IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

122 **CR-4911-2022 (O&M)**
Reserved on : 01.08.2024
Pronounced on : 21.08.2024

Rishi Karan Kakar ....Petitioner

VERSUS

Haryana State Cooperative Supply & Marketing Federation Ltd. & Anr. ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mrs. Ritam Aggarwal, Advocate for the petitioner.

Mr. Sumit Gupta, Advocate for the respondents.

ALKA SARIN, J.

1. The present revision petition has been filed by the landlord-petitioner seeking modification of the order dated 31.08.2022 passed by the Appellate Authority whereby the tenant-respondents were directed to pay mesne profits for use and occupation of the demised premises from the date of eviction order i.e. 14.02.2018 till actual vacation of the demised premises @ Rs.1,06,410/- (Rs.30/- per sq. ft.) per month.

2. The brief facts relevant to the present case are that the demised premises is Plot No.374, Industrial Area Phase-1, Panchkula having a covered area of 3547 sq. ft. comprising of godown, office space and chowkidar quarter. The landlord-petitioner sought ejectment of the tenant-respondents from the demised premises on the grounds of non-payment of rent and bonafide personal necessity. Vide order dated 14.02.2018 the Rent Controller ordered ejectment of the tenant-respondents on the ground of bonafide personal necessity of the landlord-respondent. The tenant-

respondents filed an appeal against the order of eviction. During the pendency of the Appeal, vide order dated 10.08.2018 the Appellate Authority fixed the mesne profits @ Rs.30,000/- per month. The order dated 10.08.2018 was challenged in this Court by the landlord-petitioner by filing CR-5323-2019 while seeking enhancement of the mesne profits. The said CR-5323-2019 was dismissed on 14.12.2021 and the review petition against the said order was also dismissed on 05.01.2022. The landlord-petitioner carried the matter to the Apex Court by filing a SLP. On 10.05.2022 the SLP was dismissed by the Supreme Court while passing the following order :

> *"The eviction petition is still pending at the appellate stage.*
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> *Interim determination of damages has been made against which the present Special Leave Petitions have been filed. In this behalf learned counsel submits that what has been taken as an interim assessment is based on a letter dated 02.08.2018 of the Haryana PWD Department but the norms applied as per that letter itself is of 22.10.2010 while the material placed by the petitioner as per Annexure P-5 is of the current rate.*
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> *There may be something to be said in what the petitioner submits but this being an interlocutory order, we would not like to interfere with the same more so, when the determination is only of the interim amount. At the stage of deciding the eviction proceedings, if the eviction is to be granted, then a final call will be taken based on the material placed before us or any further*

material as to what should be the final amount of damages to be determined in this behalf.

The Special Leave Petitions are dismissed with the aforesaid observations."

3. The landlord-petitioner thereafter filed an application under Section 151 CPC before the Appellate Authority in the appeal already pending before it. By this application the landlord-petitioner sought determination/assessment of the final mesne profits, damages and compensation as per the order passed by the Supreme Court. The landlord-petitioner placed on record copies of the following two lease deeds so as to assess the mesne profits :

⇒ Mark A - copy of registered lease deed dated 10.02.2014 in respect of 1850 sq. ft. area forming part of industrial Plot No.275, Phase-I Panchkula whereunder the premises were rented out @ Rs.1,45,000/- per month w.e.f. 01.07.2014 to 30.06.2015 i.e. Rs.78/- per sq. ft., and

⇒ Mark B - copy of registered lease deed dated 10.02.2014 in respect of 2850 sq. ft. area forming part of industrial Plot No.268, Phase-II Panchkula whereunder the premises were rented out @ Rs.81,629/- per month w.e.f. 01.07.2017 to 30.06.2018 i.e. Rs.28.64 per sq. ft.

The said application was contested by the tenant-respondents who relied upon a letter dated 02.08.2018 (Ex.A1) as per which PWD (B&R) assessed the rent of the demised premises @ Rs.27,680/- per month on the basis of PWD norms dated 22.10.2010.

