IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.122

Case No. : CR No.2183 of 2024 (O&M)
Date of Decision : April 18, 2024

Pardeep Kumar .... Petitioner

vs.

Harjeet Singh and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Aman Raj Bajwa, Advocate
for the respondents.

* * *

GURBIR SINGH, J. :

1. Challenge in this petition is to the order dated 29.02.2024, passed by learned Additional District Judge, Amritsar (hereinafter referred to as – the Appellate Authority), whereby application moved by the appellant/tenant Pardeep Kumar (petitioner herein), for staying the execution of ejectment order dated 04.03.2022, has been allowed and other application moved by the respondents, for assessment of mesne profits, has also been allowed, subject to payment of mesne profits @ Rs.20,000/- per month from the date of passing of eviction order till the decision of the appeal.

2. The respondents/landlords filed the ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act No.111 of 1949 (for brevity – the Act) on the ground of non-payment of arrears of rent. The petitioner/tenant contested the said petition on various grounds. Learned Rent Controller, vide judgment dated 04.03.2022, allowed the ejectment petition and ordered the petitioner to vacate the demised premises.

3. The petitioner/tenant filed appeal, in which the impugned order dated 29.02.2024 has been passed.

4. Learned counsel for the petitioner has argued that there exists no relationship of landlord and tenant between the parties. The petitioner has also become co-owner of the demised premises on the basis of sale deed dated 30.08.2012, executed by Dhir Singh in his favour. Moreover, wife of petitioner had also purchased the share of Kuldip Singh but she was not joined as party in the ejectment petition. Kuldip Singh, after selling his share, could not file the ejectment petition. So, the petition was not maintainable. The premises was taken on rent on different dates. The tenancies were distinct and rate of rent of tenancies were also different, so, single petition for ejectment in respect of different tenancies was not maintainable. The relationship of landlord and tenant is seriously disputed. So, petitioner is not liable to pay mesne profits during pendency of the appeal. The learned Appellate Authority assessed the mesne profits only on guess work. There was no material on record before the Appellate Authority for assessing the mesne profits. The respondents/landlords did not bring any evidence on record to support their claim. It is further argued when no document is on record, on which reliance can be placed, then mesne profits can be assessed on the basis of evidence to be led by both the parties. Reliance is placed on case **M/s Bird Travels P. Ltd. vs. Amarjit Kaur &**

<u>Ors.</u> - <u>Civil Appeal No.4589 of 2012</u>, decided on 11.05.2012 by Hon'ble Supreme Court. The mesne profits @ Rs.20,000/- per month have been assessed without any document on record and the same is on higher side.

5. Learned counsel for respondents/landlords has argued that at this stage, no inquiry is required to be conducted. The Appellate Authority assessed the mesne profits on the lower side. It is a big commercial building. So, mesne profits are required to be assessed at the rate of Rs.25,000/- per month.

6. I have heard the submissions of learned counsel for the parties and perused the case file.

7. There is no dispute that the petitioner was inducted as tenant for 11 months in one shop, vide rent note dated 09.08.2000. The petitioner agreed to pay rent at the rate of Rs.700/- per month and in case, premises was kept even thereafter, the rent would be increased @ 5% every year. On 15.07.2003, the petitioner took on rent another shop in the same building for a period of 11 months vide rent note dated 15.07.2003 @ Rs.1500/- per month. Thereafter, first and second floor of the said building were constructed by the respondents/landlords and the same were also let out to the petitioner on 01.07.2009 @ Rs.5000/- per month.

8. It is well settled that on the passing of ejectment order, relationship of tenant and landlord comes to an end. It tenant wants to retain the possession of demised premises during pendency of appeal, then tenant is liable to pay mesne profits at the prevalent market rate. In case **<u>Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.</u> - <u>2005(1) RCR</u>**

<u>(Civil) 212</u>, it has been observed that the rationale for awarding mesne profits is that there was a need to deter the tenant from perpetuating the life of litigation and thereby robbing the landlord of the fruits of the litigation even if he is successful. There is no dispute that there is relationship of landlord and tenant between the parties. The tenancy consists of two shops and construction made thereon at the first and second floor. The Rent Controller has already held that it was a single tenancy. The Appellate Authority, at the time of final hearing, would decide the same. Although petitioner/tenant has also disputed that with the purchase of share of a co-sharer, the petitioner and his wife have become the co-owners of the property, but the same is also a debatable issue and no finding can be given by the Appellate Authority on such issue at the time of assessing the mesne profits. All these contentions can only be considered at the final stage and not at the stage of assessment of mesne profits.

