

(2012) 08 RAJ CK 0053

In the Rajasthan High Court

Case No : Civil Second Appeal No. 546 of 2011

Late Bhanwar Lal @ Bhoori Lal through L.Rs.

APPELLANT

Vs

Nirmal Kumar Duggar HUF

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 151

Citation : (2013) 1 CDR 157

Hon'ble Judges : Prashant Kumar Agarwal, J

Bench : Single Bench

Advocate : Sudesh Bansal, for the Appellant; M.M. Ranjan with Mr. Ribu Dutt, for the Respondent

Judgement

Prashant Kumar Agarwal, J.—The matter comes up for orders on application No. 31102 dt. 14.10.2011 filed by the plaintiff-respondent (Landlord) under Order 4 Rule 5 read with Sec. 151 CPC for grant of mesne profits during pendency of this appeal. It is an admitted fact that the suit shop is situated on main M.I. Road, Jaipur in a commercial-cum-residential building known as "Duggar Bhavan" and it was let out to the defendant-appellant (tenant) years back at the rate of Rs. 46 per month.

2. Brief relevant facts for the disposal of this application are that the plaintiff-respondent filed suit for eviction on the ground of default in payment of rent and recovery of arrears of rent against the defendant-appellant under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to "Act 1950") which was registered as Civil Suit No. 1344/1993 and the same was dismissed by the trial Court vide judgment and decree dt. 15.4.1998. Against that decree the respondent filed Civil Regular Appeal No. 7/2011. (29/1998) and the same was allowed by the appellate Court vide judgment and decree dt. 14.5.2011 and the suit filed by the respondent was decreed. The tenant-appellant has filed this Civil Second Appeal under Sec. 100 of the CPC and the same was admitted vide order dt. 27.7.2011 on substantial questions of law

after hearing both the parties. While admitting the appeal this Court granted liberty to the respondent to claim mesne profits by filing a separate application. In these circumstances, the plaintiff-respondent has filed the present application for award of mesne profits at the rate of Rs. 20,000/- per month. Reply to the application has been filed by the appellant on 5.5.2012. Rejoinder to the reply has been filed by the respondent on 21.5.2012 denying the contents of the reply. It is also an admitted fact that during the pendency of the present suit, the respondent-landlord filed Civil Suit No. 78/2002 under Sec. 6 of the Act claiming standard rent and the same is still pending in the concerned Court but vide order dt. 7.12.2010 provisional rent at the rate of Rs. 1000/- per month has been determined by the Court.

3. In the instant application following two questions arise for consideration and decision of this Court.

(1) Whether mesne profits at a rate exceeding the provisional rent determined by the Competent Court vide order dt. 7.12.2010 can be awarded by this Court during pendency of this appeal.

(2) If yes, at what rate mesne profits are to be awarded

4. It was submitted by the learned counsel for the appellant that in the suit filed by the respondent under Sec. 6 of the Act for determination of standard rent in respect of the suit shop, he himself has claimed that standard rent may be fixed at the rate of Rs. 1000/- per month and during the pendency of the suit provisional rent at the rate claimed by the respondent has been fixed/determined by the Court vide order dt. 7.12.2010 and, therefore, neither the respondent can claim mesne profits at a rate exceeding the rate of standard rent nor this Court can award the same at a higher rate.

5. On the other hand, it was submitted by the learned counsel for the respondent that there is distinction between standard rent and mesne profits and therefore, during pendency of appeal, if an order is passed by the appellate Court staying the operation of eviction decree, mesne profits at the rate higher than the standard rent can be awarded. It was further submitted that it is well settled legal position that after passing of order or decree of eviction against tenant, his status as tenant comes to an end and his possession over the tenanted premises becomes unauthorized from the date of the order or decree of eviction. According to the learned counsel for the respondent as decree of eviction has been passed against the appellant on 14.5.2011 by the first appellate Court, his status as tenant has come to an end from that date and he has become unauthorized occupant in the suit shop. It was also submitted that the suit under Sec. 6 of the Act for fixing of standard rent was filed by the respondent during the period when the appellant was occupying the suit shop as tenant and even the provisional rent was fixed treating him as tenant. It was further submitted that the rate of provisional rent fixed vide order dt. 7.12.2010 was applicable only for the period in which the status of appellant continued as tenant but as soon as

the decree for eviction was passed by the appellate Court, that order ceased to apply and this Court is not bound by it and if found appropriate mesne profits exceeding the provisional rent can be awarded.

