

2024:PHHC:089668



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3049-2024 (O&M)
Date of Decision :17.07.2024

RAJINDER KUMAR MAKKAR
..... PETITIONER

Vs.

RAJESH KHANNA AND ANOTHER
..... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: Mr. Ish Puneet Singh, Advocate, for the petitioner.

DEEPAK GUPTA, J.

By way of the order dated 02.09.2019, ld. Rent Controller has ordered the ejectment of tenants Rajinder Kumar Makkar and Sunita Arora (*petitioner and proforma respondents herein, respectively*) from the demised shop, in a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 [*for short 'the Act'*]. Against the said order, the tenants filed an appeal along with an application under Order 41 Rule 5 CPC to stay the execution of the ejectment order; whereas the land lord Rajesh Khanna (*contesting respondent herein*) moved an application for assessment of the mesne profit. Both these applications have been disposed of by ld. Appellate Authority, Jalandhar vide impugned order dated 26.04.2024 (*Annexure P1*), whereby the tenant (*petitioner herein*) has been directed to pay mesne profit @ of ₹9,000/- per month from the date of eviction order i.e. 02.09.2019.

2, Assailing the aforesaid order, it is contended by ld. counsel that last agreed rent between the parties was ₹3500/- per month; that there was no material before the appellate authority so as to hold the prevalent market rent to

be ₹9000/- per month and so, the mesne profits have been wrongly assessed. It is further argued that mesne profit could be directed to be paid from the date of the order passed by the appellate authority and not from the ejectment order.

3. There is no merit in any of the aforesaid contentions.

4. As has been held by Hon'ble Supreme Court in *M/s Atma Ram Properties (P) Ltd. Vs. M/s Federal Motors Pvt. Ltd., 2005(1) RCR (1)*, on passing of the eviction order of a tenant under a Rent Act, the tenancy stands terminated and with effect from that date, the tenant is liable to pay the mesne profit 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. It was also held that landlord is not even bound by the contractual rate of rent for the period preceding the date of the decree.

5. In view of the aforesaid legal position, contention of ld. counsel for the petitioner is devoid of any merit to the effect that mesne profits could be assessed only from the order passed by the appellate authority.

6. As far as the rate at which the mesne profit is liable to be paid, as per the case pleaded by the landlord, the tenancy commenced vide rent note dated 28.07.2003 at the rate of ₹3,500/- per month with the stipulation of enhancement @ 10% after every two years. The tenant was alleged to be in arrears of rent since 01.07.2014 to 30.07.2015 @ ₹5,636/- per month; from 01.08.2015 to 30.07.2017 @ ₹6,200/- per month; from 01.08.2017 to 30.07.2019 @ ₹6,820/- per month and then from 01.08.2019 to 02.09.2019 @ ₹7,502/- per month. As has been held in *M/s Atma Ram Properties (P) Ltd. (Supra)*, the landlord is not even bound by the contractual rate of rent preceding the date of decree once the ejectment order has been passed.

7. Ld. appellate authority in the impugned order has referred about rent note dated 12.04.2017, whereby property situated in Bahri Complex, Milap Chowk, Jalandhar was let out at monthly rent of ₹18,900/-. Reference is also made to the copy of an order dated 10.08.2023, which was passed by Id. Appellate Court in case titled *Suman Khanna And another Vs. Rajesh Khanna* passed in *RA No.08 of 2020* pertaining to shop No.1, Ground Floor, Khanna Market, near Milap Chowk, Jalandhar, whereby mesne profit of the shop was assessed at ₹9000/- per month. It is by taking note of these documents and the fact that appellant-tenant had not produced any material to show the prevalent rate of rent to be lesser than Shop No.1, that appellate authority assessed the mesne profit @ Rs.9000/- per month w.e.f. ejectment order dated 02.09.2019.

8. No illegality or perversity is found in the impugned reasoned order, based on appreciation of material on record,

Dismissed.

17.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>