4. Vide order dated 31.08.2022 the Appellate Authority dismissed the appeal of the tenant-respondents thereby upholding their eviction. By the same order the Appellate Authority also fixed the mesne profit @ Rs.30/-

per sq. ft. i.e. Rs.1,06,410/- per month from the date of passing of the ejectment order by Rent Controller. Hence, the present civil revision by the landlord-petitioner seeking enhancement of the mesne profit.

5. It may be mentioned here that the tenant-respondents also filed CR-7-2023 against the order passed by the Appellate Authority. On 01.08.2023 the said CR-7-2023 was dismissed as having been rendered infructuous as counsel for the tenant-respondents herein stated that the amount, as assessed by the Appellate Authority, stood duly deposited and that the vacant possession of the demised premises had been handed over to the landlord-petitioner herein.

6. The only issue before this Court is regarding the mesne profit for the demised premises from the date of passing of the ejectment order by Rent Controller till the actual vacation of the demised premises. Learned counsel for the landlord-petitioner has submitted that the mesne profit determined by the Appellate Authority is on the lower side when compared with the prevailing rent for industrial plots in the vicinity of the demised premises. She has pointed out that though the Appellate Authority has fixed the mesne profit @ Rs.30/- per sq. ft., the rent for an industrial plot in the same industrial area as the demised premises was Rs.78/- per sq. ft. as evidenced by Mark-A, for the period 01.07.2014 to 30.06.2015. It is argued that in 2018, when the eviction order was passed, the rent of the industrial plot covered by Mark-A would have been over Rs.100/- per sq. ft. by giving an increase of 10% per annum from 2015. Per contra, learned counsel for the tenant-respondents has submitted that whatever mesne profit was determined by the Appellate Authority stands paid and that the demised premises have also been vacated. It is submitted that even as per the PWD norms the mesne

profit would be Rs.27,680/- per month. Learned counsel also contended that even as per Mark-B produced by the landlord-petitioner the rent for an industrial plot in 2018 was Rs.28.64 per sq. ft. whereas the Appellate Authority had already fixed mesne profit @ Rs.30/- per sq. ft. Lastly it was submitted that the tenant-respondents being a Government organisation ought not to be burdened with mesne profit at the market rate.

7. Heard learned counsel for the parties.

8. In the present case the eviction of the tenant-respondents was ordered by the Rent Controller on 14.12.2018. The tenant-respondents are liable to pay the mesne profit from the date of the eviction order till the handing of actual possession to the landlord-petitioner. Before the Appellate Authority the landlord-petitioner produced two lease deeds – Mark-A whereunder the rent of an industrial plot was Rs.78/- per sq. ft. and Mark-B whereunder the rent of another industrial plot was Rs.28.64 per sq. ft. While adopting some guess work, the Appellate Authority fixed the mesne profit for the demised premises @ Rs.30/- per sq. ft. per month.

9. Liability of a tenant to pay mesne profit for remaining in possession after the passing of an ejectment order against him is now well settled (see **M/s Martin & Harris Private Limited & Anr. vs. Rajendra Mehta & Ors. [2022 (2) RCR (Rent) 109], State of Maharashtra & Anr. vs. M/s Super Max International Pvt. Ltd. & Ors. [2009(2) RCR Rent 246]**). There cannot be any straight-jacket formula while fixing the amount of mesne profit. It can, however, be based upon circumstances such as location, condition of the premises, nature and age of the construction, maintenance of the same, commercial viability etc. Though reliance has been placed by the landlord-petitioner on two lease deeds of properties

stated to be in the vicinity of the demised premises but solely on account of the same no specific assessment of the mesne profit for the demised premises can be made. One does not know about the location and condition of those premises vis-à-vis the demised premises. Further, the lease deed Mark-A covered an area measuring 1850 sq. ft. while the lease deed Mark-B covered an area measuring 2850 sq. ft. The area of the demised premises is 3547 sq. ft. The areas are clearly not comparable. Thus, it would not be safe to accept in toto the rent as mentioned in the said two lease deeds. The Appellate Authority has therefore rightly adopted some guess work to fix the mesne profit @ Rs.30/- per sq. ft. per month. Further, as has been mentioned above, according to the counsel for the tenant-respondents the demised premises have also been vacated. It would be appropriate to now put a quietus to the litigation.

10. In view of the above, this Court does not find any illegality or irregularity in the impugned order. The present revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

21.08.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO