IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

CR-5450-2024
Date of decision : 19.09.2024

Ajit Kumar Sharma ... Petitioner

Versus

Bimla Devi ... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Munish Garg, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside of the order dated 23.08.2024 (Annexure P-8) passed by the Additional District Judge-Appellate Authority, Barnala, in RA-4-2024 whereby the Additional District Judge-Appellate Authority, Barnala while deciding the application for stay in the appeal has fixed the mesne profits to the tune of Rs.23,000/- per month to be payable w.e.f. 31.01.2024 to 30.09.2024.

2. Learned counsel for the petitioner has challenged the impugned order on the ground that the said order has been passed although no document was produced on record to show as to what was the market rent which was prevalent at the time of the passing of the eviction order dated 31.01.2024 and thus, the impugned order deserves to be set aside.

3. This Court has considered the argument of learned counsel for the petitioner and has perused the paper book and is of the opinion that the

said argument is meritless and deserves to be rejected.

4. The brief undisputed facts in the present case are that the respondent had filed an eviction application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the petitioner from the shop in question towards north of which there was a road and towards the south of which was an old bus stand. The said eviction application was filed in the year 2018 and the Rent Controller vide judgment dated 31.01.2024 had passed the eviction order. While passing the eviction order, the Rent Controller had taken into consideration the fact that the rent payable by the petitioner as per the rent note dated 04.06.2004 was Rs.4500/- per month for a period of one year w.e.f. 01.06.2004 to 30.05.2005 and it was also provided therein that there would be a 20% enhancement after every two years. On the basis of the same, the Rent Controller in paragraph 31 of the order dated 31.01.2024 had observed that the rent which was payable by the petitioner from 01.06.2022 to 31.01.2024 was at the rate of Rs.23,218.93/- per month and further found that an amount of Rs.12,32,645.24/- was outstanding against the petitioner and accordingly, a direction was given to the petitioner to deposit the said amount within a period of three months and in the event of failure of the petitioner to make such payment, the petitioner would hand over the vacant possession of the demised shop in question. Paragraph 31 as well as paragraph 34 of the order of the Rent Controller, which are relevant, are reproduced hereinbelow:-

"31. Before parting with this issue, it is necessary to calculate the actual amount of rent to be paid by the respondent to the

petitioner and as such final assessment of rent is made as under:-

(i) Rent from 03.05.2015 to 30.05.2016 at the rate of Rs.11,197.40/- per month	*Rs. 1,45,566.20/-*
(ii) Rent from 01.06.2016 to 30.05.2018 at the rate of Rs. 13,436.90/- per month	*Rs.3,22,485.60/-*
(iii) Rent from 01.06.2018 to 30.05.2020 at the rate of Rs. 16,124.28/- per month	*Rs.3,86,982.72/-*
(iv) Rent from 01.06.2020 to 30.05.2022 at the rate of Rs.19,349.13/- per month	*Rs.4,64,379.12/-*
(v) ***Rent from 01.06.2022 to 31.01.2024 at the rate of Rs.23,218.93/- per month***	***Rs.4,64,378.60/-***
Total Rent Payable:	*Rs.17,83,792.24/-*
Rent already paid in compliance to assessment order dated 19.07.2023 (deducted)	*Rs.5,51,147.00/-*
Net Rent Payable:	*Rs.12,32,645.24/-*

xxx xxx xxx

34. Keeping in view the findings on above said issues, this Court is of the considered opinion that the petitioner has succeeded in proving his petition against the respondent on the ground of arrears of rent. Accordingly, the petition of the petitioner is hereby allowed with costs. ***The respondent is directed to make payment of the rent calculated in para no.31 of the present order i.e. Rs.12,32,645.24/- within a period of three calender months to the petitioner and in the event of failure of the respondent to make such payment, respondent is directed to handover the vacant possession of the the demised shop as detailed in the head note of the petition****, failing which the petitioner shall be at liberty to get vacated the demised premises as per law."*

5. The petitioner had filed an appeal against the said judgment

along with a stay application and the appellate authority after taking into consideration the law laid down by the Hon'ble Supreme Court in ***M/s. Atma Ram Properties (P) Ltd. vs. M/s Federal Motors Pvt. Ltd.*** reported as ***(2005) 1 SCC 705; Marshall Sons & Co.(I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr.*** reported as (***1999) 2 SCC 325; Anderson Wright and Co. vs. Amar Nath Roy, (SC): Law Finder Doc Id # 82680 (D/d. 19.04.2005);*** and ***M/s Martin & Harris Private Limited vs. Rajendra Mehta (SC): Law Finder Doc Id # 2008346 (D/d. 06.07.2022)*** had observed that the petitioner should pay the mesne profit at the rate of Rs.23,000/- per month from the date of the eviction order for use and occupation of the demised premises pending the appeal and while granting stay had incorporated the condition / stipulation that he was required to make the said payment of Rs.23,000/- per month w.e.f. 31.01.2024. In assessing the amount of Rs.23,000/-, the Appellate Court in paragraph 12 of its order took into consideration the rent note dated 04.06.2004 which provided that the rate of rent would be Rs.4500/- per month on 04.06.2004 and also provided a provision of 20% enhancement of rent after two years and it is on the basis of said rent note, that the appellate authority, after concluding that the rate of rent was Rs.23,218.93/- per month from 01.06.2022, had observed that the mesne profit at the rate of Rs.23,000/- was to be paid by the petitioner w.e.f. 31.01.2024. The said assessment is absolutely reasonable and cannot be stated to be on the higher side in any manner. It is not disputed before this Court that the petitioner had executed the said rent note dated 04.06.2004 with the above said rate of rent and increase clause. Thus, the minimum amount of mesne profit per month the petitioner would be required to pay is the rent which was payable per month on the date of eviction as per the terms of the admitted rent note. It would be relevant to note that upon adding the amount on account of the said 20% increase, the amount apparently comes to Rs.23,218.93/- as on 01.06.2022 and thereafter a period of more than 1 year and 6 months had elapsed on the date when the eviction order was passed i.e., 31.01.2024 and as on 23.08.2024 a period of more than 2 years had elapsed and the appellate authority has not further added 20% on Rs.23,218.93/- and has kept the amount at Rs.23,218.93/- and has further rounded off the figure to Rs.23,000/- only. In the said circumstances, even if there is no other lease deed produced by any of the parties as argued on behalf of the petitioner, then also the amount of Rs.23,000/- would at any rate be payable by the petitioner-tenant moreso after the passing of the eviction order. Moreover, no lease deed has been produced by the petitioner in the present petition to show that the market rent at the time of eviction on 31.01.2024, with respect to similar premises, was lesser than the amount which has been awarded in the instant case.

6. Keeping in view the above said facts and circumstances, the impugned order dated 23.08.2024 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 19, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No