6. I have considered the submissions made on behalf of the respective parties and also gone through the material made available for my perusal as well as the relevant legal provisions and the case law.

7. In view of the submissions made on behalf of the respective parties, it is to be decided first whether during pendency of this appeal mesne profits at a rate exceeding the provisional rent as fixed by the Court below vide order dt. 7.12.2010 can be awarded or not.

8. Hon''ble Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., has held that:

In case of premises governed by the provisions of the Rent Control Act, the tenancy does not stand terminated merely by its termination under the general law, but 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 decree.

9. In this case Hon''ble Supreme Court has approved view expressed by Nagpur High Court in the case of Bhagwandas vs. Mst. Kakabai, reported in AIR 1953 Nagpur 186 which is as follows:

That the rent control order, governing the relationship of landlord and tenant, has no relevance for determining the question of what should be the measure of damages which a successful landlord should get from the tenant for being kept out of the possession and enjoyment of the property. After determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the rent control order. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value.

10. It is pertinent to note that Hon''ble Supreme Court in the case of M/s. Atma Ram Properties (supra) was dealing with Delhi Rent Control Act in which the definition of word "tenant" is almost similar to the definition given in the Act.

11. In the case of Niyaz Ahmad Khan Vs. Mahmood Rahmat Ullah Khan and Another, , Hon''ble Supreme Court has held that:

In writ petitions filed by tenants, while granting stay of execution of the order of eviction pending disposal of writ petition, the High Court has the discretion to

impose reasonable conditions to safeguard the interests of the landlord. But even in such cases the High Court cannot obviously impose conditions which are ex facie arbitrary and oppressive thereby making the order of stay illusory. When a tenant files a writ petition challenging the order of eviction, the High Court may reject the writ petition if it finds no merit in the case of the tenant, or in some cases, the High Court may admit the writ petition but refuse to grant stay of execution, in which event, the tenant may be evicted, but can claim restoration of possession if he ultimately succeeds in the writ petition; or in some cases, the High Court finding the case fit for admission, may grant stay of eviction, with or without conditions, so that status quo is maintained till the matter is decided. Where the High Court chooses to impose any conditions in regard to stay, such conditions should not be unreasonable or oppressive or in terrorem.

Hon"ble Supreme Court further held that:

To sum up, in writ petitions by landlords against rejection of eviction petitions, there is no scope for issue of any interim direction to the tenant to pay higher rent. But in writ petitions by tenants against grant of eviction, the High Court may, as a condition of stay, direct the tenant to pay higher rent during the pendency of the writ petition. This again is subject to two limitations. First, the condition should be reasonable. Second, there should not be any bar in the respective State rent control legislation in regard to such increases in rent. Be that as it may.

12. A three Hon"ble Judges Bench of Hon"ble Supreme Court in the case of The State of Maharashtra and Another Vs. Super Max International Pvt. Ltd. and Others, by affirming the view expressed by the Hon"ble Court in the case of Atmaram Properties (supra) has held that:--

In an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decreed is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

13. In this case Hon"ble Supreme Court was dealing with the provisions of Bombay Rent Act in which the definition of the word "tenant" is quite different from the definition of that word in Delhi Rent Control Act and the Act, but even then it was held that while admitting the appeal or revision it is perfectly open to the Court to decline to grant any stay or to grant stay subject to some reasonable condition. In case, stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant will not have the protection of any of the provisions under the Rent Act and in all likelihood would be evicted before the matter is finally decided.