9. The next question that requires consideration is assessment of mesne profits. The same is to be assessed on the basis of material placed on record by the parties, which could be registered lease deeds of the area or other admissible documents but un-registered rent deed cannot be taken into consideration for the said purpose. The mesne profits should be determined in such a manner that it is according to the market rate, at which the landlord would have been able to let out the premises at that time. In case **<u>Naresh Kumar Jain vs, Deepak Jain and another</u>** – **<u>2022(4) Law Herald 3434</u>**, a Co-ordinate Bench of this Court has held that mesne profit has to be akin to market rent, at which the landlord would have been able to let out the premises. Relying on various judgments, the learned Court culled out the principle for assessment of mesne profits in the following manner :-

> ***"12.*** *I have heard learned counsel for the parties and gone through the paper-book as well as records of the case. The principles enunciated in the judgments rendered by the Hon'ble Supreme Court as well as this Court in the cases of* ***R.K. Bansal Vs. Jag Pravesh Sharma, 2012 (4) RCR (Civil) 395; Vardhman Holdings Ltd. Vs. Ranbir Singh and others, 2015 (2) RCR (Civil) 164; Surinder Singh Vs. Dr. Davinder Mohan, 2006 (2) RCR (Rent) 26; M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd., 2005 (1) RCR (Rent) 1; Anderson Wright and Co. Vs. Amar Nath Roy and others, 2005 (2) RCR (Civil) 831;*** *and* ***Angoori Devi and others Vs. Smt. Satya Bhama, 2016 (5) RCR (Civil) 1043****; can be culled out in the following manner :-*
>
> ***i)*** *Determination of mesne profits has to be made by way of summary manner without there being any detailed trial;*
>
> ***ii)*** *It has to be based on cogent and reliable material placed on record on behalf by both the sides, primarily by way of recent registered lease deeds pertaining to the locality concerned including any judicial determination;*
>
> ***iii)*** *While making assessment, Court needs to consider, age of building; construction of building; its accessibility with main road; parking space, facilities inside and outside the premises; advantages and dis-advantages*

attached to the premises; date of termination of tenancy; & change of market condition.

iv) *Though, it has to be akin to market rent at which the landlord would have been able to let out the premises, if a tenant would have vacated the same; yet a balance has to be drawn between the claims of the landlord and the tenant, making the assessment as reasonable so as not to be oppressive which in a given case, if tenant fails to pay, has no option; but to suffer the execution of the ejectment decree/ orders.*

13. *Even in a latest judgment-**M/s. Martin & Harris Private Limited & Anr. Vs. Rajendra Mehta & Ors., (2022) 8 SCC 527**, the Hon'ble Supreme Court reiterated the earlier view and relevant paras 18 & 19 thereof, are reproduced hereunder for reference :-*

> *"**18.** Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in the case of Atma Ram (supra) has been reaffirmed in the case of **State of Maharashtra vs. Super Max International Pvt. Ltd. and others (2009) 9 SCC 772** by three Judges Bench of this Court. Therefore, looking to the fact that the decree of eviction passed by Trial Court on 03.03.2016 has been confirmed in appeal; against which second appeal is pending, however, after stay*

> *on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just equitable and reasonable.*
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> ***19.*** *The basis of determination of the amount of mesne profit, in our view, depends on the facts and circumstances of each case considering place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential are and the rate of rent precedent on which premises can be let out are the guiding factor in the facts of individual case."*"

10. The judgment of Hon'ble Supreme Court, relied upon by learned counsel for the petitioner in case **M/s Bird Travels P. Ltd.** ***(supra)*** is on its own facts. In the said case, the mesne profits for the period from May 06, 2002 to February 11, 2012 were to be determined. The Court was of the view that fixation of mesne profits would require evidence from both sides. The Hon'ble Apex Court remanded the case to the Rent Controller for determining the mesne profits after holding inquiry. So, the petitioner is not able to get any help from the said authority.

11. It is further to be seen that in the present case, the landlord demanded mesne profits @ Rs.25,000/- per month but the Court has granted Rs.20,000/- per month. The assessment of mesne profits depends upon the nature of the property, location of the property, commercial value, condition of property and so many other factors. In the case in hand, admittedly one shop was taken on rent in August 2000 @ Rs.700/- per month, with 5% increase every year. Second shop was taken on rent in July 2003@ Rs.1500/- per month. First and second floors of the building were taken on rent in July 2009 @ Rs.5000/- per month. Thus, in the year 2013, when petition was filed, the rent of the demised premises was about Rs.10,000/- per month. In the absence of any authenticated document on record, the Court is still bound to assess the mesne profits and one of the modes which can be taken into consideration is about the rate of 24 karat gold at the time of filing of ejectment petition and at the time of assessment of mesne profits. The rate of 24 karat gold in the year 2013 was about Rs.29,600/- per 10 grams. In the year 2024, it is about Rs.75,600/- per 10 grams. The increase is about 2.45 times. By applying the same increase, it is Rs.24,500/- per month. The learned Appellate Authority has assessed the mesne profits @ Rs.20,000/- per month only. So, the same cannot be considered to be on higher side.

12. In view of what has been discussed above, this Court does not find any ground to interfere in the impugned order dated 04.03.2022, passed by learned Appellate Authority. The present revision petition is without any merit and the same is hereby dismissed.

13. Pending applications, if any, shall stand disposed of along with this judgment.

April 18, 2024
monika

(GURBIR SINGH)
JUDGE

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