282. 2024:PHHC:015025

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-13-2023
Date of decision: 30.01.2024

Bahadur Singh and another ... Petitioners

Versus

Santosh Rani ... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. Shalini, Advocate and
Ms. Sukhmani Riar, Advocate, for the petitioners.

Mr. Naresh Prabhakar, Advocate, for the respondent.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is for setting aside of order dated 22.09.2022 (Annexure P-1) passed by learned Appellate Authority, Ludhiana.

2. Brief facts of the case are that respondent-Santosh Rani (hereinafter called, “landlady”) filed a petition under Section 13 of East Punjab Urban Rent Restriction Act for ejectment of the petitioners-tenants (hereinafter called, “tenant”) from one shop out of property No.369/3 situated at Karabara Road, Ludhiana (hereinafter called, “demised shop”). As per the landlady, the tenant took the demised shop on rent @ Rs.1,800/- per month on 14.06.1994. It was oral tenancy. It was contended that the tenant is in arrears of rent w.e.f. 01.12.2009 and he, without getting any permission, has made material changes in the demised shop. So, she filed ejectment petition.

2.1 Upon notice, tenant appeared and contended that his name is Bahadur Singh son of Shri Gian Chand, and the landlady knows him but she, in order to get ex-parte eviction order, deliberately named him in the rent petition as Osho Chaudhary. It was submitted that he took the demised shop on rent in the year 1990 @ Rs.300/- per month and till August, 2014, the rate of rent was increased to Rs.850/- per month. The tenant further submitted that he had already paid the rent till January, 2015 @ Rs.850/- per month.

2.2 After appreciating the evidence on record, the learned Rent Controller, Ludhiana, vide order dated 11.01.2022, ordered to evict the tenant from the demised shop. Against the said order, tenant went in appeal. Before the Appellate Authority, two applications were filed, one by the tenant for staying the eviction order and the other application by the landlady for mesne profits @ Rs.15,000/- per month from the date of eviction till the decision of appeal.

2.3 Both the applications were contested by the respective parties. The tenant contended that he had already paid rent from January, 2021 to December, 2022 before the learned Rent Controller, Ludhiana. Whereas the landlady contended that the demised shop is situated in commercial area and the market rate of rent is Rs.15,000/- per month.

2.4 Vide order dated 22.09.2022, said applications were disposed of. The eviction order was stayed but subject to payment of mesne profits @ Rs.5,000/- per month from the date of order of eviction from demised shop i.e. 11.01.2022 and the tenant was directed to deposit the entire arrears of mesne profits upto 31.08.2022 before the learned Rent Controller within a period of two months from the date of order dated 22.09.2022 passed by learned Appellate Authority and thereafter, continue to make the future deposit at the same rate.

2.5 Aggrieved against the aforesaid assessment of mesne profits @ Rs.5,000/- per month, the tenant has approached this Court by way of present revision petition.

3. Learned counsel for the petitioners has contended that the petitioners-tenant had already paid the rent from January 2021 to December, 2022 vide CM/225/2021 before the Rent Controller and the respondent-landlady had also filed an application i.e. CM/54/2022 on 19.01.2022 to receive the same. It is contended that the demised shop, which is situated at Karabara Road near Sabzi Mandi, is not a highly developed area and there are lack of basic amenities. The shop is of small size, measuring 14 square yards (14' x 8'), having a roof of wooden battens and is 2 feet below the road level and situated at a very congested area. He has placed on record an affidavit dated 31.05.2022 (Annexure P-7) of one Rupinder Singh, tenant of a shop, which is opposite to the shop of the petitioner. As per the affidavit, the said shop is also old one and the tenancy is oral. The tenant of that shop is paying the rent @ Rs.300/- per month, though said shop is bigger in size i.e. 23 square yard than the shop of the petitioner.

4. On the other hand, learned counsel for the respondent has argued that petitioners-tenant can only be allowed to continue in

possession during the pendency of appeal if he pays the mesne profits at the prevailing market rate. The shop is situated at commercial area. The learned Appellate Authority has rightly assessed the mesne profits.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. It is well settled that tenant is liable to pay the mesne profits to the landlord if he wants to retain possession of demised premises and operation of ejectment order is stayed by the Appellate Authority and said amount is subject to adjustment on final decision. In case ***Angoori Devi and others Versus Smt. Satya Bhama, 2016(5) RCR (Civil) 1043***, an authority of this Court, it has been held that contractual rent comes to an end when eviction order is passed. The Court should balance the competing claims between mesne profits at market rate and reasonable compensation for landlord. In the case in hand, the ejectment order was stayed but subject to payment of mesne profits.

7. From the pleadings, it reveals that the tenancy is very old and is on meager amount of rent and in these days of high prices, a landlord cannot be deprived to enjoy the fruit of the property and keeping in view the same, mesne profits were ordered to be paid to the landlady vide impugned order dated 22.09.2022.

8. The building is quite old. The demised shop was let out long time back. In the ejectment petition, arrears of rent was claimed @ 1,800/- per month w.e.f. December, 2009. It is well known when fresh tenancy is created then various factors such as facilities provided by the

lessor, infrastructure, type of business and condition of the premises etc. are considered for determining the rental value of the property but since the demised shop was let out long time back and the landlady has merely stated that the shop, in question, was situated in the commercial area and the prevalent market rent is not less than Rs.15,000/- per month and to substantiate said plea, no document was placed on record, so, in the absence of any document, this Court does not find any merit in the argument of learned counsel for the respondent for assessing the mesne profit @ Rs.15,000/- per month. On the other hand, the petitioners-tenant has relied upon an affidavit (Annexure P-7) of Rupinder Singh, tenant of a shop in the same vicinity whereby that tenant is paying Rs.300/- per month.

9. No doubt, rate of inflation is very high but the property which is in possession of the tenant cannot fetch such exorbitant rent as claimed by landlady. The mesne profits are required to be assessed in such a manner that tenant can pay the same and is able to exercise his right of appeal. Otherwise if profits are assessed arbitrarily at an exorbitant rate, then tenant is not able to get his right decided in the appeal which is his statutory right. So, the assessment of profits should be reasonable, neither should be as per prevalent market rate of rent nor should be very less.

10. Keeping in view the nature of property, the extent of area, the tenancy which is quite old and is on meager rent, so, this Court is of view that the learned Appellate Authority has assessed the profits

slightly at higher side which is reduced from Rs.5,000/- per month to Rs.4,000/- per month.

11. In view of above, this revision petition is partly allowed and order of assessment of mesne profits @ Rs.5,000/- per month by the learned Appellate Authority is hereby set aside and mesne profits are hereby ordered to be assessed @ Rs.4,000/- per month. All the arrears less the amount already deposited/paid in view of order of learned Appellate Authority and as per order of this Court are to be deposited by the petitioners-tenant within one month from today and to further deposit the mesne profits at the said rate by 10th of every month till the disposal of the appeal.

12. In case of default, the petitioners-tenant is not entitled to keep possession of the demised shop and learned Appellate Authority is free to pass any order.

(GURBIR SINGH)
JUDGE

January 30, 2024
sanjeev

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