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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-16813-CII-2024 IN/AND CR-4340-2024
Date of Decision: October 03, 2024

SANJAY BANSAL ....Petitioner

Versus

M/S MELODY HOUSE AND OTHERS ....Respondents

CR-5593-2024 (O&M)

M/S MELODY HOUSE AND OTHERS ....Petitioners

Versus

SANJAY BANSAL ....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Divanshu Jain, Advocate,
Mr. Minkal Rawal, Advocate and
Mr. Abhinav Goel, Advocate for the petitioner
in CR-4340-2024 and for respondent in CR-5593-2024.

Mr. Gaurav Chopra, Sr. Advocate with
Ms. Gauri C. Kaushal, Advocate for respondents
In CR-4340-2024 and for petitioners in CR-5593-2024.

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HARKESH MANUJA, J. (ORAL)

CM-16813-CII-2024 in CR-4340-2024

This is an application filed under Section 151 CPC for preponing the date of hearing of the main case which is fixed for 16.10.2024, to some early date.

With the concurrence of learned counsel for the petitioner as well as learned Senior counsel for the respondents, the main case is preponed and taken up on board today itself.

The application stands disposed of.

MAIN CASE

1. Vide this common order, abovementioned two revision petitions are being disposed of as they involve common question of law and facts. For convenience, the facts are being drawn from CR-4340-2024.

2. By way of present revision petition filed on behalf of landlord-petitioner, challenge has been laid to an order dated 24.07.2024 passed by the Appellate Authority, Chandigarh whereby, mesne profits @ Rs.70,000/- has been assessed.

3. Briefly stating, the dispute in the present case stems from proceedings relating to eviction of respondents from an area measuring 435 square feet forming part of ground floor of SCO Nos.-92, 93 and 94, Sector 17-D, Chandigarh. The ejectment was sought at the instance of petitioner-landlord on the ground of bona fide necessity and the same was allowed by the learned Rent Controller, Chandigarh vide its decision dated 24.04.2023. Aggrieved thereof, the respondents filed statutory appeal before the Appellate Authority at Chandigarh and also prayed for grant of stay on execution of eviction order passed against them.

4. Upon notice, the petitioner-landlord filed an application seeking assessment of mesne profits @ Rs.2.5 lakhs per month before the Appellate Authority.

The same was opposed at the instance of respondents-tenants, however, the Appellate Authority vide order dated 24.07.2024 assessed the mesne profits @ Rs.70,000/- per month from the date of order of eviction while granting stay of operation of order of eviction/ejectment dated 24.04.2023 passed by learned Rent Controller.

Aggrieved thereof, both the sides have filed their separate revision petitions.

5. While relying upon lease deed dated 19.05.2022 pertaining to SCO-6, Sector 17-E, Chandigarh whereby, an area measuring 1150 square feet was leased out against Rs.5,00,000/- per month, learned counsel for the petitioner-landlord submits that the mesne profits for the tenanted premises in the case in hand measuring 435 square feet comes to Rs.1,90,000/- per month. He further refers to lease deed dated 12.04.2023 relating to SCO Nos.63-64, Sector 17-C, Chandigarh whereby, the lease was executed @ Rs.550/- per square feet and thus, submits that if the said lease deed was relied upon, the mesne profits with respect to the demised premises would come to Rs.2,40,000/-.

5.1. Learned counsel also refers to a lease deed dated 15.07.2022 relating to SCO No.13, Sector 17-E, Chandigarh whereby, an area measuring 2,000 square feet was leased out against Rs.9,00,000/- per month and submits that in case the same was to be considered; the lease amount with respect to the demised premises comes to Rs.1,69,000/- per month. Mr. Jain further places reliance upon decision rendered by this Court in **CR-3348-2024** titled as **"Jatinder Singh Vs. S. Prabhpreet Singh"** to contend that the appreciation towards gold price between the year of commencement of tenancy till the month/year of ejectment order can also be considered while assessing mesne profits. He thus, submits that applying the aforesaid, the price of gold in the year 1972 being Rs.202/10 grams (24 k) which in the year 2023 rose to Rs.66,000/10 grams (24k) with an appreciation of 326 times, as such, when the rent of the tenanted premises in the year 1972 was Rs.600/-, the assessment of mesne profits in the year 2023 would be Rs.1,96,000 (326x600). The operative portion from the case of **Jatinder Singh (Supra)** which has been relied upon is reproduced hereunder for reference:-

> 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 7" of every month and if there is holiday on the said day, payment be made on the next working day. In case of default this interim stay against eviction shall automatically stands vacated."

In addition, learned counsel for the petitioner also submits with respect to the location and situation of the property in question which as per him is situated in the heart of the commercial hub of the city and thus, claims enhancement of mesne profits.

