subject to adjustment on final decision. In case *Angoori Devi and Ors Vs. Smt. Satya Bhama in CR.No.6248-2011* passed by Coordinate Bench of this Court, it has been held that contractual rent comes to an end when eviction order is passed. The Court should balance the competing claims between mesne profits at market rate and reasonable compensation for landlord.

9. The property in question was allotted to the landlord in the year 1955. The building is quite old. Verandah in front of the property is not exclusively meant for the allottee. It is common place for the use of public also. From the photographs, it can be ascertained that now the shopkeepers are using the verandah for their commercial activity. The demised premises were let out

about long time back. In the ejectment petition, rent is claimed Rs.550/- per month w.e.f. 1999. It is well known when fresh tenancy is created then various factors such as facilities provided by the lessor, infrastructure, type of business and condition of the premises etc. are considered for determining the rental value of the property but the demised premises was let out long time back so the lease deeds which have been relied by the respondent are not of much help for assessing the mesne profits. The learned Appellate Court also held that landlord has relied upon the lease deeds of the property situating in the same vicinity. The petitioners/tenants are relying on one lease deed of lesser amount of the property situated in the same locality and has also shown intention to pay Rs.26,000/- per month, so in these circumstances the mesne profits cannot be certainly assessed as claimed by the landlord @ Rs.1,50,000/- per month or as per the petitioners/tenants Rs.26,000/- per month. But learned trial Court assessed the mesne profits at the rate of Rs.90,000/- per month. Thus, there was not sufficient material with the learned Appellate Authority to assess the mesne profits at the said rate.

10. No doubt rate of inflation is very high but the property which is in possession of the petitioners/tenants cannot fetch such exorbitant rent as claimed by landlord. The mesne profits are required to be assessed in such a manner that tenant can pay the same and is able to exercise his right of appeal otherwise if mesne profits are assessed arbitrarily at an exorbitant rate then tenant is not able to get his rights decided in the appeal which is his statutory right. So the assessment of mesne profits should be reasonable, neither should be as per prevalent market rate of rent nor should be very less.

11. Only two rooms which are segregated at the ground floor and two

rooms at the first floor are in exclusive possession of petitioners/tenants. Remaining portion which is being used by them is in fact common area, but now being used by the petitioners/tenants.

12. Keeping in view the nature of the property, the extent of exclusive area and common area in possession of the petitioner, the tenancy which is quite old and is on meager rent, so I am of view that respondent/landlord can be duly compensated if mesne profits are assessed @ Rs.45,000/- per month. The learned Appellate Authority assessed the mesne profits at very high rate. So, this revision petition is allowed and order of assessment of mesne profits @ Rs.90,000/- per month by the learned Appellate Authority is hereby set aside and mesne profits are hereby ordered to be assessed @ Rs.45,000/- per month. All the arrears are to be paid by the petitioners/tenants within one month and to further pay the mesne profits at the said rate by 10th of every month till the disposal of the appeal. In case of default the petitioners/tenants are not entitled to keep possession of the demised premises and learned Appellate Authority is free to pass any order.

13. Pending applications, if any, are disposed of in view of the above-said order.

(GURBIR SINGH)
JUDGE

renu
22.12.2023

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