



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

275

CR-3514-2022

Date of decision : 11.12.2025

Umesh Jain**..... Petitioner****versus****Bhupesh Jain****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. H.K. Aurora, Advocate
for the petitioner.

Mr. Rohit Duggal, Advocate for
Mr. Ravi Chadda, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Challenge in the present petition is to the order dated 04.08.2022 passed by the Appellate Authority under the Punjab Rent Act, 1977.
2. Petitioner is a tenant who was proceeded against by the landlord under Section 13 of the East Punjab Urban Rent Restriction Act, 1949. Eviction order has been passed against the petitioner. Aggrieved to the order passed by the Rent Controller, the petitioner preferred appeal before the Appellate Authority. Application was moved by the landlord for assessment of mesne profit to be paid by the tenant during the pendency of the appeal. The petitioner-tenant was originally paying Rs.7500/- per annum as held by the Rent controller. The same has been now enhanced to Rs.5000/- per month.



3. In the case of **‘Aatma Ram Properties (P) Limited vs. Ms. Federal Motors (P) Limited’ (2005) 1 SCC 705**, Supreme Court observed as under :-

“16. 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.

17. In the Delhi Rent Control Act, 1958, the definition of a “tenant” is contained in clause (l) of Section 2. Tenant includes “any person continuing in possession after the termination of his tenancy” [Section 2(l)(ii)] and does not include “any person against whom an order or decree for eviction has been made” [Section 2(l)(A)]. This definition is identical with the definition of tenant dealt with by this Court in *Chander Kali Bai case* [(1977) 4 SCC 402]. The respondent tenant herein having suffered an order for eviction on 19-3-2001, his tenancy would be deemed to have come to an end with effect from that date and he shall become an unauthorised occupant. It would not make any difference if the order of eviction has been put in issue in appeal or revision and is confirmed by the superior forum at a latter date. The date of termination of tenancy would not be postponed by reference to the doctrine of merger.

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable



discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In *Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd.* [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

19. To sum up, our conclusions are:

(1) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (I) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, 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.

(3) The doctrine of merger does not have the 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 latter date.”

4. Coming on to the issue of assessment of mesne profits, this Court in ***Surinder Singh vs. Rattan Lal, 2006(3) RCR (Civil) 291***, observed as under:-

“xx xx xx

9. The other questions that requires consideration is the mode of determination of the mesne profits or compensation payable. In this respect, it is appropriate to note that the same is to be done on the basis of materials placed on record by the parties. The parties would be at liberty to place cogent evidence by way of recent registered lease deeds of the locality to show their amount of rent which is payable. It is on the basis of such convincing material that a provisional assessment of the compensation/damages which the tenant is liable to pay the landlord pending his appeal or revision against an order of ejectment, can be determined. This provisional assessment that has been made would be subject to adjudication at the time of final disposal of the appeal or revision as the case may be. If the final adjudication by the appellate or revisional Court in respect of the damages or compensation payable by the tenant is at variance with the provisional order, the landlord would be liable to reimburse or refund the excess amount deposited by the tenant and in case of deficient deposit, the tenant shall be liable to make good the deficient amount. In fact in Atma Ram Properties case (supra), the Hon'ble Supreme Court held that reversal of interim orders passed at the interim stage due to final decision going against the party securing the interim order in its favour would entitle the successful party to demand (a) restitution of benefit earned by the opposite party under the interim orders or (b) compensation for what it has lost. It was observed that to grant such relief is the inherent jurisdiction of the Court and application of the above principle by analogy to support imposition of conditional or periodical deposit of reasonable sum in Court is the pre condition for grant of stay of execution of decree for eviction. Therefore, in case the party filing the appeal or seeking revision of the order is successful it would



be entitled to restitution of the interim benefit which has been granted to the respondent in the appeal or the revision.”

5. On being asked, Mr. Aurora does not dispute that in the vicinity, a similar commercial space shall fetch rent not less than Rs.4,000/- per month. In view of the same, impugned order is modified to the extent that the petitioner shall pay mesne profits during pendency of appeal @ Rs.4,000/- per month w.e.f. 22.08.2019.
6. In view of above, this Court finds that in the absence of any cogent piece of evidence, Appellate Authority ought to have been more careful in assessing mesne profits.
7. The impugned order passed by the Appellate Authority is accordingly modified. The enhanced amount already paid shall be set off in future mesne profit. Appellate authority shall also make an endeavour to decide the appeal before **30.06.2026**.
8. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

11.12.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No