6. On the other hand, learned Senior counsel appearing on behalf of respondents refers to lease deed dated 29.08.2017 pertaining

to SCO-97, Sector 17-D, Chandigarh as per which the lease money for an area measuring 500 square feet was leased out for Rs.79,350/- per month. He thus submits that while going by the contents of the aforesaid lease deed which also contains an appreciation clause, at best, the lease money from June 2023 onwards would be Rs.69,000/- per month. Learned Senior counsel further submits that the respondents-tenant have been paying rent regularly to the co-owner of the demised premises, namely, Smt. Satwant Kaur and thus, no mesne profits were required to be paid to the petitioner herein. Learned Senior counsel also submits that the lease deeds pertaining to SCO No-6, Sector 17-E, Chandigarh as well as SCO-13, Sector 17-E, Chandigarh could not be relied upon for the purpose of making assessment of mesne profits in the present case as the said two premises were leased out in favour of firms running showrooms of international brands and therefore, there was no similarity of factual aspect as compared to the case in hand.

6.1 Learned Senior counsel also submits that the Appellate Authority went wrong while ordering the release of mesne profits in favour of petitioner-landlord as the same at best could have been ordered to be deposited with the Court, subject to final outcome of the appeal. No further argument has been addressed.

7. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

8. No merits can be found in the submissions made on behalf of the respondent-tenant that the lease deeds dated 19.05.2022 and 15.07.2022 pertaining to SCO No.6, Sector 17-E, Chandigarh and SCO No.13, Sector 17-E, Chandigarh were required to be discarded merely for the reason that the said premises were leased out to international brands especially when the comparative locational and potential value of the same as regards the tenanted premises remains exactly the same. A perusal of the photographs appended along with the present revision petition as Annexure P-9, (Page 89-91) clearly reflects that the demised premises is situated exactly opposite to the property forming part of aforementioned two lease deeds with just some open area in between.

Furthermore, the two SCOs been leased out in favour of multinational brand; as well as the demised premises are situated within the busiest part of the commercial hub of the Chandigarh city.

9. Again, no merits can even be found in the submissions made on behalf of the respondent whereby reliance has been sought to be placed upon lease deed dated 29.08.2017 pertaining to SCO-97, Sector 17-D, Chandigarh regarding an area measuring 500 square feet. A perusal thereof shows that the same was the result of a settlement entered into between the landlord and the tenant under the circumstances wherein, the tenant was occupying the demised premises since last 46 years and therefore, it cannot be treated to be as an exampler for the purpose of making assessment of mesne profits. Moreover, the aforementioned lease deed was executed in the year

2017; about six years prior to the date of eviction order in the present case whereas it may be prudent to rely upon the recent lease deeds of the locality as compared to the old one.

10. Another submission made on behalf of the respondent that the lease amount @ Rs.44,800/- per month was being paid to another co-sharer, namely, Satwant Kaur under lease deed dated 18.05.2018 and thus, the same should be adjusted towards mesne profits also needs to be rejected. In the present facts, the eviction petition was admittedly filed by the petitioner on 03.05.2017 and thus, any subsequent lease deed entered into by the respondents with another co-sharer would not defeat the rights of the petitioner herein. Furthermore, at this stage when the First appeal is already sub judice, any further discussion on this may be uncalled for as it may prejudice the rights of the parties therein.

11. In view of the aforesaid discussion, while appreciating the commercial nature of the demised premises besides locational and potential benefits attached to it and also relying upon the following relevant material i.e.:-

(i) lease deed dated 19.05.2022 pertaining to SCO-6, Sector 17-E, Chandigarh as per which area measuring 1150 square feet, leased out for Rs.5,00,000 per month; lease amount for an area measuring 435 square feet comes to Rs.1,90,000/- per month;

(i) lease deed dated 12.04.2023, pertaining to SCOs-63-64, Sector 17-C, Chandigarh executed @ Rs.550/- per square feet, leased out for a sum of Rs.2,40,000/- p.m.;

(iii) lease deed dated 15.07.2022 pertaining to SCO No.13, Sector 17-E, Chandigarh whereby an area, measuring 2000 square feet leased out for Rs.9,00,000/- per month, lease amount would be Rs.1,69,000/-; and

(iv) gold price in the year 1972 was Rs.202/10 grams and in the year 2023, Rs.66,000/10 grams with appreciation of 326 times, as such, the rent which was Rs,600/- per month in the year 1972 having appreciated at the same pace comes around Rs.1,96,000/- per month in the year 2023;

the impugned order dated 24.07.2024 is hereby modified and the mesne profits qua the premises in question are assessed @ Rs.1,90,000/- per month towards its use and occupation, however, finding substance in the submissions made on behalf of the respondent-tenant that till the final adjudication of the appeal, the mesne profits be deposited before the Appellate Authority which in turn would convert it into fixed deposit and the same shall be subject to final outcome of the appeal.

12. Disposed of in the above terms.

03.10.2024 **(HARKESH MANUJA)**

Tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*