



CR-3221-2024 (O&M) & other connected case

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3221-2024 (O&M)
Date of Decision: 01.08.2024

Mohd. Haleem (Since Deceased) through LRs ... Petitioner

VS.

Mohd. Ramzan and others ... Respondents

CR-3963-2024 (O&M)

Mohd. Ramzan ... Petitioner

VS.

Mohd. Haleem (Since Deceased) through LRs ... Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Sunny K. Singla, Advocate
for the petitioner in CR-3221-2024 and
for the respondent in CR-3963-2024.

Mr. Ishan Gupta, Advocate
for the petitioner in CR-3963-2024 and
for respondent No.1 in CR-3221-2024.

RITU TAGORE, J.

1. These revisions have been directed against the order dated 30.03.2024, passed by the learned Appellate Authority, Sangrur, vide which *mesne* profits qua the demised premises, a shop measuring 13.62 sq. yards, as detailed in the order (Annexure P-1), has been assessed as Rs.10,000/- from the date of ejectment.

2. Dissatisfied with the order dated 30.03.2024, both the landlord (Mohd. Ramzan) and tenant (Mohd. Haleem through his LRs), filed the above captioned peti-

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tions. Learned Counsel for the parties, have agreed and consented to dispose of these revisions petitions together. Accordingly, these petitions are being disposed of by this common judgment.

3. Learned counsel for the LR's of the tenant Mohd. Haleem urges that learned Appellate Authority, Sangrur, erroneously assessed the *mesne* profits at an exorbitant rate of Rs.10,000/- per month. It is submitted that the learned Appellate Authority, while assessing the *mesne* profits failed to consider that demised shop measures only 13.62 sq. yards and one of the grounds for eviction was its unfit and unsafe condition for human habitation, as evidenced by the photographs (Annexure P-7) showing the dilapidated condition of the shop. Furthermore, learned counsel states that learned Appellate Authority, disregarded the comparative rent deeds/agreements (Annexure P-6) submitted on record, which indicate that the prevailing rent in the same locality for similar shops ranges between Rs.600/- per month to Rs 2200/- per month. Learned counsel for the tenant further contends that the agreed rate of rent of the demised shop was Rs.350/- per month and average increase in the rent should not exceed Rs 2200/- per month. It is submitted that determination of *mesne* profits by learned Appellate Authority, is based on surmises and conjectures, ignoring the evidence on record. It is urged that impugned order should be modified.

4. Learned counsel for the landlord, on the other hand, urges that assessment of *mesne* profits @ Rs.10,000/- per month is on the minimal side not akin to the market rate, prevalent in the area, which is not less than Rs.20,000/- per month. The petitioner places on record the rent deed dated 02.01.2024 (Annexure P-6 in CR-3963-2024) indicating rent of the shop measuring 12.1/2 X 25 sq. feet at Rs.22,000/- per month. A prayer is made to enhance the *mesne* profits.

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5. I have heard learned counsel for the parties and had gone through the paper book and documents placed on record.

6. It is a matter of record that landlord (Mohd. Ramzan), filed an ejectment petition against the tenant (Mohd. Haleem) regarding the demised shop measuring 13.62 sq. yards, on grounds of personal *bona-fide* necessity and unfit and unsafe for human habitation. The said petition has been allowed vide order dated 15.11.2023 (Annexure P-1) and an ejectment order has been passed.

7. Aggrieved by the order of eviction, tenant filed the appeal, and a stay application. The landlord also filed an application for *mesne* profits, that was allowed by the impugned order. Perusal of the order indicate that landlord relied on the rent notes dated 17.11.2018 and 15.12.2023, which shows the rental rates of the premises in the locality ranges between Rs.20,000/- and Rs.14,000/- per month. On the other hand, the tenant produced a copy of the rent deed dated 18.06.1992 indicating a rent of Rs.600/- per month and photocopy of a rent note dated 16.12.2021 showing a rent of Rs.2200/- per month for shop 12 X 17 feet as well as another rent note dated 05.11.2011 with a rent of Rs.2500/- per month. The learned Appellate Authority, considering the rent deeds and assessed the rent on an average basis and determined the *mesne* profits to be Rs.10,000/- per month.

8. The relationship of landlord and tenant is not in dispute. At the time of filing of the petition, the agreed rate of rent was Rs.350/- per month. It is well settled that a tenant is liable to pay *mesne* profits to the landlord if the operation of the ejectment order is stayed by the learned Appellate Authority, and said amount is subject to adjustment upon the final decision. ***In Angoori Devi and others Vs. Smt. Satya Bhama, 2016 (5) RCR (Civil) 1043,*** a Coordinate Bench of this Court held that con-

tractual rent comes to an end when eviction order is passed. Admittedly, the ejectment

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order has been passed, and one of the grounds for order is the unfit and unsafe condition of the demised premises for human habitation. Photographs of the shop also show that the roof of the demised premises has fallen. In this circumstance, rent deeds relied upon by the parties are of no help and relevance to gauge the prevalent rate of rent in the area where the demised shop is located.

9. The basis of determination of amount of *mesne* profit depends on the facts and circumstance of each case, such as where the property is situated i.e., village or city or metropolitan place, nature/condition of premises, old or new building, facilities provided therein, commercial or residential and rate of rent precedents on which premises can be let out, are few guiding factors in the facts of individual case.

10. No doubt the rate of inflation also invites attention when assessing the *mesne* profits. However, the Court should balance the competing claims between the *mesne* profits at market rate and reasonable compensation for landlord. So, *mesne* profits are required to be assessed in such a manner that tenant can pay the same and is able to exercise his right of appeal otherwise if *mesne* profits are assessed arbitrarily at an exorbitant rate, then tenant may not be able to exercise his statutory right of appeal. Therefore, the assessment of *mesne* profits should be reasonable.

11. Considering the condition and area of the demised shop in question, it does not seem reasonable for it to fetch such an exorbitant rent as claimed by landlord. In these circumstances to the mind of this Court that, determination of *mesne* profit @ Rs.10,000/- per month is on the higher side. Considering all the facts of the case, such as size, condition of the shop, the area and locality and city (Malerkotla) and commercial nature of the shop; making some estimation of the market rental value of the shops in the vicinity, by taking some clue from the rent deeds provided to by the parties, (though these may not be relevant, insofar as present condition of shop is con-

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cerned), this Court finds that an assessment of Rs 8500/- per month as *mesne* profits for the shop in dispute, will reasonably compensate the landlord and would not unduly burden the tenant as well. Accordingly, the order of learned Appellate Authority to the extent of *mesne* profit is modified and same is assessed Rs.8,500/- per month. Consequently, there is no basis to enhance the *mesne* profits as requested for by the landlord. Other conditions and directions given by the learned Appellate Authority remain unaltered.

12. For the reasons given and discussion made herein above, CR-3963-2024 filed by landlord is dismissed and CR-3221-2024 filed by tenant is allowed in above terms.

13. It may be noted herein that the above-said discussion may not be construed as an expression on the merits of the case. The present discussion is purely for the deliberations made in the matter.

14. Pending application(s), if any, shall also stands disposed of.

15. Photocopy of this order be placed on the connected file.

01.08.2024

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(RITU TAGORE)**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No