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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.943 of 2024 (O&M)
Date of decision : 07.11.2024

Amarjit Singh ....Petitioner

Versus

Bhupinder Singh and another ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. V.K. Sandhir, Advocate for the petitioner.

Mr. Veneet Sharma, Advocate for respondent No.1.

PANKAJ JAIN, J. (ORAL)

Petitioner has been ordered to be evicted from the tenanted premises by Rent Controller, Amritsar on the petition filed by respondent No.1 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 1949 Act) vide order dated 13.10.2023.

2. For convenience and to avoid confusion, the parties hereinafter are referred to by their legal status i.e. petitioner as tenant and respondent No.1 as landlord.

3. Petitioner filed appeal before the Appellate Authority impugning the aforesaid order dated 13.10.2023. On the application filed by respondent No.1/landlord seeking assessment of *mesne* profits, Appellate Authority assessed the same @ Rs.20,000/- per month and stayed the

ejectment of the petitioner subject to payment of *mesne* profits @ Rs.20,000/- per month.

4. Mr. V. K. Sandhir, Advocate counsel representing the petitioner has assailed the impugned order dated 30.01.2024 whereby Appellate Authority assessed the *mesne* profits and directed the petitioner to pay the same accordingly, claiming that the demised premises is a small shop wherein the petitioner was inducted as tenant in the year 1999 at the rate of Rs.1500/- per month. He submits that without there being any evidence on record, Appellate Authority assessed the *mesne* profits @ Rs.20,000/- per month which is exorbitant and unreasonable. He submits that a specific issue was framed w.r.t. rate of rent by the Rent Controller. Finding on issue No.2 having been answered in favour of the petitioner, Appellate Authority erred in assessing the *mesne* profits to the tune of Rs.20,000/- per month which is more than ten times to the rent paid by the petitioner/tenant.

5. Per contra, counsel for respondent No.1/landlord submits that the finding recorded by the Rent Controller on the rate of rent cannot be a basis to assess the *mesne* profits in terms of ratio of law laid down by Supreme Court in the case of **Aatma Ram Properties (P) Limited vs. Ms. Federal Motors (P) Limited' (2005) 1 SCC 705**. He further submits that the property, in question, is situated in the prime commercial area of city of Amritsar. The neighbouring shops are fetching rent @ Rs.50,000/- per month. He further relies upon ratio of law laid down by Co-ordinate Bench of this Court in case bearing CR No.86 of 2024 titled as **'Pardeep Kumar**

vs. Rajinder Kumar Shukla and another', decided vide order dated 11.01.2024 wherein Co-ordinate Bench held that where there is no particular document regarding rate of rent, price index of gold can be a sufficient guide to fix the *mesne* profits.

6. I have heard counsel for the parties and have carefully gone through records of the case.

7. So far as the plea raised by counsel for the petitioner w.r.t. findings recorded by the Rent Controller on the rate of rent, the same is misconceived. The law stands settled by Apex Court in the case of '**Aatma Ram Properties (P) Limited vs. Ms. Federal Motors (P) Limited**' (supra) observing as under :

> "**16.** We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.
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> **17.** In the Delhi Rent Control Act, 1958, the definition of a "tenant" is contained in clause (*l*) of Section 2. Tenant includes "any person continuing in possession after the termination of his tenancy" [Section 2(*l*)(*ii*)] and does not include "any person against whom an order or decree for eviction has been made" [Section 2(*l*)(A)]. This definition is identical with the definition of tenant dealt with by this Court in *Chander Kali Bai case* [(1977) 4

SCC 402] . The respondent tenant herein having suffered an order for eviction on 19-3-2001, his tenancy would be deemed to have come to an end with effect from that date and he shall become an unauthorised occupant. It would not make any difference if the order of eviction has been put in issue in appeal or revision and is confirmed by the superior forum at a latter date. The date of termination of tenancy would not be postponed by reference to the doctrine of merger.

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In *Marshall Sons & Co. (I) Ltd.* v. *Sahi Oretrans (P) Ltd.* [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

19. To sum up, our conclusions are:

(*1*) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as

> those proceedings are concerned. Such terms, needless to say, shall be reasonable.
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> (*2*) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (*l*) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, 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 and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.
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> (*3*) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date."

8. It is not in dispute that the petitioner has been ordered to be evicted. The Appellate Authority has stayed the eviction of the petitioner subject to his paying the *mesne* profits. Thus, no fault can be found with the Appellate Authority putting tenant to the condition of paying *mesne* profits while staying the eviction and assessing *mesne profits dehors* the findings recorded by the Rent Controller w.r.t. rate of rent.

9. Coming on to the issue of assessment of the *mesne* profits, Co-ordinate Bench in ***Pardeep Kumar's*** case (supra) observed as under :

> "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."

10. The same was followed in CR No.3348 of 2024 titled as **'Jatinder Singh vs. S. Prabhpreet Singh'** decided vide order dated 29.07.2024 observing as under :

> "[11]. Furthermore, considering the fact that the demised premises forms part of an already developed commercial area-thickly surrounded by many other establishments, applying the formula/principles followed by this Court in case of ***Pardeep Kumar*** (supra), wherein guidance on the issue of assessment of *mesne* profits was drawn from the proportionate inflation towards the price of gold from the date of inception of tenancy till the date of ejectment order, the determination of *mesne* profits in the case in hand comes to around Rs.31,500/- per month (gold rate in the year 1989 was @ Rs.3140/- per 10 grams as compared to the rates on 03.07.2023 @ Rs.66,000/- per 10 grams, as per which appreciation comes to around 21 times). Accordingly, the impugned order dated 18.05.2024 is hereby modified, thereby assessing the *mesne* profits @ Rs.31,500/- per month. The time for payment of total outstanding arrears towards mesne profits is extended upto 31.08.2024 and further till disposal of the appeal, payment of *mesne* profits @ Rs.31,500/- per month shall be made by 7th of every month and if there is holiday on the said day, payment be made on the next working day. In case of default of this interim stay against eviction shall automatically stands vacated."

11. Thus, this Court finds that in the absence of there being any cogent piece of evidence to serve as a guidance to assess *mesne* profits, gold index serves as a substantive guide. In the year 1999, when the petitioner was inducted as tenant @ Rs.1500/- per month, 10 grams of gold was being

sold for Rs.4,234/-. Today in the year 2024 when the Appellate Authority assess the *mesne* profits for the shop in question @ Rs.20,000/- per month, gold is priced at Rs.79,360/- per 10 grams.

12. In view of above, this Court finds that no fault can be found with the impugned order passed by the Appellate Authority assessing the *mesne* profits payable by the tenant during the pendency of the appeal @ Rs.20,000/- per month.

13. Resultantly, the revision petition is dismissed. However, keeping in view the pendency of the instant petition before this Court, tenant is granted time up to **31.01.2025** to clear the entire arrears of *mesne* profits as directed by the Appellate Authority.

14. Pending application, if any, shall also stand disposed off.

November 07, 2024 **(Pankaj Jain)**

Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No