

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**128****CR No.6286 of 2023****Reserved on : 23.01.2024****Date of Decision: 08.02.2024**

Parveen Kumar Sharma @ Rinku

....Petitioner

VERSUS

Sunil Jain

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Kumar, Advocate for the petitioner

ALKA SARIN, J.

1. The present revision petition has been filed challenging the order dated 07.08.2023 passed by the Addl. District Judge, Hoshiarpur whereby mesne profits to the tune of Rs.5,000/- per month has been fixed for use and occupation of the property in dispute w.e.f. 13.02.2023. Aggrieved by the same, the present revision petition has been filed.

2. Learned counsel for the tenant-petitioner would contend that the amount assessed by the Addl. District Judge is in excess and the market rate of rent is much lower. It is submitted that the property in dispute is old construction and such like shop cannot command rent of Rs.5,000/- per month. He drew the attention of the Court to the site plan Annexure P-4 and the photographs Annexure P-5.

3. Heard counsel for the tenant-petitioner.

4. In the present case, as mentioned in the paperbook, the landlord-respondent filed an ejectment petition under Section 13 of the East

Punjab Urban Rent Restriction Act, 1949 against the tenant-petitioner. Vide order dated 13.02.2023 the eviction petition was allowed by the Rent Controller and the tenant-petitioner was directed to handover vacant possession of the property in dispute within two months. Aggrieved by the said order, an appeal was preferred by the tenant-petitioner. The landlord-respondent moved an application for grant of mesne profits during the pendency of the appeal from the date of passing of the eviction order i.e. 13.02.2023. In the application, an amount of Rs.20,000/- per month was sought as mesne profits. A rent note dated 10.08.2018 pertaining to a nearby shop was relied upon wherein rent for the property was fixed @ Rs.19,000/- per month. The said application was contested by the tenant-petitioner. Admittedly, no lease deed or rent note was relied upon by the tenant-petitioner before the Addl. District Judge to show the market rent in the vicinity. Vide the impugned order, the Addl. District Judge deemed it proper to assess the mesne profits @ Rs.5,000/- per month. Aggrieved by the same, the present revision petition has been filed.

5. Reliance by learned counsel for the tenant-petitioner on the site plan Annexure P-4 and the photographs Annexure P-5 is wholly misplaced. The site plan and photographs cannot be relied upon for deciding the present *lis*. The Hon'ble Supreme Court in the case of **M/s Martin & Harris Private Limited & Anr. vs. Rajendra Mehta & Ors. [2022 (2) RCR (Rent) 109]** has held as under :

“10. Now, reverting on the issue of determination of the amount of mesne profits @ Rs.2,50,000/- per month is concerned, the guidance may be taken from the judgment of Marshall Sons & Co. (I) Ltd. v. Sahi

Oretrans (P) Ltd. and Another - (1999) 2 SCC 325, in which this Court held that once a decree for possession has been passed and the execution is delayed depriving the decree holder to reap the fruits, it is necessary for the Appellate Court to pass appropriate orders fixing reasonable mesne profits which may be equivalent to the market rent required to be paid by a person who is holding over the property. In the case of Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. - (2005) 1 SCC 705, this Court held that Appellate Court does have jurisdiction to put reasonable terms and conditions as would in its opinion reasonable to compensate the decree holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent Court, the tenant is liable to pay mesne profit or compensation for use and occupation of the premises at the same rate at which the landlord would have able to let out the premises in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have effect of postponing the date of termination of tenancy merely because the decree of

eviction stands merged in the decree passed by the superior forum at a later date.

11. Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in the case of Atma Ram (supra) has been reaffirmed in the case of State of Maharashtra v. Super Max International Pvt. Ltd. and others - (2009) 9 SCC 772 by three Judges Bench of this Court. Therefore, looking to the fact that the decree of eviction passed by Trial Court on 03.03.2016 has been confirmed in appeal; against which second appeal is pending, however, after stay on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just equitable and reasonable.”

6. The property in dispute is a shop situated in a commercial area of Mukerian. The Addl. District Judge while assessing the mesne profits of the property in dispute did not completely rely upon the rent note produced by the landlord-respondent and assessed the mesne profit @ Rs.5,000/- per month. The counsel for the tenant-petitioner has not brought anything on the record to demonstrate the rent prevailing in the locality. Keeping in view the location of the property in dispute and the fact that it is a shop, I do not find the mesne profits assessed by the Addl. District Judge as being excessive.

7. In view of the discussion above, I do not find any illegality or infirmity in the order passed by the Addl. District Judge. The present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

08.02.2024

jk

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