116 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DECIDED ON: 06.10.2023

1. CR-5872-2023 (O&M)
PAWANDEEP SINGH ....PETITIONER
VERSUS
DALJIT KAUR AND OTHERS .....RESPONDENTS

2. CR-5876-2023 (O&M)
JAGMOHAN SINGH AHUJA ....PETITIONER
VERSUS
DALJIT KAUR AND OTHERS .....RESPONDENTS

3. CR-5889-2023 (O&M)
DEEPAK DHAWAN ....PETITIONER
VERSUS
DALJIT KAUR AND OTHERS .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Nakul Sharma, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

1. By way of the present judgment, I shall decide three revision petitions. The impugned orders in all three revisions petitions are dated 01.08.2023 (Annexure P-1), having been passed by the Appellate Authority, Ludhiana vide which mesne profits have been fixed during the pendency of appeals against eviction orders passed by the Rent Controller, Ludhiana.

2. The respondents-landlords filed eviction petitions against different tenants. The petitioner in ***CR-5872-2023*** was a tenant in shops No.3 and 4, forming part of property bearing H.No.85, Model Gram, Near Kochhar Market, Ludhiana. The petitioner in ***CR-5876-2023*** was a tenant in shops No.5 and 12 whereas the petitioner in ***CR-5889-2023*** was a tenant in shops No.8, 9, 10 and 13. Separate eviction petitions were filed qua all three tenants. All were allowed vide separate judgments dated 30.11.2022 passed by the Rent Controller, Ludhiana on the ground of *bona fide* necessity.

3. Appeals were filed by all three tenants. During the pendency of the

appeals, applications were moved by the respondents-landlords for fixing mesne profits. The application is on record as Annexure P-5 in all three revision petitions. It was averred in the application that the disputed shops are situated in a very posh locality i.e. Kochhar Market Chowk, Model Gram, Ludhiana which is the hub of the city and that the rent of the shops could easily be ₹27,000/- per month. It was averred that such like premises in the vicinity had been let out at a monthly rent of ₹82,500/- per month. All disputed shops were measuring 100 square feet each. It was averred that one Nitin Verma had taken shop No.B-26-201 on rent from one Ravinder Kaur at a monthly rent of ₹82,500/- per month. The area of the said shop was 342 square feet and that the shops in dispute could easily get rent of ₹50,000/- per month. Reliance was placed upon another shop which had been let out at the rent of ₹18,900/- per month with a clause of increase of 7% per annum.

4. The application was resisted by way of a reply (Annexure P-6). Certain preliminary objections were raised. It was averred that the respondents-landlords had themselves given shop No.11 on rent at the ₹7,000/- per month about two years back. Similarly shop No.21 had also been let out @ ₹2,500/- during the pendency of the eviction petition. It was averred that these rent notes were in possession of the respondents-landlords. The rent quoted in the application was stated to be exorbitant. It was averred that the market where the shops were situated was not being maintained properly and there were no bathrooms or water facilities. The properties in the neighborhood had been recently constructed and were properly maintained. With regard to the rent note qua rent of ₹82,500/- per month, it was averred that the same seemed to have been created under legal advice. All other averments were denied.

5. The Appellate Authority, Ludhiana assessed the mesne profits for two shops in ***CR-5872-2023*** @ ₹15,000/- per month for each shop, for two shops

in ***CR-5876-2023* @** ₹15,000/- per month for each shop and for four shops in ***CR-5889-2023*** @ ₹10,000/- per month for each shop. It is against these orders passed by the Appellate Authority that the present revision petitions have been preferred.

6. I have heard learned counsel for the petitioner and have gone through the paper books.

7. Learned counsel for the petitioner has strenuously urged that the Appellate Authority erred in fixing the mesne profits at an exorbitant rate by erroneously relying upon the unregistered rent notes. Learned counsel has contended that the petitioners in all three revision petitions are in occupation of the disputed shops since the year 1993 and that at best, the rate of rent could have been doubled by the Appellate Authority but the Appellate Authority erred in assessing the mesne profits many times above the current rent. Learned counsel has submitted that the shops for which the rent notes were produced were situated on the main road whereas the disputed shops are situated inside a street and are measuring only 10x10 sq. ft. Learned counsel has submitted that no reliance could have been placed upon the unregistered rent notes and that too for big shops situated on the main road. It has been submitted that the Appellate Authority ignored the settled principles of law while assessing the mesne profits. In support of his contentions, learned counsel has relied upon the judgments passed by the Coordinate Benches of this Court in ***CR-3106-2016*** titled as ***'Inderjit and Another Vs. Kamal Kishore', 2018 (1) RCR (Rent) 660*** and ***CR-4427&7578-2015*** titled as '***Rakesh Kumar and Another Vs. Ashok Kumar Mehal and Others', 2018 (2) RCR (Rent) 201***.

