

2014 PLRonline 0203

Punjab and Haryana High Court

G.S Sandhawalia, J.

Vardhman Holdings Ltd. v. Ranbir Singh

C.R No. 7926 of 2014 (O&M)

17.12.2014

Mr. O.P Goel, Sr. Advocate, with Mr. Bhawesh Chaudhary, Advocate, for the petitioner. Mr. Divanshu Jain, Advocate, for the caveator-respondents.

G.S SANDHAWALIA, J.

The present judgment shall dispose of the abovesaid revision petition alongwith C.M No. 26865-CII of 2014 which has been filed by the tenant-respondent in C.R No. 7230 of 2014 for recalling the order dated 30.10.2014, whereby, the revision petition filed by the landlords was dismissed seeking enhancement of the mesne profits which is @ Rs. 1,50,000/- per month and the order of the Appellate Authority dated 26.09.2014 has been upheld. In the main revision petition i.e C.R No. 7296 of 2014, the tenant/petitioner is challenging the fixation of mesne profits vide the same order in the revision petition which has been filed subsequently.

2. Counsel for the petitioner-tenant has vehemently contended that the Appellate Authority was not justified in fixing the mesne profits at such a high rate and submitted that in the same building, tenants are paying @ Rs. 8 per sq. ft. whereas in adjoining areas in the same sector, the rate of rent varies to a maximum of Rs. 40 per sq. ft. whereas, in the present case, since the tenant is in occupation of 1860 sq. ft., the rent works out at Rs. 80 per sq. ft., which is on excessive side. He submits that in the absence of an valuation report and keeping in view that the lease deed provided of an increase clause of 10%, the amount is fanciful and whimsical and accordingly, submitted that the order is liable to be set aside. The application bearing C.M No. 26865-CII of 2014 for recalling in the connected petition i.e C.R No. 7230 of 2014 is also being argued on the ground that the landlord, by virtue of the findings recorded by this Court on 30.10.2014, has tried to oust the petitioner by filing revision petition first for enhancement of the mesne profits and, therefore, the order should be recalled and the matter should be remanded to the Appellate Authority. Reliance has been placed on the observations of the Apex Court in Mohammad Ahmad v. Atma Ram Chauhan, (2011) 7 SCC 755 and R.K Bansal v. Jag Parvesh Sharma, 2012 (4) CCC 845 and also the judgment of the Bombay High Court in Super Max International Pvt. Ltd. v. State of Maharashtra, 2009 (2) Mh.LJ 134 which was further upheld by the Apex Court in State of Maharashtra v. Super Max International Pvt. Ltd., (2009) 9 SCC 772.

3. The premises in question, as noticed, measures 1860 sq. ft. and is situated on the first floor of SCO No. 1-3, Sector 17-B, Chandigarh. The rent petition was instituted on

25.10.2007 by the landlords contending that there was a registered lease deed dated 09.04.1996 and renewed from time to time and finally, vide agreement dated 30.11.2004, renewal was for a period of 3 years from 01.09.2004 to 31.08.2007 and the rate of rent was Rs. 22,600/- per month. The ground was of sub-letting and arrears from 01.10.2007 Eviction order was passed on 23.08.2014 by the Rent Controller on the ground of sub-letting whereas on the ground of non-payment, the petition was rendered infructuous in view of the fact that the rent assessed by the Court had been paid.

4. In appeal, the application for mesne profits was filed by the landlords wherein, specific averment was made that the building in question comprised of 6 floors including the basement and there were many tenants in the building in question. The tenants on the second and third floor namely Crayons Advertising Ltd. and Mega Cabs. Ltd. were occupying 811 sq. ft. and paying monthly rent of Rs. 68,935/- which translated to Rs. 85 per sq. ft. which they had occupied in the year 2010 @ Rs. 1,40,000/-. Another tenant, the IDBI Bank Ltd. was occupying 1860 sq. ft. The rent had thereafter been increased to Rs. 1,61,000/- w.e.f August, 2014 but the execution of the registered lease deed was, however, under process. As per the enhanced rent, the rent came to Rs. 87 per sq. ft. Another tenant namely Legrand on the second floor was occupying same area and was paying rent of Rs. 1,71,957/- and the rent came to Rs. 92.45 per sq. ft., however, the last lease deed was unregistered though the TDS certificates were attached. The claim was made for Rs. 2,04,600/- on the ground that there was area of 1000 sq. ft. comprising of balconies and the rent was not less than Rs. 110 per sq. ft.

