

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.372 of 2024

Reserved on : 31.01.2024

Date of Decision: 13.02.2024

Balwinder Singh Malhi & Another

....Petitioners

VERSUS

Rajinder Singh Bath

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satnam Chauhan, Advocate for the petitioners.

Mr. Divanshu Jain, Advocate for the respondent.

ALKA SARIN, J.

1. The present revision petition has been filed challenging the orders dated 05.09.2023 (Annexures P-9 and P-10) passed by the lower Appellate Court whereby the application filed for impleading the legal representative of the plaintiff-respondent has been allowed and by the second order the operation of the judgment and decree dated 30.03.2019 has been stayed subject to the defendant-petitioners depositing the arrears of mesne profits within one month and also depositing the future mesne profits for every month by the 7th of the following month.

2. Learned counsel for the defendant-petitioners would contend that the application filed by Mohinder Kaur Bath for being impleaded as a legal heir was time barred and should have been rejected. He cited **Jatav Panchayat Committee & Anr. vs. VIIth Additional District Judge, Etawah & Ors. [AIR 2000 All. 253]** in support of his contention. It is also contended that initially all the legal heirs of the plaintiff - Rajinder Singh

Bath i.e. his wife, son and daughter had filed an application dated 23.07.2019 for impleading them as legal heirs and subsequently a fresh application dated 04.01.2022 was filed only by his wife, Mohinder Kaur Bath, for being impleaded as a legal heir of Rajinder Singh Bath. According to counsel since there was a dispute regarding the legal heirs to be impleaded, the application has wrongly been allowed by the lower Appellate Court. The second impugned order regarding mesne profits is challenged by contending that the stay application filed with the appeal was not listed on 05.09.2023 and therefore the lower Appellate Court erred in passing an order thereon. It is further contended that the amount assessed is in excess and the market rate of rent is much lower.

3. Per contra, learned counsel for the plaintiff-respondent has submitted that by being impleaded as a legal heir of the original plaintiff Rajinder Singh Bath, the wife is permitted to pursue the litigation. It is further submitted that in any event the defendant-petitioners only want to delay the proceedings and that they have no concern with the impleadment of the legal heirs of the original plaintiff - Rajinder Singh Bath. It is argued that with the amendment to the CPC, there is no limitation for bringing on record the legal heirs. Reliance has been placed on **Ram Sarup & Ors. vs. Dilbagh Singh [2004(1) RCR Civil 94]**, **Banta Singh vs. Khajan Singh [2001(2) RCR Civil 326]**, **Pradeep Kumar vs. Vijay Kumar Sharma [2009(48) RCR Civil 358]**. It is contended that since the defendant-petitioners are wanting to remain in possession of the suit property after the passing of the judgement and decree against them by the Trial Court, they are bound to pay the mesne profits for use and occupation. He argued that since a money decree had been passed against the defendant-petitioners, the

interest of the plaintiff-respondent has to be suitably safeguarded before staying their eviction. Reliance has been placed on **M/s Martin & Harris Private Limited & Anr. vs. Rajendra Mehta & Ors. [2022 (2) RCR (Rent) 109]**, **Sihor Nagar Palika Bureau vs. Bhabhlubhai Virabhai & Co. [2005(2) RCR Civil 672]** and **Congress Committee (I) (Rural) & Anr. vs. S. Brahmgyan Singh Majithia (since deceased) through his LRs & Ors. [2022(2) RCR Rent 212]**.

4. Heard counsel for the parties.

5. In the present case the original plaintiff, Rajinder Singh Bath, filed a suit for mandatory injunction and for mesne profits stating that he is owner of the suit property and that defendant-petitioner No.2 is his relative and she was allowed to reside in the house as a licensee. However, later on due to some complications the plaintiff issued a notice for vacating the suit property and also for recovery of mesne profits from the defendant-petitioners. The defendant-petitioners in their written statement claimed that they are in exclusive possession of the suit property and have become owners by way of adverse possession. The suit for mandatory injunction was decreed by the Trial Court on 30.03.2019 and the plaintiff Rajinder Singh Bath was held entitled to mesne profits of Rs.40,000/- per month along with interest @ 6% from 18.10.2014 till the realization of the same. However, three months time was given to the defendant-petitioners to make the payment of the mesne profits. The defendant-petitioners filed an appeal against the judgement and decree dated 30.03.2019 along with an application for stay on which notice was issued to the plaintiff. The original plaintiff – Rajinder Singh Bath – died on 02.06.2019. An application dated 23.07.2019 was filed by all the legal heirs of Rajinder Singh Bath i.e. his

wife, son and daughters for impleading them as his legal heirs. The defendant-petitioners contested this application. Thereafter, on 04.01.2022 a fresh application was filed by Mohinder Kaur Bath for impleading her as the legal heir of Rajinder Singh Bath as she had been recorded as owner of the suit property by GMADA. This application was also contested by the defendant-petitioners. Vide impugned order Annexure P-9 the said application was allowed. On the same date, vide a separate order Annexure P-10, the application for staying the operation of judgment and decree dated 30.03.2019 was allowed subject to deposit of the arrears of mesne profits as assessed by the Trial Court within one month and also to deposit the mesne profits of every month by the 7th of the following month.

