2023:PHHC:006224

130 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-86-2024 (O&M)
Date of decision: 11.01.2024

PARDEEP KUMAR ......PETITIONER

VS

RAJINDER KUMAR SHUKLA AND ANOTHER

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Aayush Gupta, Advocate for the petitioner.

Mr. Sardavinder Goyal, Advocate for respondent No.1/caveator.

GURBIR SINGH, J.

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1. Challenge in this revision petition is to the order dated 06.12.2023 passed by the Appellate Authority, Ludhiana, whereby the Court has imposed mesne profit @ Rs.30,000/- per month from the date of eviction.

2. The brief facts as culled out from the petition are that respondent No.1/landlord filed a rent petition for the ejectment of the petitioner/tenant from the demised shop, which is forming part and parcel of property No.13-E, Tagore Nagar, Civil Lines, Ludhiana on the grounds of non-payment of rent w.e.f. 01.04.1999 @ Rs.1200/- per month along with house tax and on *bona fide* necessity. The petitioner/tenant was proceeded ex-parte in the said petition and the same was allowed vide judgment dated 31.03.2016 to the effect that the petitioner-tenant was directed to vacate the premises in dispute within a period of two months and to pay the arrears of rent @ Rs.1200/- per month

w.e.f. 01.04.1999 along with house tax, failing which, the respondent/landlord would be at liberty to get the vacant possession of the same as per the provisions of law. After passing of ejectment order, the petitioner-tenant filed an application under Order 9 Rule 13 CPC read with Section 151 CPC before the trial Court for setting aside the *ex-parte* judgment dated 31.03.2016 and the same was dismissed on 22.03.2023. Thereafter, the petitioner-tenant filed an appeal for setting aside the order impugned order dated 22.03.2023 and eviction order dated 31.03.2016. Along with the appeal, an application for staying operation of impugned order was also filed. Thereupon, the respondent/landlord moved an application for assessment of mesne profits. The reply to the application for assessment of mesne profit was filed by the petitioner-tenant.

3. The Appellate Authority assessed the mesne profits @ Rs.30,000/- per month from the date of ejectment order and operation of the eviction order has been stayed subject to the payment of arrears of mesne profits in 03 equal monthly installments and future mesne profits at the same rate on or before 25th of every month. The appeal against the order dated 22.03.2023 is still pending before the Appellate Authority.

4. Learned counsel for the petitioner-tenant submits that an inter-pleader suit has already been filed by the petitioner-tenant against respondent No.1-landlord and his brothers titled as *Pardeep Kumar Vs. Rajinder Kumar Shukla and others*. Another eviction petition was filed by Jagdish Kumar Shukla titled as *Jagdish Kumar Shukla Vs. Pardeep Kumar* on the ground of non-payment of rent has been stayed by learned trial Court vide order dated 16.11.2019 wherein learned trial Court held that respondent No.1 is not entitled to receive the rent. It is further argued that shop, in question, is not

situated in a bye lane and is a small shop of 9'x15" which comes to 15 sq. yards. The respondent No.1 has relied upon two rent notes dated 13.04.2014 and 04.03.2022 and evaluation report of the tenancy premise. The evaluation report of the Civil Engineer is only one sided. The rent note dated 13.04.2014 is only with regard to Rs.700/- per day for running tea stall for selling eggs, omelete etc. The second rent note is with regard to reducing the rent. In the evaluation report, the rate of rent is shown highly exaggerated. The mesne profits cannot be claimed three years prior to filing of the application for payment of mesne profit. Reliance has been placed on *Angoori Devi and Ors Vs. Smt. Satya Bhama in CR.No.6248-2011* passed by Coordinate Bench of this Court wherein it has been held that contractual rent comes to an end when eviction order is passed. The mesne profits have been assessed on much higher side. Learned counsel has further submitted that the report of Civil Engineer submitted by the respondent-landlord is a procured one. The learned Appellate Authority failed to take into account that mesne profits are 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.

5. Notice of motion.

6. At this stage, Mr. Sardavinder Goyal, Advocate, has put in appearance on behalf of respondent No.1-caveator. He has argued that the petitioner-tenant did not produce any evaluation report. The evaluation report submitted by respondent No.1-landlord is approved by Engineer and the rate of rent in that area is quite high. It is contended that petitioner-tenant is running a

chemist shop opposite DMC Hospital, Ludhiana and is not paying rent since 1999. There is big footfall in that area. The learned Appellate Authority has rightly assessed the mesne profits.

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 (supra)*, 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 small shop is in possession of the petitioner/tenant. The rate of rent in the year 1999 was Rs. 1200/- per month. The learned Court below has assessed the mesne profits on the basis of estimation and taking judicial notice of the market rate of rent prevalent in that market and on the basis of photographs placed on the file. When assessment of mesne profits is made on estimation then said Authority is required to explain the basis of estimation. In the rent deed dated 04.03.2022 (Annexure P-8), party had agreed to reduce the rent which means property was in occupation at higher rent but later on by agreement, rent was reduced. The rent note dated 13.04.2014 is with regard to giving shop for a particular purpose i.e to run vend for tea, egg-omelet so these rent notes are not of any help to assess the amount of mesne profits. In the assessment report, no reason has been given how the rental value per sq.feet has been arrived. When there is no particular document then one of the criteria which a Court can take guidance is about the rate of gold which is directly

proportional to the rate of inflation. In the year 1999, the rate of gold was Rs.4234/- per 10 grams and today it is Rs.64,500/- per 10 grams. So, it can be said that rate of gold is increased by 15.25 times from 1999. In addition, rate of rent depends upon the location of the property, infrastructure, conditions of the premises, facilities provided by the lessor and type of business which is being conducted in the said shop. Since shop is opposite the DMC Hospital, Ludhiana which is multi-specialty hospital and there is big footfall of patients there and this hospital cater to the needs of Ludhiana people and also large area around Ludhiana and chemist shop is being run in the premises in question. So, I am of the view that mesne profits to the extent of Rs.20,000/-per month is required to be assessed. Since it is not an appeal but application was moved for setting aside the ex-parte ejectment order which was dismissed and appeal is filed against the said order so tenant is liable to pay mesne profits from the date of ejectment order dated 31.03.2016 and not three years prior to filing the application.

10. Accordingly, this revision petition is disposed of and tenant is directed to deposit the arrears of mesne profits within two months and further till the disposal of appeal, deposit the mesne profits at the said rate by 12th of every month and if there is holiday on these day, payment be made on next working day. In case of default, this order shall automatically stand vacated.

11. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

11.01.2024
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*