
(2008) 11 P&H CK 0013
In the Punjab And Haryana At Chandigarh

Jewellers Khanna Sons

APPELLANT

Vs

Dr. Naresh Mittal and Others

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : (2009) 3 CivCC 616 : (2009) 153 PLR 341 : (2009) 2 RCR(Civil)
567 : (2009) 1 RCR(Rent) 396

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.—This revision petition u/s 15(5) of the East Punjab Rent Restriction Act, 1949 (for short the Act) is directed against an interim order passed by the learned Appellate Authority on 14.4.2008 vide which the stay application moved by the petitioner was allowed subject to condition of the tenant/petitioner depositing the mesne profit at the rate of Rs. 1 lac per month w.e.f. 20.2.2008 during the pendency of appeal on or before 10th of each month. The petitioner/tenant was also directed to deposit all the arrears of rent from the date due or from the date of filing of the ejectment petition till 19.2.2008 at the agreed rate if not paid by it during the pendency of eviction petition before the learned Rent Controller. Order was directed to be complied with within a period of one month.

2. The petitioner is a tenant in half of the ground floor of S.C.O. No. 814 situated at Chandigarh Kalka Road, Manimajra, Union Territory, Chandigarh measuring approximately 1000 Sq. ft. The other half portion of the ground floor of the said shop is in possession of another tenant. It is the case of the petitioner that the shop in dispute was orally let out to the petitioner/tenant on 1.2.1991 at the rate of Rs. 62,000/- per annum which was later increased to Rs. 72,000/- per annum. In the year 1995 respondent/landlords sought eviction of the tenant and got possession of first floor of S.C.O. No. 814 from the tenant therein.

3. In the year 1996, respondent-landlords filed eviction petition against the

petitioner on the ground of non-payment of arrears of rent which was followed by a series of similar ejectment applications on the same ground of non-payment of arrears of rent. Out of the said petitions, five petitions are still pending and the petitioner/tenant filed a counter-claim for refund of excess tender made in those petitions.

4. On 31.3.1997, the respondent-landlords filed present eviction application on the ground of non-payment of arrears of rent w.e.f. April, 1996 and also on the ground of bonafide personal necessity claiming that the property was required for running a Nursing Home and Clinic and Diagnostic Centre.

5. The claim was contested by the petitioner-tenant. It is the case of the petitioner that during the pendency of the present eviction application before the learned Rent Controller another ejectment application filed by the respondent landlord was dismissed by the court of learned Rent Controller holding that the rent deed dated 1.10.1991 relied upon by the respondent/landlords Ex.PX could not be taken into consideration as a genuine document and the agreed rate of rent was Rs. 6,000/- per month only. Counter claim filed by the petitioner was allowed and it was ordered that respondent-landlords should refund a sum of Rs. 2,29,276/- along with future interest at the rate of 6 per cent per annum till realization.

6. The eviction petition filed by the respondent-landlords was allowed by the learned Rent Controller on 19.2.2008 and the counter-claim filed by the petitioner/tenant was ordered to be dismissed. It is the case of the petitioner that the impugned order was passed despite an application having been moved u/s 10 read with Section 151 of the CPC praying for stay in the further proceedings as the appeal against the earlier order was pending before the Appellate Authority in which question of rate of rent was to be adjudicated upon.

7. Said application was dismissed as the cause of action in both the cases was not said to be the same. The order passed by the learned Rent Controller is under challenge before the learned appellate authority in which application for stay was moved by the petitioner though the respondent/landlords did not file any reply to the stay application but instead filed an application for fixing the mesne profit/compensation for use and occupation of the shop in dispute for the period of stay of execution of eviction order.

8. The tenant/petitioner claimed that the present market rate of rent is over Rs. 225/- per sq. feet and in support of the said claim a lease deed dated 31.7.2007 executed qua the half of the ground floor portion of S.C.O. No. 39, N.A.C. Mani Majra situated across the Chandigarh Kalka Road was attached showing the monthly rent of Rs. 2,28,000/-. Other half of the ground floor of S.C.O. No. 39 N.A.C. Mani Majra measuring 800 Sq. feet was leased at a monthly rent of Rs. 2,40,000/-. Thus, mesne profits have been claimed at the rate of Rs. 250/- per sq. ft. It was also claimed that the petitioner should further be directed to pay the rent agreed till date.

9. The said application was contested claiming it to be malicious, mala fide and based on false documents. A copy of the order passed by this Court was also pressed into service wherein an undertaking was given by the respondent-tenant to refund the excess amount received by him in the event of success of counter claim. It was claimed that in spite of order having been passed by the learned Rent Controller on 24.10.2002 the respondent/landlords has not refunded single penny out of Rs. 1.25 lacs which is alleged to have been excessively tendered.

