

2026:PHHC:080892



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

RSA-1035-2023 WITH
RSA-1334-2023 (O&M)
Date of Decision: 18.05.2026

1. RSA-1035-2023

SHAHZADANAND AND SONS FINANCE AND CHIT FUND PVT.
LTD.

....Appellant

Versus

KAILASHWATI MEHRA AND ANOTHER

...Respondents

2. RSA-1334-2023

M/S SPEEDWAYS

....Appellant

Versus

KAILASHWATI MEHRA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Prateek Sodhi, Advocate
Mr. Raunaq Singh Dhillon, Advocate
for appellant in RSA-1035-2023.

Mr. Divanshu Jain, Advocate
Mr. Arjun Sangwan, Advocate
for appellant in RSA-1334-2023.

PARMOD GOYAL, J. (ORAL)

RSA-1035-2023

Present appeal has been preferred by appellants/defendants being aggrieved by judgment and decree dated 07.12.2017, passed by learned Additional Civil Judge, (Senior Division), Amritsar whereby suit preferred by respondent No.1/plaintiff for recovery of Rs.36,00,000/- with interest was decreed against appellant/defendants and by judgment and

decree dated 14.11.2022, passed by learned Additional District Judge, Amritsar vide which first appeals preferred by appellants/defendants No.1 and 2 were also dismissed.

2. Respondent No.1/plaintiff in her suit for recovery of Rs.36,00,000/- along with interest @18% p.a. claimed that she is owner of property bearing Municipal No.256 N/XIII built over Khasra No.1158, situated at M.M.M. Road, Amritsar and had inducted appellant/defendant No.1 as tenant on the ground floor of said property. However, appellant/defendant No.1 had sublet the said premises to defendant No.2 without the consent of respondent No.1/plaintiff and since then it is defendant No.2 who is using the premises. Ejectment petition preferred by respondent No.1/plaintiff against defendants was allowed vide eviction order dated 08.03.2007 and defendants were directed to hand over possession of premises to respondent No.1/plaintiff within two months from the date of order. The appeal preferred by defendants against ejectment order dated 08.03.2007 was also dismissed by learned Appellate Authority, Amritsar vide order dated 09.03.2010 and even revision petition preferred before this Court was dismissed vide order dated 16.07.2015 and amount of Rs.1,00,000/- was determined as mesne profits payable to applicant with effect from 08.03.2007. That since defendants had no right to occupy the suit property after 08.03.2007, however, since they had continued to occupy the same illegally, they were bound to pay mesne profits for use and occupation of the suit property owned by respondent No.1/plaintiff as was determined by this Court. It was the case of respondent No.1/plaintiff that since defendants had failed to pay mesne profits, therefore, they are liable to pay

mesne profits from 08.03.2007 till 07.04.2016 i.e. date on which defendants had handed over vacant possession to respondent No.1/plaintiff in pursuance to her execution petition. That both defendants are liable to pay mesne profits for illegally occupying the suit property w.e.f. 08.03.2007 to 07.04.2016 @Rs.1,00,000/- per month so determined by this Court vide order dated 16.07.2015 and accordingly, suit was preferred.

3. Appellant/defendant No.1 took number of preliminary objections with regard to maintainability etc. Previous litigation between the parties and judgments passed thereupon were not disputed. It was also admitted that this Court had determined Rs.1,00,000/- per month as mesne profits, however, same could not be paid by defendants and, therefore, they were evicted from the suit property. It was claimed that since possession has already been given in the execution petition, therefore, suit is liable to be dismissed.

4. Learned Courts below after considering respective pleadings and evidence led by both the parties had concluded that once defendants have been found to be in illegal possession w.e.f. 08.03.2007, they are bound to pay mesne profits till the date they had vacated the premises i.e. upto 07.04.2016. Since mesne profits already stood determined by this Court vide order dated 16.07.2015 @ Rs.1,00,000/- per month therefore, suit of respondent No.1/plaintiff was decreed and defendants were found liable to pay mesne profits from 08.03.2007 till 07.04.2016. However, claim was restricted only for the last three years, in view of law of limitation by the Courts below.

5. The only defence taken by defendants in the present case is that

they had already surrendered the possession and are ready to pay agreed rent, therefore, are not liable to pay mesne profits.

6. On consideration, I do not find any error in the conclusion drawn by both the Courts below. Admittedly, in the present case, on passing of eviction order dated 08.03.2007, defendants had lost their status of tenant and had become to be persons in illegal possession, therefore, they are bound to pay mesne profits for illegal use and occupation of the suit property. Once it is proved that defendants have been in illegal possession, they cannot avoid their liability to pay mesne profits for said illegal use and occupation of suit property.

7. Admittedly, suit property was a commercial property and its mesne profits were duly assessed by this Court vide order dated 16.07.2015, after taking into consideration all the facts, especially area and nature of tenancy as well as market rent prevalent in the said area. The order determining mesne profits as Rs.1,00,000/- per month passed by this Court has attained finality but was not complied with by the defendants.

8. The revision petition preferred by defendants was dismissed for not paying mesne profits, therefore, the only issue is with regards to the liability to pay mesne profits. Quantification of mesne profits, which stand adjudicated by this Court vide order dated 15.07.2015 now cannot be re-opened by defendants. Therefore, the Court had rightly held respondent No.1/plaintiff entitled to mesne profits to the extent of Rs.36,00,000/- @Rs.1,00,000/- per month. No fault with the conclusion drawn by the Courts below can be found. There is no merit in the present appeal, hence is dismissed.

9. Pending application(s), if any, is/are disposed of accordingly.

RSA-1334-2023

10. Appellant/defendant No.2 who was alleged to be sub-tenant has also preferred the present appeal (RSA-1334-2023) challenging judgment and decree dated 07.12.2017 and 14.11.2022, on the ground that he was not found to be sub-tenant by the Courts below in the eviction proceedings and, therefore, he is not liable to pay mesne profits. However, it is pertinent to note that Courts below have duly taken note of the fact that it was appellant/defendant No.2 who was in possession of suit property as its partner, Raman Kapoor had handed over possession of suit property on 07.04.2016 before the Executing Court.

11. Statement of Raman Kapoor made on 07.04.2016 before the Executing Court whereby he had given possession of suit property to respondent No.1/plaintiff has been perused. Same is reproduced as under :

“As per the ejectment order in question passed by the Id. Rent Controller, Amritsar I hereby deliver the vacant possession of the demised property and today I have handed over the keys of the demised premises to Mr. Satyan Mehra s/o petitioner/decreed holder namely Smt. Kailashwati Mehra and the counsel for the decreed holder/petitioner in the Court. I have handed over the possession and keys towards entire satisfaction of ejectment order in question.”

Perusal of same shows that possession of suit property for all means was with Raman Kapoor i.e. partner in appellant/defendant No.2. It was Raman Kapoor who had surrendered the possession in the Court. No explanation is forthcoming as to why appellant/defendant No.2 had surrendered the possession on 07.04.2016, rather surrender of possession by appellant/defendant No.2 clearly shows that even though sub-tenancy could not have

been proved, it was appellant/defendant No.2 who was in actual possession along with defendant No.1. Once it is proved that appellant/defendant No.2 was also in illegal possession of suit property, then fixing of liability to pay mesne profits upon defendants No.1 and 2 cannot be held to be erroneous or perverse. Therefore, liability upon appellant/defendant No.2 has rightly been imposed. There is no merit in the present appeal, hence is dismissed.

12. Pending application(s), if any, is/are disposed of accordingly.

18.05.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No