
(2015) 01 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Civil Misc. No. 16778-CII of 2014 in Civil Revision No. 1484 of 2014 and Civil Misc. No. 16902-CII of 2014 in Civil Revision No. 5691 of 2013

Usha Kwatra and Others

APPELLANT

Vs

Sita Rani Chopra and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 1 RCR(Rent) 337

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Arun Jain, Senior Advocate and Deepak Basatia, for the Appellant; M.L. Sarin, Senior Advocate and Himani Sarin, Advocates for the Respondent

Judgement

Gurmeet Singh Sandhawalia, J.—This order shall dispose of Civil Misc. Application No. 16778-CII of 2014 in CR No. 1484 of 2014 and Civil Misc. Application No. 16902-CII of 2014 in CR No. 5691 of 2013 since parties are common and the dispute arises out of the eviction order dated 19.3.2013 and issue of mesne profits. The respondents filed an eviction petition against the petitioners and the Rent Controller, Chandigarh directed eviction on 19.3.2013 from 1/3rd share of the hall room on the ground floor measuring 11" X 27"-5" of SCF No. 14, Sector 22-D, Chandigarh. Admittedly, the petitioners-tenants preferred an appeal before the Appellate Authority, Chandigarh wherein an application for stay of order of the Rent Controller, Chandigarh was filed whereas the respondents/landlords filed an application for granting of mesne profits. The Appellate Authority, Chandigarh noticed that area comes to 302 square feet and the monthly rent of Rs. 430/- was fixed in the year 1975 and the property was situated in the commercial hub of Sector 22, Chandigarh and adjoining the Post Office. Accordingly, keeping in view the lease deed of the booths of the same sector, conclusion was arrived at that market rate of rent would come to Rs. 574/- per sq. feet but mesne profits were assessed at Rs. 300/- per sq. feet and the tenants were held liable to pay Rs. 90,600/- per month from the date of eviction. The tenants were further

directed to clear arrears of rent and mesne profits within a period of one month. The landlords were held not entitled to withdraw the amount of mesne profits during the pendency of appeal and were to be paid to the party in whose favour the appeal was decided. Operative part of the order reads as under:--

"18. The tenants are directed to make payment of arrears of rent if any as well as arrears of mesne profits within a period of one month from the date of order with Rent Controller and they are further directed to make the payment of future mesne profits by 10th of every month. If they comply with all these conditions only then the operation of impugned order would remain stayed.

19. The landlord will, however, not be entitled to withdraw the amount of mesne profits except the amount at which the appellants were paying rent. The balance amount will remain lying deposited with the Rent Controller, which will be paid to the party in whose favour, appeal is decided. With these observations the applications in hand stand disposed of."

2. The tenants challenged the said order in Civil Revision No. 5691 of 2013 before this Court and this Court on 19.9.2013 directed a sum of Rs. 2 lacs on account of mesne profits as assessed by the Appellate Authority will be paid within stipulated time. The order reads as under:--

"Notice of motion.

Mr. Harsh Aggarwal, Advocate puts in appearance on behalf of the respondents and accepts notice.

List on 19.11.2013.

In the meantime, the petitioners shall deposit a sum of Rs. 2 lacs on account of mesne profits as assessed by the appellate authority within the stipulated time."

3. During the pendency of the aforesaid Civil Revision Petition, Civil Misc. Application No. 24953-CII of 2013 was filed by the tenants taking the ground that the interim order dated 19.9.2013 should be corrected as further payment of mesne profits was stayed and the factum was not mentioned in the interim order. This Court on 17.12.2013 directed the Appellate Authority to decide the appeal but no correction of the order was done as prayed for. In the meantime the appeal was decided on 8.1.2014 and the eviction order was upheld. Civil Revision No. 5691 of 2013 came up on 24.1.2014 and counsel for the petitioners withdrew the said revision petition on the ground that the main appeal had been dismissed and case had become infructuous. The order reads as under:--

"Learned counsel for the petitioners has submitted that this petition has been rendered infructuous as the main appeal had been dismissed by the learned appellate authority. Dismissed as infructuous."

4. Thus, it is apparent that challenge raised to the fixation of mesne profits at Rs. 90,600/- had attained finality inter se the parties and the landlord became entitled to the amount deposited.

