

Before Surinder Gupta J.

RAKESH KUMAR AND ANOTHER—*Petitioners*

versus

ASHOK KUMAR MEHAL AND OTHERS—*Respondents*

CR No. 4427 of 2015

February 15, 2018

East Punjab Urban Rent Restriction Act, 1949—S.13—Mesne profit is determined only to compensate the landlord for delay in execution of eviction—Cannot be compared with rent of adjoining area/shops—Lease deeds only a guiding factor—Location and type of business is a material fact—Both revision petition dismissed—No ground made out to initiate proceedings under Section 340 Cr.P.C.

Held that, it is a case where premises in question were let out under a lease agreement, which spells out terms of tenancy. After ejection order, while fixing mesne profits, the purpose is to compensate the landlord for the delay in execution of ejection order against which tenant has come in appeal or revision. There may be a case where the tenant has taken the premises on lease about 20 to 30 years back. Mesne profits payable by such tenant after ejection cannot be compared with the rent settled with tenants of adjoining or nearby shops. Location and type of business being carried out in a premises is also material fact. Lease deeds produced by parties are only a guiding factor for the Court and are not to be blindly followed as in this case almost all the lease deeds produced by landlord are pertaining to premises let out to banks, which get so many additional facilities while taking the premises on rent.

(Para 5)

Vikas Bahl, Sr. Advocate with
Divanshu Jain, Advocate
for the petitioners
in CR-4427-2015 and
for the respondents
in CR-7578-2015.

S.M. Wadhwa, Advocate
for the petitioners
in CR-7578-2015 and

for the respondents
in CR-4427-2015.

SURINDER GUPTA, J.

(1) Both the above revision petitions have been taken up together as the same arise from order dated 02.07.2015 passed by Appellate Authority, Chandigarh, whereby mesne profits of the demised premises was assessed as Rs.90,000/- per month. While assessing the mesne profit, the Appellate Authority has taken into consideration lease deeds produced on record by petitioners-landlords in CR No. 7578-2015 and observed as follows:-

“15. The arguments advanced by the learned counsel for the parties are considered apart from perusing the record. It is correct that most of the lease deeds as produced by the learned counsel for applicants/landlords are executed with the companies/banks and the rent with the companies/banks is generally on the higher side.....On the other hand, lease deed produced by the learned counsel for the respondents/tenants are not in respect of companies/banks. However, these lease deeds reveals rent at a lower side then the lease deeds of applicant but these lease deeds also reflect the rent more than Rs.50000-60000/- as alleged by the respondents/appellants. Keeping in view the entire facts & circumstances of the present matter, the lease deeds produced by the learned counsel for both the sides, the location of the shop, the present rate of rent and the rate of market rent etc., the mesne profits are assessed to the tune of Rs.90,000/- per month.”

(2) While petitioners-tenants in CR-4427-2015 have sought reduction of mesne profits, petitioners-landlords in separate revision petition (CR-7578-2015) have sought enhancement of the same.

(3) At the very outset it has been submitted that the Appellate Authority has decided the appeal on merit against which revision has been filed, which is pending in this Court.

(4) Learned counsel for landlords in CR-7578-2015 while referring to lease deeds produced on record by landlords and also on the basis of citations referred by him could not make out that mesne profits as assessed by the Appellate Authority is exorbitant or on

higher side. However, learned counsel for landlords while referring to lease deeds which find mentioned in para 2 of the order passed by the Appellate Authority has argued that tenants have been let out complete ground floor and basement of SCO No. 819, Notified Area Committee, Manimajra, U.T. Chanidgarh. Even if prevailing rent of ground floor or basement or even half of the ground floor in that area be taken as base, rent of the demised premises works out to be Rs.4 lacs per month.

(5) It is a case where premises in question were let out under a lease agreement, which spells out terms of tenancy. After ejectment order, while fixing mesne profits, the purpose is to compensate the landlord for the delay in execution of ejectment order against which tenant has come in appeal or revision. There may be a case where the tenant has taken the premises on lease about 20 to 30 years back. Mesne profits payable by such tenant after ejectment cannot be compared with the rent settled with tenants of adjoining or nearby shops. Location and type of business being carried out in a premises is also material fact. Lease deeds produced by parties are only a guiding factor for the Court and are not to be blindly followed as in this case almost all the lease deeds produced by landlord are pertaining to premises let out to banks, which get so many additional facilities while taking the premises on rent.