5. The application was contested by submitting that the lease deeds had been executed during the pendency of the ejection petition by the respondents in favour of the tenants. The bank had vacated the premises because the rent was too high and the letter that the fresh lease deed was under process could not be taken into consideration. It was accordingly submitted that the lease deeds were the handy works of the landlords only to increase the rent and it was not the prevalent rent. It was pleaded that the ground floor of the same building had been leased out to the State Bank of India who was paying Rs. 27,500/- for 3500 sq. ft. since 2006 though the [tenancy](#) had started earlier and thus, the rate was Rs. 8 per sq. ft. Other lease deeds of properties in Sector 17, Chandigarh were also relied upon to show that the rent varies from Rs. 11 to Rs. 40 per sq. ft. and, therefore, the mesne profits claimed were unreasonable.

6. The Appellate Authority, in the order impugned, tabulated the lease deeds relied upon by the landlord and the tenants respectively and rejected the ones which pertain to the year 2003-04 keeping in mind the order of eviction dated 23.08.2014 Similarly, the other lease deeds belonging to Sector 17, Chandigarh for two different portions were rejected on the ground that they were not similarly situated and located. The unregistered lease deed relied upon of the same building by the landlord was also excluded. The lease deed dated 11.10.2012 in respect of 811 sq. ft. for Rs. 74,734/- @ Rs. 92 was kept in mind and also the one on the third floor of the same building which was fetching Rs. 1,40,000/- in September, 2010 with a stipulation of 15% increase after every 3 years. It was noticed that in September, 2014, the rent was increased to 1,61,000/- by IDBI Bank. Accordingly, the impugned order was passed directing that the amount be deposited in fixed deposit minus

the accrued rent protecting the interest of the tenant. The amount was to be deposited within a period of 30 days and to be deposited by the 10th of each calendar month.

7. As noticed, the landlords approached this Court at an earlier point of time on 30.10.2014 praying for enhancement as claimed for in the application for mesne profits and this Court, keeping in view the law laid down by the Apex Court held that the discretion exercised was reasonable since the mesne profits had been awarded on the basis of the registered lease deeds of the same building. The relevant observations read thus:-

“After hearing the counsel for the petitioners, this Court is of the opinion that the Appellate Authority has reasonably been prudent enough and has exercised discretion by relying upon the lease deed of the same SCO while fixing the mesne profits. The lease deed of second floor pertaining to year 2012 is for Rs. 1,40,000/- whereas fresh lease deed of September, 2014 of the 3rd floor is of Rs. 1,61,000/-. The eviction order in the present case is of August, 2014 and therefore, the amount of Rs. 1,50,000/- is quite reasonable and akin to the rate of rent which the landlords are getting from other tenants. This Court cannot also lose sight of the fact that the premises on the ground floor of Sector 17 have greater advantage than the one situated on the 1st, 2nd and 3 floor as access is limited to the floors on top. In such circumstances, slight variation from floor to floor is bound to occur and fixation of mesne profits is not possible with exactitude at the market rate as noticed by the Appellate Authority in the order which has been passed interse the parties. The mesne profits have thus been assessed at the rate of Rs. 1,50,000/- per month from Rs. 22,600/- the agreed rate of rent and therefore, the interest of the landlords has been kept in mind, and it is settled principle that a fanciful or punitive rate of mesne profit is not to be fixed. Accordingly, this Court is of the opinion that there is no scope for interference with the impugned order.”

