

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****279-2****CR-6456-2024 (O&M)****Date of decision: 24.02.2025****Pankaj Jain and another****...Petitioner(s)****Vs.****Smt. Usha Rani (now deceased) represented
by legal representatives****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Naveen Gupta, Advocate for the petitioners.

Mr. Abhinav Aggarwal, Advocate for the respondent.

NIDHI GUPTA, J.

Prayer in the present petition filed by the tenant under Article 227 of the Constitution of India is for setting aside the order dated 13.09.2024 (Annexure P-3) passed by Ld. Appellate Authority, Ambala, whereby the application (Annexure P-1) dated 13.10.2022 filed by the respondent for grant of mesne profits has been allowed and petitioner has been directed to pay mesne profit of the demised shop @ Rs. 9,000/- p.m.

2. Ld. counsel for the petitioner-tenant *inter alia* submits that impugned order dated 13.09.2024 (Annexure P-3) is unfair, unjust and unsustainable in view of the fact that the mesne profits payable by the petitioner has been fixed on the basis of a shop situated at Ahata Kedar Nath; and recording incorrect finding that both the shops i.e. demised shop as well as said relied-upon shop are in the same locality. Ld. counsel contends that the said



finding of the Id. Appellate Authority is factually incorrect as the nature and the locality of the two shops are different. Inasmuch as the demised shop is situated in Ahata Mukha Singh; whereas relied upon shop is in Ahata Kedar Nath. It is further submitted that the relied-upon shop is bigger in size than the demised premises; and accordingly, the mesne profits could not have been fixed on the basis of the said shop. It is further pointed out that the petitioner No.1 is continuing to pay monthly rent @ Rs.3,175/- to the respondent. It is accordingly prayed that the impugned order be set aside.

3. Learned counsel for the respondent-landlord vehemently opposes the prayer made on behalf of the petitioners and submits that the impugned order suffers from no infirmity. It is submitted that it is correctly recorded in the impugned order that the two shops are located close to each other as, the relied-upon shop in Ahata Kedar Nath is at a distance of mere 270 meters i.e. 2 minutes away, from the demised shop.

4. Ld. counsel for the landlord submits that another shop which is just 3 shops away from the demised shop, rent is being paid @ Rs.9,000/- p.m. Ld. counsel accordingly prays for dismissal of the present petition.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. Brief facts of the case are that the predecessor-in-interest of the respondent-landlord, namely Usha Rani had filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 seeking eviction of the petitioners from the demised shop describable as



bearing Shop No.1 in Property No. 5469-70, Nicholson Road, Ambala Cantt., which was under the tenancy of petitioner No.1 @ monthly rent of Rs.3,175/- and petitioner No.2 also used to work with petitioner No.1. Usha Rani sought eviction of the petitioners on the ground that she is owner and landlord of the shop; and she required the shop for the bonafide need of her younger married son - Rajesh Sapra, who was doing the business of Garment & General Store at Shop No.3, The Mall, Nahan (Himachal Pradesh). Now the landlord of shop at Nahan (Himachal Pradesh) had got the same vacated from the son of Usha Rani. As such, her son wanted to shift to Ambala along with his family and, therefore, she required the shop for opening the showroom of Garments and General Store for her son.

8. Vide order dated 29.08.2022, the Rent Controller allowed the Rent Petition of Usha Rani. The appeal filed by the petitioners before the learned Appellate Authority, Ambala was dismissed by the learned Appellate Authority vide judgment dated 13.09.2024. During the pendency of Rent Appeal, the respondent had moved application dated 13.10.2022 (Annexure P-1) for grant of mesne profits, to which reply (Annexure P-2) was filed by the petitioners. Vide the impugned order dated 13.09.2024 (Annexure P-3), the petitioners have been directed to pay mesne profits @ Rs.9,000/- p.m.

9. It has been contended on behalf of the petitioners that the relied-upon shop namely Ambala Homoeo Pharmacy, bearing No. 6274/4, Ahata Kedar Nath, Near Nigar Cinema, Ambala Cantt. is not situated in the same locality where the demised shop is situated. However, during



arguments, Id. counsel for the petitioners has been unable to deny that the demised shop is at a distance of only 270 meters i.e. 2 minutes away from Ambala Homoeo Pharmacy. As such, it has been correctly recorded by the Id. Appellate Authority that the demised shop and the relied-upon shop i.e. Ambala Homoeo Pharmacy are in the same locality and of the same nature.

10. Ld. Counsel for the petitioner has also been unable to deny that a shop down the road from the demised premises (Annexure P-5), is fetching rent @ ₹9000/- per month. It is therefore, correctly directed that mesne profits be paid @ Rs.9,000/- p.m. from the date i.e. 29.08.2022.

11. It may be pointed out that vide the impugned order dated 13.9.2024, the petitioners were further directed to clear the mesne profits within 3 months from the date of receipt of certified copy of said order. However, it has been admitted by the petitioners that despite no stay granted by this Court, petitioners have only been paying rent @ Rs.3,175/- p.m.

12. Thus, keeping in view the entirety of the above said facts, the present petition is **dismissed**.

13. Pending application, if any, stands disposed of.

24.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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