5. Thereafter, in Civil Revision No. 1484 of 2014, the petitioners-tenants chose to challenge the order of eviction and the order of the Appellate Authority. Notice of motion was issued on 3.4.2014 on the ground that the petitioners would clear the arrears of rent due against them within a week and would continue paying the rent thereafter. In the application for stay bearing Civil Misc. No. 3841-CII of 2014 no mention was made of earlier Civil Revision No. 5691 of 2013 whereby the mesne profits had been fixed at Rs. 90,600/- per month. On the next date of hearing i.e. 9.5.2014, counsel for the landlords put in appearance and pointed the fact that apart from Rs. 2 lacs no further payment has been made. Counsel for the petitioners-tenants took time to seek instructions. Order dated 9.5.2015 reads as under:--

"Counsel for respondents No. 1 to 4 states that mesne profits were duly assessed vide order dated 21.8.2013 of the Appellate Authority out of which payment of Rs. 2.00 lacs has been made vide order of 19.9.2013 of this Court in CR No. 5691 of 2013, but further payment has not been made. Counsel for the petitioners wants time to seek instructions.

On request of counsel for the parties, adjourned to 15.7.2014."

6. Thereafter, matter was adjourned to 15.7.2014 whereby it was admitted by the tenants that mesne profits had not been paid but the rent has been paid. Counsel for the landlords accordingly took time to make an appropriate application. The order dated 15.7.2014 reads as under:--

"Learned counsel for the petitioner states that he has already paid the rent but the mesne profits have not been paid as yet for which the respondents now intend to make an application in this regard.

Adjourned to 20.8.2014."

7. Resultantly, Civil Misc. Application No. 16778-CII of 2014 has been filed by the landlords praying that stay granted vide order dated 3.4.2014 should be vacated for non payment of mesne profits. The petitioners-tenants in Civil Revision No. 5691 of 2013 which was withdrawn on 24.1.2014 thereafter filed an application bearing No. 16902-CII of 2014 on 20.8.2014 praying that the revision petition be restored. Resultantly, this Court is under obligation to keep the interest of both the parties during the pendency of present revision petition. The principles of aspect of occupation after order of eviction and payment of mesne profits has been laid down by the Apex Court in Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., (2005) 1 CTC 53 : (2004) 10 JT 410 : (2005) 141 PLR 643 : (2004) 10 SCALE 345 : (2005) 1 SCC 705 , Anderson Wright and Co. Vs. Amar Nath Roy and Others, AIR 2005 SC 2457 : (2005) 11 JT 300 : (2005) 141 PLR 666 , 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 and Mohammad Ahmad and Another Vs. Atma Ram Chauhan and Others, AIR 2011 SC 1940 : (2011) 4 CTC 218 : (2011) 6 JT 189 : (2011) 162 PLR 711 : (2011) 2 RCR(Civil) 972 : (2011) 1 RCR(Rent)

394 : (2011) 6 SCALE 265 : (2011) 7 SCC 755 : (2011) 4 UJ 2157 , thus, there is no dispute regarding this proposition.

8. It is also apparent that the tenants had accepted the fixation of mesne profits at the rate of Rs. 90,600/- per month and voluntarily withdrew the revision petition on 24.1.2014. Now after 7 months they cannot seek revival of the same, when it has been pointed out that stay is to be conditional on payment. Rather they were under obligation to deposit the whole amount within a period of one month as per direction of the Appellate Authority but nevertheless since this Court directed them to deposit a sum of Rs. 2 lacs, this Court is of the opinion that to keep the interest of both the parties in mind the mesne profits at the rate of Rs. 90,600/- per month assessed by the Appellate Authority which had attained finality in-terse the parties would be adequate amount of mesne profits which the tenants have to deposit in case they wish to continue in the premises during the pendency of the revision petition.

9. Accordingly, the tenants shall deposit the amount of mesne profits at the rate of Rs. 90,600/- per month from the date of eviction by the Rent Controller, Chandigarh i.e. 19.3.2013 to 8.1.2014 till the date of order of the Appellate Authority. The benefit of Rs. 2 lacs which they have already deposited will be given to them and the deposit be made within a period of two months from today with the Rent Controller, Chandigarh. The landlords will be entitled to withdraw the same in view of the finding which has become final in-terse the parties in Civil Revision No. 5691 of 2013.

10. The mesne profits thereafter from 9.1.2014 till 31.1.2015 will also be deposited with the Rent Controller, Chandigarh along with rent within the above said period and the landlords will be entitled to withdraw the rent portion only. The tenants shall continue depositing the mesne profits and the rent for the subsequent months by the 7th of every month before the Rent Controller, Chandigarh and failure to comply with the condition will entitle the landlords to seek eviction in accordance with law. Accordingly the Civil Misc. Application No. 16902-CII of 2014 in CR No. 5691 of 2013 for restoration is dismissed. However, Civil Misc. Application No. 16778-CII of 2014 in Civil Revision No. 1484 of 2014 for vacation of stay is accordingly disposed of in the aforesaid terms by modifying the order dated 3.4.2014.

Civil Revision No. 1484 of 2014.

To come up for arguments on 22.4.2015.