

2024:PHHC:041291

**134 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-2164-2023 (O&M)
Date of decision: 21.03.2024

Judge Kumar

....Petitioner

Versus

Prem Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikas Arora, Advocate for the petitioner

Mr.V.K.Sandhir, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the tenant assails the correctness of the appellate authority's order assessing mesne profits at the rate of Rs.20,000/- per month. The petitioner's appeal before the appellate authority against his eviction order passed by the Rent Controller is pending. During the pendency of the aforesaid appeal, an application for stay was filed by the petitioner whereas the respondent landlord filed an application for assessing mesne profits. The court itself has noticed that the tenant has produced two rent notes of nearby shops to prove that the prevailing rate of rent in the area is Rs.1500-Rs.3000/- per month however, the appellate authority, while relying upon the assessment made by the High Court in **Bhushan Kumar vs. Pardeep Kumar** (CR-2011-2017 decided on 29.11.2019) assessed the amount of mesne profits at the rate of Rs.20,000/- per month. The entire approach of the appellate authority while deciding the mesne profits is erroneous. In **Bhushan Kumar's case (supra)** the disputed property was located in

Chandigarh and hence, it cannot be compared with the property located in Amritsar, as both of the cities are totally different. While assessing the amount of mesne profits, the appellate authority is required to analyse the material evidence which has been placed before it. The jurisdiction of the appellate court is based upon appreciation of the material. There is some amount of discretion that vests with the appellate authority, however, the same is required to be exercised in accordance with law. It is evident that the order passed by the appellate authority is a result of total non-application of mind. Hence, the same is set aside. The appellate authority is required to decide the application afresh, within a period of two months, from the date of this order.

2. The revision petition stands allowed.
3. All the pending miscellaneous applications, if any, are also disposed of.

21.03.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE