

While fixing the mesne profits, registered lease deeds are a valid parameter and a toolbar to fix the mesne profits. It was held that the assessment should be on the basis of some relevant material and the tenant should be protected so that the amount which is to be deposited can be refunded in case the appeal is successful. The lease deeds also were to be of the same locality and of a similar building to show the prevalent rate of rent which the landlord was entitled during the pendency of the appeal of the tenant. The relevant observations read thus:-

*"8. The other questions that requires consideration is the mode of determination of the mesne profits or compensation payable. In this respect, it is appropriate to note that the same is to be done on the basis of materials placed on record by the parties. The parties would be at liberty to place cogent evidence by way of recent registered lease deeds of the locality to show their amount of rent which is payable. It is on the basis of such convincing material that a provisional assessment of the compensation/damages which the tenant is liable to pay the landlord pending his appeal or revision against an order of ejectment, can be determined. This provisional assessment that has been made would be subject to adjudication at the time of final disposal of the appeal or revision as the case may be. If the final adjudication by the appellate or revisional Court in respect of the damages or compensation payable by the tenant is at variance with the provisional order, the landlord would be liable to reimburse or refund the excess amount deposited by the tenant and in case of deficient deposit, the tenant shall be liable to make good the deficient amount. In fact in Atma Ram Properties case (supra), the Hon'ble Supreme Court held that reversal of interim orders passed at the interim stage due to final decision going against the party securing the interim order in its favour would entitle the successful party to demand (a) restitution of benefit earned by the opposite party under the interim orders or (b) compensation for what it has lost. It was observed that to grant such relief is the inherent jurisdiction of the Court and application of the above principle by analogy to support imposition of conditional or periodical deposit of reasonable sum in Court is the pre condition for grant of stay of execution of decree for eviction. Therefore, in case the party filing the appeal or seeking revision of the order is successful it would be entitled to restitution of the interim benefit which has been granted to the respondent in the appeal or the revision.*

*Insofar as the objection of Shri M.L. Sarin, Senior Advocate as regards the inadmissibility of documents on account of the lease deed being inadmissible for want of registration, it is appropriate to note that there is no dispute to the said proposition that an un-registered lease deed signed by the lesser and lessee is inadmissible in evidence, as has been held in several decisions, c.f. Satish Chand Makhan v. Govardhan Das Byas , Bajaj Auto Limited v. Behari Lal Kohli A.I.R. 1989 S.C. 1606 and Anthony v. K.C. Ittoop and Sons and Ors. (2006) 6 S.C.C. 394. It has already been held that the provisional assessment is to be made on the basis of cogent and credible evidence which would necessarily mean that inadmissible evidence like unregistered lease deeds which are required to be registered compulsorily in terms of Section 17(1)(d) of the Registration Act, 1908 are not taken into account."*

*Surender Kumar v. Rattan Lal, (2006-2)143 PLR 200*

referred in [2017 PLRonline 0106 \(P&H\)](#)