14. The word "tenant" as defined in Clause (vii) of Sec. 3 of the Act includes in its purview such person also who is continuing in the possession of the tenanted premises even after termination of his contractual tenancy but it does not include such a person whose tenancy has been terminated by a decree for eviction passed under the provisions of the Act even if he is continuing in possession after passing of such decree.

15. From the perusal of prevalent legal position, it is very much clear that as soon as an order or decree for eviction is passed against a tenant even under the provisions of Rent Control Act, his status as tenant comes to an end and from the date of order or decree of eviction, his occupation of tenant premises becomes unauthorized. As in the present case decree for eviction has been passed against the appellant on 14.5.2011 by the First Appellate Court, his status as tenant has come to an end and his occupation in the suit shop has become unauthorized and. therefore, even if during pendency of the present suit on the basis of suit filed by the respondent himself under Sec. 6 of the Act provisional rent of the suit shop has been determined, the same will not be applicable after passing of decree of eviction and this contention of learned counsel for the appellant is not legally tenable that the mesne profits awardable during pendency of this appeal cannot exceed the rate of provisional rent. I am of the considered view that in the light of well settled legal position, the standard/provisional rent was payable only during the period in which the status of appellant continued as tenant. This fact is also relevant that a landlord applying for determination of standard rent, under Sec. 6 of the Act cannot be placed in a disadvantageous position in comparison to a landlord who does not apply for determination of standard/provisional rent. If the contention of learned counsel for the appellant is accepted, it would mean that a landlord not applying for such determination of standard rent would be able to demand for grant of mesne profits at a rate higher than the contractual rent and even at a rate exceeding the possible standard rent under Sec. 6 of the Act whereas a landlord in whose favour decree or order fixing standard/provisional rent has been passed, would not be able to demand mesne profits exceeding such rate. I am of the view that such a situation can never be legally tenable.

16. In the case of Pokhardas vs. Govind Sharan (S.B. Civil Second Appeal No. 468/2011) decided by this Court on 2.4.2012, in the application filed by the landlord for grant of mesne profits during pendency of the appeal, it was contended by the tenant that mesne profits at a rate exceeding the revised rent awarded under, Sec. 6. of the Rajasthan Rent Control Act, 2001 can be granted but the same was rejected. On the same analogy, the contention raised in the present appeal is also liable to be rejected. The Court is not bound by the criteria provided by the rent control legislation and criteria is 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.

17. Accordingly, it is held that in a case in which during pendency of suit or

appeal filed under the provisions of the Act for eviction of tenant, standard provisional rent has been determined u/s 6/Section 7 of the Act, the appellate Court while awarding mesne profits during pendency of the appeal filed against a decree of eviction, is not bound to confine the amount of mesne profits to the extent of standard/provisional rent only but if found appropriate, even an amount exceeding such rate of rent can be awarded.

18. Now the question to be considered and decided is at what rate mesne profits can be awarded the respondent in the facts and circumstances of the case.

19. In the case of M/s. Atma Ram Properties Pvt. Ltd. (Supra) the criteria laid down by Hon''ble Court is that the amount of mesne profits or compensation for use and occupation of the premises should be 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. Hon''ble Supreme Court approved the view of Nagpur High Court to the effect that if the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value. In the case of State of Maharashtra Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors., (supra) it was observed by Hon''ble Supreme Court that the amount fixed by the Court should not be excessive, fanciful or punitive. In case of Mohammad Ahmad and Another Vs. Atma Ram Chauhan and Others, , it has been held by Hon''ble Supreme Court that if the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently. It was also held at the rent so fixed should be just, proper and adequate, keeping in mind the location, type of construction, accessibility to the main road, parking space facilities available therein, etc. Care ought to be taken that it does not end up being a bonanza for the landlord. It was also observed that these are some of the illustrative guidelines and norms but not exhaustive, which can be worked out between the landlord and tenant so as to avoid unnecessary litigation in Court.