6. It is to be noted that after the amendment was made by the High Court in Order 22 Rules 3 and 4 CPC, there is no limitation for impleading the LRs and the only condition precedent for impleading them is the pendency of the suit. As per the amendment, where one of two or more plaintiffs die and right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application in that behalf, shall cause the legal representatives of the deceased plaintiff to be made a party and shall proceed with the suit. The amendment further speaks that even if no application is filed within time, then the suit shall not abate against the deceased plaintiff and the judgment could be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between deceased and the pleader in that event shall continue to subsist. Thus, the attack to the order

Annexure P-9 that the application for impleading the LR of the original plaintiff Rajinder Singh Bath was beyond limitation, is not sustainable.

7. The other contention by the learned counsel for the defendant-petitioners was that there was a dispute regarding the legal heirs to be impleaded as initially all the legal heirs of the plaintiff - Rajinder Singh Bath i.e. his wife, son and daughters had filed an application for impleading them as legal heirs and subsequently a fresh application was filed by only his wife, Mohinder Kaur Bath, for being impleaded as a legal heir of Rajinder Singh Bath. However, this argument is also to be rejected as admittedly in both the applications the person sought to be impleaded was the wife of Rajinder Singh Bath i.e. Mohinder Kaur Bath. No doubt in the first application dated 23.07.2019 the son and daughters were also sought to be impleaded but the fact remains that the right to sue survived and for conducting the appeal in a suit for mandatory injunction and recovery, the wife i.e. Mohinder Kaur Bath, was impleaded as the legal heir, which was sufficient. If the son and daughters of the original plaintiff – Rajinder Singh Bath – were aggrieved by the impleadment of their mother then they could have always come forward to challenge the order Annexure P-9. Therefore, there is no error or illegality in the application being allowed. However, the lower Appellate Court has erred in holding that the first application dated 23.07.2019 filed by the wife, son and daughters of the original plaintiff, Rajinder Singh Bath, stands abandoned. The Court has to either allow or dismiss the said application but it cannot treat it as having been abandoned.

8. The order Annexure P-10 regarding mesne profits has been challenged by contending that the stay application filed with the appeal was

not listed on 05.09.2023. However, the fact remains that since the filing of the appeal by the defendant-petitioners the stay application was never listed separately. It was always listed with the main appeal. Therefore, the lower Appellate Court was justified in dealing with the same on 05.09.2023. The Hon'ble Supreme Court in the case of **State of Maharashtra & Anr. vs. M/s Super Max International Pvt. Ltd. & Ors. [2009(2) RCR Rent 246]** held as under :

"45. In Atma Ram Properties the Court viewed the issue exactly in the same way (See paragraphs 6, 8 & 9 of the decision). Further, the decision also answers Mr. Lalit's submission that the tenancy did not come to end on the passing of the decree but would continue until the tenant was actually physically evicted from the premises in execution of the decree. In Atma Ram Properties the Court framed two issues arising for consideration as follows :

"This submission raises the following two issues :

(i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent to the landlord ?"

The Court answered the first issue as follows :

"We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy."

The second issue was answered as follows :

"With effect from that date (the passing of the decree of eviction), the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree." (words in parenthesis added)

We are in respectful agreement with the decision of the Court in Atma Ram Properties.

46. In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.”

9. In **M/s Martin & Harris** (supra) the **Supreme Court** 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.”

10. The counsel for the defendant-petitioners has not brought anything on the record to demonstrate the rent prevailing in the locality. Keeping in view the location of the suit property I do not find the mesne profits assessed being excessive.

11. No other point was argued.

12. In view of the discussion above, I do not find any illegality or infirmity in the impugned orders. The present revision petition being devoid of any merits is accordingly dismissed. However, the lower Appellate Court shall deal with and decide the impleadment application dated 23.07.2019 and pass appropriate orders and the same shall not be treated as being abandoned. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

13.02.2024

jk

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