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(2015) 01 P&H CK 0342

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 5467 of 2013 (O&M)

Haryana State Co-Operative Apex Bank Ltd. APPELLANT

Vs

Anil Syal RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Citation : (2015) 179 PLR 457

Hon'ble Judges : Surinder Gupta, J

Bench : Single Bench

Advocate : D.V. Sharma, Senior Advocate and Eshjyot Waha, for the Appellant; Prtiam Saini, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Surinder Gupta, J—Revision petitioner bank was a tenant in the premises i.e. SCO No. 165, Sector 34-C, Chandigarh. After being ordered to be ejected by the Rent Controller Vide order dated 13.11.2010, the revision petitioner filed appeal before the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949. During the pendency of the appeal, the respondent-landlord filed application for determination of the mesne profits of the demised premises @ 4 lacs per month during the pendency of the appeal. Vide order dated 14.08.2013, Appellate Authority, Chandigarh assessed the mesne profits of the demised premises @ Rs. 3 lacs per month. While assessing the mesne profits, it relied upon the lease deed dated 01.09.2010 relating to booth No. 160, Sector 34-C measuring 64 square yards which was let out @ Rs. 40,000 per month as rent. The Appellate Authority on the basis of the above lease deed assessed the mesne profits of the demised premises measuring 1750 square feet as Rs. 3 lacs per month. This revision petition has been filed by the revision petitioner-tenant challenging the order of the Appellate Authority dated 14.08.2013. Vide order dated 10.09.2013, Co-ordinate Bench of this Court partly allowed the revision petitioner and reduced the mesne profits of the demised premises @ Rs. 2 lacs per month (minus agreed rate of rent).

2. Not satisfied, the revision petitioner filed SLP (C) No. 31859 of 2013 (Civil Appeal No. 11134 of 2013) in the Hon''ble Supreme Court, which was allowed and the order passed in this revision petition was set aside and the case was remanded to this Court for passing a reasoned order while refixing the amount of mesne profits.

3. I have heard learned counsel for the parties and have perused the paper book with their assistance.

4. Learned counsel for the revision petitioner has vehemently argued that the mesne profits determined by the Appellate Authority are excessive. The Appellate Authority has relied on a rent note of a small booth which was let out in September, 2010 while the demised premises was let out in the year 1994. A small booth located at a prominent location for business, may fetch high rent but the same cannot be a yardstick to assess the rental of a bigger premises particularly when the ground, first and second floor are let out to one tenant

5. Learned counsel for the respondent-landlord has argued that though the premises on rent with the revision petitioner-bank was situated in a commercial area which is a business hub of Chandigarh City i.e. Sector 34, where even one floor of SCO is not available at the rental of Rs. 2 lacs to Rs. 3 lacs per month, yet the Appellate Authority had taken a very lenient and considerate view while assessing the mesne profits @ Rs. 3 lacs per month, which require no interference.

6. The revision petitioner had taken the demised premises on rent for banking business in the year 1994 @ Rs. 17,500 per month. During the course of arguments, it has been intimated that revision petitioner had already vacated the demised premises and handed over the vacant possession to the respondent. The revision petitioner has relied on the rent deed of SCO No. 184 Sector 34-C, Chandigarh with the plea that the same was let out at the rent of Rs. 7,500 per month. This rent deed pertains to the year 1991, as such, was irrelevant. Reliance was also placed on the rentals of SCO Nos. 167 and 168 but the lease deed of these SCOs have not been produced on record.

7. The respondent had relied on a registered tease deed dated 01.09.2010 relating, to booth No. 160 Sector 34-C, which was let out @ Rs. 40,000 per month. The area of this booth is 64 square yard. I agree with the contention of learned counsel for the revision petitioner that the rental of such a small booth cannot be the basis while fixing the rent-al/mesne profits of a bigger premises and particularly when ground, first and second floor of the building were let out to one tenant. The area of the premises let out to the revision petitioner was 1750 square feet. If the rental of booth No. 160 Sector 34-C, Chandigarh is taken as basis, the mesne profits of the demised premises would work out to be more than Rs. 10 lacs per month. The area of the demised premises comes to be more than 27 times the area of the said booth as such, the rental of the booth cannot be taken as precedent for fixing rental of demised building. While

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assessing mesne profits of multi-storey building, it is to be kept in mind that all the floors do not carry equal rental value. First and second floor have lesser rental value than ground floor shop. The demised premises was an old construction let out more than two decades ago: Keeping in view all these facts and circumstances, the mesne profits of the ground floor can be assessed to be Rs. 90,000/-, of first floor Rs. 60,000/- and second floor to be Rs. 50,000 per month. The total mesne profits works out to Rs. 2 lacs per month, which is just about 1/5th of the rental of booth No. 160 Sector 34-C, Chandigarh. The Appellate Authority while assessing mesne profits @ Rs. 3 lacs per month, has not given any basis for calculating this amount. Even in case of The State of Maharashtra and Another Vs. Super Max International Pvt. Ltd. and Others, AIR 2010 SC 722 : (2009) 11 JT 344 : (2009) 11 SCALE 794 : (2009) 9 SCC 772 : (2009) 14 SCR 801 relied by the Appellate Authority, the Apex Court has observed that while fixing the amount of mesne profits, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount as mesne profits. With modification of mesne profits, as assessed by the Appellate Authority as Rs. 3 lacs, to Rs. 2 lacs per month (minus agreed rate of rent), this revision petition is disposed of. The amount of mesne profits, if lying deposited, be released and paid to the respondent-landlord.

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