8. As noticed, counsel for the petitioner has submitted that since when the eviction petition was filed, the rate of rent was Rs. 22,600/- and in the first lease deed dated 09.04.1996, there was an increase clause of 20%. It is submitted that subsequently on 30.11.2004 increase was of 5% on completion of lease period of each year and in such circumstances, it is pointed out that once the bank on the ground floor is paying only Rs. 8 per sq. ft. and the tenant in SCO No. 99-100, Sector 17-B, Chandigarh was paying Rs. 40 per sq. ft. only, it was not justified to fix the mesne profits at Rs. 80 per sq. ft. It is submitted that in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2005) 1 SCC 705, the Apex Court had only fixed the rent at Rs. 15,000/- though the corresponding building was getting Rs. 3,50,000/-. Similarly, in *R.K Bansal's case* (supra), lease deeds were of properties at Rs. 65,000/- but rent had only been fixed at Rs. 25,000/-. The valuation of the building having not been made, as held by the Bombay High Court in *Super Max International's case* (supra), the order was not justified.

9. Counsel for the landlord, on the other hand, submitted that the reliance upon the lease deeds pertaining to SCO No. 1-3, Sector 17-D, Chandigarh were of lessors already in occupation and similarly, also the premises in question situated in SCO No. 99-100. It was submitted that in such circumstances, no reliance can be placed upon the lease deeds (Annexures P-13 and P-14). It is pointed out that photocopy of the registered lease deed

dated 17.09.2014 executed by the bank in favour of the landlords was placed on record to submit that the rate of rent had been enhanced to Rs. 1,61,000/- and the bank had not vacated, as pleaded. Accordingly, it is similarly argued that the rate of rent on the second floor was @ Rs. 92 per sq. ft. and thus, the Appellate Authority is well justified in fixing the mesne profits. He also handed over the assessment of the rent of the adjoining building wherein, the Municipal Corporation assessed the rent @ Rs. 147.72 per sq. ft. as per CPWD norms on the basis of the prevailing Collector rate.

10. After hearing counsel for the parties, this Court is of the opinion that the order is liable to be upheld. Admittedly, this Court in *Surinder Kumar v. Rattan Lal*, 2006 (2) PLR 200, while considering the law on this aspect and after placing reliance upon *Atma Ram Properties' case* (supra) and *Anderson Wright and Co. v. Amar Nath Roy*, 2005 (2) RCR (Civil) 831, held that the determination of mesne profits is to be done on the basis of recent registered lease deeds of the locality to show the amount of rent which is payable. The reasoning is the registered lease deeds were cogent and credible evidence which would necessarily mean that inadmissible evidence like unregistered lease deeds are not taken into account in view of the fact that registration was mandatory under Section 17(1)(d) of the Registration Act, 1908. Thereafter, the judgments of the Apex Court have also come in *Mohammad Ahmad's case* (supra) and *Super Max International Pvt. Ltd.'s* (supra). The basic principle which is to be kept in mind is that the tenant is under a bounden duty to pay the rent which is akin to the market rent since the earlier lease deed inter se the parties has come to an end as has been held by the Apex Court in *Atma Ram Properties's case* (supra). The argument of the counsel that in the adjoining building, the rate of rent of adjoining building was not fixed is without any basis as in the said case, the landlord was in appeal as the High Court had set aside the order of fixing of mesne profits and only the principle was being laid down and the mesne profits had already been fixed by the Rent Control Tribunal. The issue of valuation would not arise as, admittedly, not only the registered lease deeds of similarly situated building have been taken into consideration but in the present case, the registered lease deed of the same building which were available of the same area and which had been entered into at an earlier point of time have been taken into account. Merely because they had been entered prior to the eviction order would not mean that there was any collusion as such with the landlord. The said tenants were independent persons who had entered into the lease deeds for taking the property for commercial purposes and were deducting tax on the same and, therefore, it cannot be said that there was collusion as such to enhance the rent and the argument which is raised is too far fetched to merit acceptance. The principles of landlord getting the market rate has also been thereafter fixed by the Apex court in *Mohammad Ahmad's case* (supra) to minimize the landlord-tenant litigation so that the landlord gets the reasonable rent.

11. In the present case, in view of the best tool bars available with the Appellate Authority of the same building and of identically situated premises, this Court is of the opinion that there is no scope for interference in the well reasoned order. Accordingly, C.R No. 7926 of 2014 is dismissed.

12. Keeping in view the observations made herein, C.M No. 26865-CII of 2014 filed in C.R No. 7230 of 2014 also does not warrant any reason to recall the order dated 30.10.2014

and the present application also stands dismissed.