10. However, it may be noticed here that the order on the basis of which this assertion is made has been made stayed by the learned appellate authority.

11. It is the case of the petitioner that half portion of the ground floor of shop No. 814 which is the shop in dispute was recently let out by the respondent/landlords at the rate of Rs. 17,000/- per month and current rate of rent of the said premises is Rs. 17,850/- in view of clause contained therein. It was claimed that the lease deeds attached by the respondent/landlords along with the application were with respect of shops which had much better a scope and therefore, rent fixed for the said shops could not be the basis for determining the mesne profit in the present case. It is the case of the petitioner that recently executed rent deed of S.C.O. No. 805 was also placed on record where the rate of rent was fixed at Rs. 21,420/- per month with regard to half portion of S.C.O. No. 805. Thus, it was claimed that the assessment of mesne profit by the learned Rent Controller was arbitrary.

12. It was also claimed that mesne profit fixed is at exorbitant rate which requires to be set aside.

13. Mr. M.L. Sarin, learned Senior Counsel appearing on behalf of the petitioner has challenged the impugned order on two grounds:

(i) that the learned appellate authority has not mentioned the alleged agreed rate of rent which was ordered to be paid till 19.2.2008; and

(ii) that the fixation of mesne profit at the rate of Rs. 1 lac per month was totally arbitrary and based on the document which has no relevance to the matter in issue and is passed by ignoring the material evidence brought on record.

14. Learned senior counsel vehemently contends that in the earlier decision learned Rent Controller rejected the alleged licence agreement dated 1.10.1991 and held that the rate of Rent was only Rs. 6,000/- per month. The contention of the learned senior counsel, therefore, is that it was incumbent upon the learned appellate authority to have determined the alleged agreed rate of rent in view of the two contradictory orders i.e. one earlier passed inter se between the parties and the other or which is impugned in appeal.

15. It is also the contention of learned senior counsel for the petitioner that it was incumbent upon the learned appellate authority to have adjudicate the question of mesne profit and the assessment of Rs. 1 lac cannot be sustained in the absence of any reason in view of material placed on record by the respective

parties.

16. Mr. S.K. Garg Narwana, learned Counsel appearing on behalf of the respondents on the other hand contended that once an order of eviction has been passed the tenant is required to pay mesne profits during the pendency of appeal and thus, the appellate authority was fully justified in ordering payment of mesne profit at the rate of Rs. 1 lac per month.

17. In support of this contention reliance has been placed on the judgment of Hon''ble Supreme Court in the case of Sadhu Ram Vs. Parminder Singh, , wherein the Hon''ble Supreme Court directed the payment of Rs. 5,000/- as provisional mesne profit during the pendency of appeal where the rate of rent was shown to be Rs. 700/-.

18. Learned Counsel for the respondents also placed reliance on the judgment of Hon''ble Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., , wherein the Hon''ble Supreme Court has been pleased to lay down that the Delhi High Court has jurisdiction to put the appellant 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.

19. Reliance has also been placed on the Division Bench judgment of this Court in the case of Dayal Chand v. The Union of India and Ors. 1970 R.C.R. 205 holding therein that after expiry of terms of lease the continuation would be under new terms.

20. The proposition of law as canvassed by the learned Counsel for the respondents cannot be disputed.

21. The Appellate Authority has the jurisdiction to fix mesne profit payable. However, that has to be based on some material. In the present case it may be noticed that" there are 2 orders of the learned Rent Controller, which impugned in the appeals. In both the orders, learned Rent Controller has assessed the rent payable differently. Therefore, it was incumbent upon the learned appellate authority to have considered the matter and thereafter arrive at prima facie finding as to what was the agreed rent between the parties so as to enable the petitioner to pay the same.

22. In the present case, learned appellate authority is silent with regard to the agreed rent between the parties.

23. It may also be noticed that the assessment of mesne profit at Rs. 1 lac is also arbitrary. Learned appellate authority has neither accepted the evidence led by the respondent landlords nor the petitioner without assigning any reason.

24. Learned appellate authority was required to give some reasons for the conclusion arrived at though detailed adjudication was not required.

25. In view of the position explained above, the impugned order cannot be

sustained.

26. Revision is accordingly allowed and the case is remanded back to the learned appellate authority to determine prima facie the agreed rent between the parties and also assess the mesne profits payable by the petitioner during the pendency of appeal, after taking into consideration the evidence led by the petitioner as well as the respondent-landlords.