(6) Keeping in view above facts, I am of the opinion that rent of the demised premises, which was let out @ Rs.25000/- per month with escalation clause in the lease deed executed in the year 1993 is adequate and reasonable, which calls for no interference. As per terms of lease deed, rent of demised premises in the year 2015 would have been around Rs.40,000/- per month, as such, mesne profits as assessed by Appellate Authority appears to be reasonable. It is, however, made clear that landlord-petitioners in CR-7578-2015 shall be at liberty to seek mesne profits in the revision petition stated to be pending against order of Appellate Authority and nothing observed herein shall come in the way while deciding that application.

(7) Both the revision petitions have no merit and are dismissed.

(8) There is application (CM-19253-CII-2017) under Section 340 Cr.P.C. filed by landlords for initiating criminal proceedings against tenants, namely, Rakesh Kumar and Parveen Kumar.

(9) Learned counsel for landlords has argued that tenants in their revision petition while seeking reduction of mesne profits assessed by the Appellate Authority have not disclosed area of the demised

premises and have wrongly given instances of tenancy in another premises, bearing SCO No. 814, Chandigarh-Kalka Road, Manimajra, Chandigarh and alleged that premises under tenancy of respondents-tenants is similar to tenancy in SCO No. 814. In fact entire ground floor and basement are on rent with respondents-tenants while half second floor portion of SCO No. 814 was given on rent. This Court believing said argument at bar reduced the mesne profits from Rs.1 lac to Rs.50,000/- per month.

(10) On perusal of order dated 16.07.2015, when notice of motion was issued to applicant-landlords, I find that no reference was made to any instance or premises while reducing the mesne profits as assessed by the Appellate Authority to Rs.50,000/- per month. Order dated 16.07.2015 passed by this Court reads as follows:-

“Notice of motion returnable by 7.10.2015.

In the meanwhile, operation of the impugned order shall remain stayed but subject to the following conditions:-

(i) that petitioners will clear all the arrears of mesne profits @Rs.50,000/- per month till date from the date of the ejectment order within 21 days from today; and

(ii) that the petitioners shall continue to pay the mesne profits at the same rate by 11th of each month till further orders.

In case the petitioners fail to comply with any of these conditions, then in that eventuality the stay order shall stand automatically vacated.”

(11) Learned counsel for applicants-landlords in support of his contention has relied upon judgments in cases *N. Natarajan* versus *B.K. Subba Rao*¹, *Swaran Singh* versus *State of Punjab*², Suo Motu Proceedings against *R. Karuppan, Advocate*³, *Ashok Kumar* versus *Sharda Kadan and others*⁴, *Kishorebhai Gandubhai Pethani* versus *State of Gujarat and another*⁵, *Afzauddin Ansari* versus *The*

¹ 2003 SCC (Cri.) 437

² 2002 (2) RCR (Criminal) 462

³ 2001 (5) SCC 289

⁴ 2012 (2) RCR (Criminal) 592

⁵ 2014 (2) Law Herald (P&H) 1180 (SC)

*State*⁶, *Nafar Chandra Jute Mills* versus *United Bank of India*⁷, *CTR Manufacturing Industries Ltd.* versus *Sergi Transformer Explosion Prevention Technologies Pvt LU and others*⁸, *Union of India and others* versus *Haresh Mrumal Milani*⁹, *Ram Narain* versus *The State*¹⁰, *Union of India and others* versus *Ramesh Gandhi*¹¹ and *Mott Lal Songara* versus *Prem Prakash W Pappu and another*¹².

(12) Revision petition filed by applicant-landlords has been heard on merit and decided. Tenants have given instances of lease deeds of adjoining premises while seeking reduction in the mesne profits while landlords have come up with lease deeds in their revision petition seeking enhancement of mesne profits. Pleas raised by parties make out no ground for initiating any proceeding under Section 340 Cr.PC. against respondents-tenants. The citations referred by learned counsel for applicants-landlords, as such, call for no discussion in detail.

(13) Application stands dismissed.

Payel Mehta

⁶ 1997 (1) Recent Criminal Reports 771

⁷ 2000 (9) SCC 545

⁸ 201d (1) RCR (Criminal) 131

⁹ 2017 (3) AfR Bonn. R 796

¹⁰ 17 (1980) Delhi Law Times 230

¹¹ 2012 (1) SCC d76

¹² 2013 (9) SCC 199