



CR-5550-2023(O&amp;M)

1

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CR-5550-2023 (O&M)  
Date of Decision: 04.04.2024**

**RAM KUMAR****.....PETITIONER****VS****SANDEEP KUMAR AND ANR****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Mukand Gupta, Advocate for the petitioner.

Mr. K.B.Raheja, Advocate for respondent No.1.

**GURBIR SINGH, J.**

1. Challenge in this revision petition is to the order dated 31.08.2023 (Annexure P-7) passed by learned lower Appellate Court whereby petitioner-appellant/defendant No.1 has been directed to deposit an amount of Rs.40,000/- per month as mesne profits of the shop, in question, from the date of application till the passing of order, within a month and in future by the 7<sup>th</sup> day of every month, and operation of the impugned judgment and decree dated 11.07.2023 passed by trial Court was stayed subject to payment of the above mentioned mesne profits.

2. The parties are being addressed as per their original status in the suit.

3. Briefly stated, plaintiff (respondent No.1 herein) filed a suit for possession of a double story shop situated in the municipal limits of Bhikhi,

**CR-5550-2023(O&M)****2**

District Mansa on basis of previous possession as sub lessee under the Temple Thakur Dawara Bhikhi on the ground that 5 marlas of property was taken on lease by the father of the plaintiff and proforma defendant No. 2 by registered sale deed and he came into possession of the same and constructed a double story shop thereon. Thereafter, Raj Kumar died and plaintiff & proforma defendant No.2 got the property on the basis of Will executed by their father. Since defendant No.1 wanted to get his shop renovated so on 14.08.2011, he requested plaintiff, his brother and mother to keep his goods in their shop but defendant No.1 did not give back possession of said shop.

4. Defendant no.1 contested the suit *inter-alia* on the ground he is tenant of the shop, in dispute, and Civil Court has no jurisdiction rather Rent Controller has the jurisdiction.

5. The trial Court passed judgment that plaintiff is entitled to get the shop, in dispute, from defendant No.1, so he was directed to vacate the shop, in dispute, within two months. Defendant No.1 filed appeal and moved an application under Order 41 Rule 5 CPC with a prayer that operation of the impugned judgment and decree be stayed. The plaintiff filed reply to said application and stated that appellant/petitioner-defendant no.1 is using both floors of the shop in question without payment of any rent. Vide impugned order, learned lower Appellate Court partly allowed said application directing defendant No.1 to deposit a sum of Rs.40,000/- per month as mesne profits, as mentioned above.

6. Learned counsel for the petitioner has argued that petitioner/defendant No.1 is a tenant of Thakur Dawara Bhikhi, District

**CR-5550-2023(O&M)****3**

Mansa and is regularly paying the rent to the landlord for more than 20 years. The suit property is measuring 6.16 marlas having different descriptions from the land mentioned in the lease deed dated 17.01.1983 which was sub-leased by Satara Lal in favour of Raj Kumar, father of plaintiff-respondent No.1. The petitioner is not liable to pay the mesne profits of the suit property since petitioner is not tenant of defendant No.1. The petitioner shall be liable to pay the mesne profits only if there is such relationship. The suit was not maintainable. Original landlord i.e. Thakur Dawara (Temple) was not impleaded as party.

7. Learned counsel for respondent No.1 has argued that well reasoned judgment has been passed by the trial Court. The area of the shop in dispute is 1700 sq.ft at the ground floor and also at the first floor and the petitioner is using the same without paying any rent. Learned lower Appellate Court has assessed the mesne profits as per prevalent market rate. The order impugned needs no modification as it has been passed subject to final decision.

8. I have heard the submissions of the learned counsel for the parties.

9. Decree of possession has been passed by the learned trial Court vide judgment dated 11.07.2023 in favour of respondent No.1-plaintiff. Petitioner has filed appeal and on an application filed under Order 41 Rule 5 CPC, said decree was stayed subject to deposit a sum of Rs.40,000/- as mesne profits. The power of the Appellate Court under Order 41 Rule 5 of CPC is discretionary. With judicial overload, docket explosion and clogging adjudicatory avenues at every stage, if a person against whom decree of



possession is passed enjoys the property without paying for the use and occupation of the same then purpose of law would be defeated. So, the Appellate Court is within its power to assess mesne profits but such mesne profits neither should be too high nor too low, otherwise it may prejudice one party or the other. The purpose to ask payment of mesne profits is a balancing act between the competing interests of a party who secured a decree and a party who entertains the hope of emerging successful in the appeal proceedings.

10. In the case in hand, the learned lower Appellate Court has directed to deposit the mesne profits in the shape of FDR and the same would be paid after the final disposal to either side depending upon the result of the case. None of the parties has produced any document regarding prevalent market rate of rent of such like property but suit property adjoins the HDFC Bank and area of the shop is 1700 sq.ft on the ground floor as well as on the first floor. The document of lease agreement of the HDFC Bank was not proved. The prevalent market rate of rent depends upon the various factors like nature of the property, location of the property, town in which it is situated etc. Although the property is situated on the Bus Stand of Bhikhi town, but said town is a small town, so, it cannot have higher rental value of the property. On asking, both the counsel for the parties have submitted that sweets shop is being run in the suit property. The amount of mesne profits should not be such that is excessive, fanciful and punitive amount that appellant can not pay the same.

11. In the absence of documentary evidence and keeping in view the town where the shop, in dispute, is situated I am of the view that a sum

CR-5550-2023(O&M)

5

of Rs. 30,000/- per month is the just amount of mesne profits which can be paid by the petitioner and it is neither too high nor too less for the property in question.

12. In view of the above, present revision petition is party allowed subject to deposit of mesne profits @ Rs.30,000/- per month for the period mentioned in the impugned order on or before the date fixed and petitioner shall retain the possession of the shop in question till the pendency of the appeal. In case of default, this order shall automatically stand vacated and petitioner shall be liable to vacate the possession immediately.

13. Pending applications, if any, shall also stand disposed of.

04.04.2024

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(GURBIR SINGH)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No