

Haryana Urban (Control of Rent and Eviction Act 1973 S. 4, 5 - Mesne profits - Once the tenant has been ordered to be evicted by the Rent Controller, then his status as a tenant is subject to the decision of the appellate Court - In such circumstances, the Courts have developed the concept of making the tenant liable to pay mesne profit which is nearly the market rent - Concept of mesne profit has been devised in order to enable the landlord to recover the market rent during the pendency of appeal and revisions - Hence, the mesne profit cannot be assessed only on the basis of fair rent fixed by the Rent Controller.

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(2022-3)207 PLR 381

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

SUSHIL MANGLA - Petitioner,

Versus

DEEPA MANGLA and others - Respondents.

CR Nos. 3648 and 7142 of 2019(O&M)

Haryana Urban (Control of Rent and Eviction Act, 1973 (II of 1973) Section 4, 5 - Mesne profits - Once the tenant has been ordered to be evicted by the Rent Controller, then his status as a tenant is subject to the decision of the appellate Court - In such circumstances, the Courts have developed the concept of making the tenant liable to pay mesne profit which is nearly the market rent - Concept of mesne profit has been devised in order to enable the landlord to recover the market rent during the pendency of appeal and revisions - Hence, the mesne profit cannot be assessed only on the basis of fair rent fixed by the Rent Controller.

Mr. Arihant Jain, for the petitioner in CR-3648 of 2019 for the respondent (in CR-7142 of 2019. *Mr. Kunal Mulwani and Ms. Shifali Goyal* for the petitioners in CR-7142 of 2019 for the respondent in CR-3648 of 2019

Anil Kshetarpal, J(Oral) - (6th April, 2022) - With the consent of the learned counsel representing the parties, hearing in a cross case i.e. Civil Revision No.7142 of 2019, is preponed to today. Taken on Board for final disposal.

2. By this order, two connected revision petitions i.e Civil Revision No.3648 and 7142 of 2019, shall stand disposed of.

3. The dispute is between the landlord and the tenant. One revision petition has been filed by the tenant, whereas the second petition has been filed by the landlord. The tenant has been ordered to be evicted by the Rent Controller vide judgment dated 18.09.2018. While granting protection from eviction, the Appellate Court has ordered the tenant to pay mesne profit for use and occupation of the tenanted premises @ Rs.90,000/- per month. For this purpose, the Appellate Authority has relied upon a lease deed executed with respect to SCF No.1, whereas the property in question is SCF No.2 & 3.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the tenant contends that on the application of the landlord, the fair rent of the tenanted premises was determined @ Rs.32,740/- , therefore, the order passed is wrong.

6. Per contra, the learned counsel representing the landlord contends that the Appellate Authority has committed a factual error in calculating the amount of mesne profit.

7. The fixation of fair rent under Section 4 and 5 of the Haryana Urban (Control of Rent and Eviction Act, 1973 (hereinafter referred to as 'the 1973 Act') is entirely a different concept. The fair rent is not synonymous with the expression mesne profits as per the provisions of the 1973 Act. Once the tenant has been ordered to be evicted by the Rent Controller, then his status as a tenant is subject to the decision of the appellate Court. In such circumstances, the Courts have developed the concept of making the tenant liable to pay mesne profit which is nearly the market rent. This concept has been devised in order to enable the landlord to recover the market rent during the pendency of appeal and revisions. Hence, the mesne profit cannot be assessed only on the basis of fair rent fixed by the Rent Controller.

8. No doubt, the Appellate Authority has committed an error in overlooking the fact that the tenant is also in occupation of the ground floor. However, be that as it may. The first appeal filed by the tenant is pending for the last 4 years.

9. Keeping in view the aforesaid facts, both the revision petitions are disposed of while directing the tenant to continue paying the amount of mesne profit as determined by the Appellate Authority.

10. The Appellate Authority is requested to dispose of the pending appeal positively, within a period of 3 months, from today.

All the pending miscellaneous applications, if any, are also disposed of.

R.M.S. – Petition disposed of.