20. In the present case, it is an admitted fact that the suit premises is a shop situated on main M.I. Road in the City of Jaipur and it was let out to the appellant about 60 years ago at the monthly rent of Rs. 46/- and since then the agreed rent remained continuously static until provisional rent was determined vide order dt. 7.12.2010. It is also an admitted fact that M.I. Road is one of the oldest and main Commercial Center of Jaipur and commercial activities and business are being carried on in the suit shop. There is dispute between the parties in regard to the size of the suit shop. The respondent claims that the size is 13.35 square meter whereas case of appellant is that the size is only 7.98 square meter. The valuation report filed by the respondent along with the present application mentions that the area of the suit shop is 13.35 square meter and the rental value of same on 4.10.2011 was Rs. 19,200/- per month only. According

to copy of lease deed dated July, 2008, shops Nos. 306 & 307 situated near Panch Batti Circle M.I. Road, Jaipur having an area of 1000 square feet were let out at the rate of Rs. 1,80,000/- per month for a period of nine years. Copy of agreement of leave and license dt. 27.7.2011 filed by the respondent shows that shop No. 368 situated in same building in which the suit shop is situated having a total area of 847 square feet was let out at the rate of Rs. 1,35,00/- per month. On the other hand, the appellant in the reply to the application has given particulars of various shops situated on the M.I. Road with their respective size and monthly rent but it has not been made clear by the appellant at what point of time the various shops mentioned in the reply were let out. Along with the additional affidavit the appellant has filed copy of valuation report dt. 19.8.2012 and according to this report area of the suit shop is 7.98 square meter and its monthly rental value as on 30.9.2011 was Rs. 7,621/. It is also pertinent to note that in the suit filed under Sec. 6 of the Act for determination of standard rent, the respondent filed a valuation report in the year 2002 and according to this report the size of the suit shop is 11.47 square meter and as on April, 2002 the rental value of the same was Rs. 5,364/- per month. I am of the considered view that none of the piece of evidence produced by both the parties can be made sole basis of determination of a reasonable amount of mesne profits and this Court has no alternative other than to determine the same on the basis of over all facts and circumstances of the present case. Looking to the fact that the suit shop is situated on a main and oldest Commercial Center, M.I. Road, City of Jaipur and it was let out about 60 years back at a monthly rent of Rs. 46/- and the same remained static until the provisional rent of Rs. 1000/- per month was determined by the concerned Court by order dt. 7.12.2010 and also looking to the fact that since the commencement of the tenancy, monthly rent and price of immovable property has increased many folds, I think it is fit and proper to determine/fix the mesne profits of the suit shop at the rate of 10,000/- per month with effect from the date of passing of the impugned judgment and decree of eviction dt. 14.5.2011.

21. Consequently, the application filed by the plaintiff-respondent is partly allowed and it is ordered that defendant-appellant is liable to pay mesne profits at the rate of Rs. 10,000/- per month with effect from May, 2011 till the final disposal of this appeal. All the arrears of mesne profits for the period of May, 2011 to August, 2012 shall be deposited in the trial Court within a period of three months from today. It is also directed that from the month of September, 2012 the mesne profits at the above said rate shall be deposited in the trial Court up to 10th of each succeeding month during pendency of this appeal.

22. It is made clear that the amount of mesne profits so determined by this order is over and above and in addition to the provisional rent as determined vide order dt. 7.12.2010. It is further made clear that if in compliance of this order the amount is deposited in the trial Court, the same will not be released/disbursed/paid to any of the parties and it will be deposited/invested by the trial Court in the fixed deposits in a Nationalized Bank from time to time for a

reasonable period. It is also made clear that the amount so deposited along with the interest accrued on it shall be paid to the party entitled to it after final disposal of the appeal depending on the result of it. It is further made clear that the appellant shall continue to pay the contractual/ provisional rent. It is needless to say that if the appellant fails to comply this order within the time granted, the stay order dt. 27.7.2011 would stand automatically vacated without further reference to this Court and the impugned decree shall be liable to be executed immediately. Consequently, the application No. 31102 dt. 14.10.2011 stands disposed of in the aforesaid manner.