8. I have considered the submissions made by learned counsel for the petitioner and find the same to be devoid of merit.

9. Before adverting to the merits of the case, it would be essential to

examine the law on the subject. The matter was initially examined by the Hon'ble Apex Court in the case of '***M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd', 2005 (1) SCC 705***. In this case, it was held that after eviction of the tenant has been ordered, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. Thereafter, in the case of '***Anderson Wright and Company Vs. Amar Nath Roy and Others', 2005 (6) SCC 489***, it was held by the Hon'ble Apex Court that from the date of decree of eviction, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises on being vacated by the tenant. This principle was further reiterated in the case of '***M/s Martin and Harris Pvt. Ltd. and AnotherVs. Rajender Mehta and Others', 2022 (8) SCC 527.*** In the case of '***State of Maharashtra and Another Vs. Super Max International Pvt. Ltd. and Others' 2009 (9) SCC 772,*** also this view was affirmed. However, it was held that no strait jacket formula could be laid done while fixing the quantum of mesne profits and that the Courts would have to be guided by the facts of each case. It was held that the Court could not fix any excessive or punitive amount. A number of judgments were, thereafter, passed by Co-ordinate Benches of this Court fixing mesne profits as per the facts of each case. In some cases, it was held that the amount so fixed should be reasonable and the same cannot be onerous. In some cases, it was held that the mesne profits can be fixed somewhere between the existing rent of the tenant and the prevalent market rent.

10. Reverting to the facts of the present case, the rent of the shops in question was ₹2,000/- and ₹2,500/- per month. The respondent-landlord

produced on record an unregistered rent note for a shop measuring 342 sq. ft., the rent of which was ₹82,500/-. Another rent note was produced wherein the rent was ₹18,900/-. No doubt, these rent notes were unregistered rent notes. It is also not in dispute that these shops are situated on the main road as would be clear from the site plan (Annexure P-7) as also the photographs (Annexure P-8). The disputed shops are inside a street. However, the fact remains that the locality is the same and all are commercial shops. Another important fact is that the petitioner-tenant did not produce on record any evidence worth its name in the form of rent notes etc. to prove the prevalent rate of rent for which an adverse inference also deserves to be drawn against them. In all likelihood, they held back the evidence which may have gone against them. In the considered opinion of this Court, the Appellate Authority struck a fine balance and fixed the mesne profits for shops in ***CR-5872-2023***@ ₹15,000/- per month for each shop, for the shops in ***CR-5876-2023*** @ ₹15,000/- per month for each shop and for the shops in ***CR-5889-2023*** @ ₹10,000/- per month for each shop considering their size and location and did not simply follow the rent as per the rent notes produced. The mesne profits so fixed by the Appellate Authority are not at all on the excessive side and do not call for any interference. It has to be borne in mind that the shops in question had been let out in 1993 and, therefore, 30 years after that, rent of ₹15,000/- or ₹10,000/- cannot be said to be excessive.

11. I have gone through the judgments relied upon by learned counsel for the petitioner. In the case of ***Inderjit and Another Vs. Kamal Kishore'*** (supra), it was held by a Coordinate Bench of this Court that the fixation of mesne profits is to be on the basis of some registered documents and it cannot be fanciful and at the discretion of the Court. The judgment was passed in the particular facts of that case since the mesne profits had been fixed at ₹10,000/- per month against the rate of rent at ₹175/-. No doubt, registered lease deeds

would be a valid parameter but even unregistered lease deeds can be taken into consideration at least for the purposes of rent and especially when no evidence to the contrary was produced by the petitioner-tenant. Even otherwise, as has been held in a number of judgments, no strait jacket formula can be fixed for assessment of mesne profits and each case would have to be decided on its own facts. Even in the case of '***Rakesh Kumar and Another Vs. Ashok Kumar Mehal and Others'*** (supra), a similar view was taken and it was held that mesne profits cannot be compared with rent settled with tenants of adjoining or nearby shops and that the location and type of business being carried out in premises is the material fact. This judgment would also not come to the aid of the petitioner because this judgment also lays down the general principles and cannot *mutatis mutandis* be applied to the facts of the present case.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petitions and the same are accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

06.10.2023
Prince Chawla

Whether speaking/reasoned Yes/No

Whether reportable Yes/No