

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****110****CR-7138-2024 (O&M)****Date of decision: 10.01.2025****Suman @ Shammi Kumar Verma (deceased) through LRs****...Petitioner(s)****Vs.****Manoj Kumar & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Mona Goyal, Advocate
for the petitioner.

NIDHI GUPTA, J.

Challenge in the present petition is to the order dated 30.04.2024 (Annexure P1) passed by the learned Additional District Judge, Bathinda, whereby the application filed by the respondent/landlord for assessment of mesne profit, has been allowed; and the petitioner has been directed to pay mesne profit at the rate of Rs.20,000/- per month.

2. Learned counsel for the petitioner inter alia submits that the petitioner is a poor person and does not have the capacity to pay the excessive mesne profits as directed vide the impugned order. It is pointed out that the demised premises is very small in size, situate only on the ground floor portion which is part of 50 years old building which is situated at narrow railway road. The Shop in question is part of a bigger building belonging to the respondent/landlord which comprises of about 3 floors out of which rear portion of ground floor, entire first floor, entire second floor are in possession of the landlord himself, who is conducting / running their own business of Hotels namely Manoj Hotel, Hotel Bansi



Dhar, Hotel Paras etc. The demised premises in question has its small entrance towards railway road with narrow rear portion. The shop in question on a narrow-congested railway road. It is contended that thus, the said amount of Rs.20,000/- per month is excessive, inflated and exorbitant. It is reiterated that the demised premises is only a small ground floor shop in which the petitioner is running a small business.

3. It is also contended that the rent of the shops situated in the same street/locality is in the range of Rs.4-5 thousand per month. The petitioner had even produced rent receipts issued by the Municipal Corporation of similar shops with 10 feet verandah. However, the said evidence has been overlooked by the learned Additional District Judge while passing the impugned order. Thus, the assessed mesne profit is much more than the ongoing market value/prevaling rent of adjoining shops of similar size, age of building, situation of premises. It is accordingly prayed that the present petition be allowed and the mesne profits assessed vide the impugned order dated 30.04.2024 (Annexure P1) by the learned Appellate Authority, Bathinda be modified and reduced.

4. It is repeatedly reiterated that the petitioner is a poor person running a very small shop, and is, therefore, unable to pay the assessed mesne profit.

5. No other argument is raised on behalf of the petitioner.

6. I have heard learned counsel for the petitioner and perused the case file in great detail.



7. Brief facts of the case are that originally father of respondent No.1 was the owner in possession of the demised premises (describable as shop/property bearing Municipal No.4855, situated on Railway Station, Bathinda as shown in red colour in site plan having boundaries at present as under:- East: Tenant Harish Chander/street; West: Railway Road; North: Yash Vaishnu Dhaba; South: Pappu Vaishnu Dhaba);and he had rented out the same to the father of the petitioner more than 40 years ago for a sum of Rs.850/- per month. Father of the respondent no.1 died in 2001 and thereafter respondent No.1 became the owner; and sought eviction of the petitioner from the said property by way of eviction application under Section 13 of the East Urban Punjab Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') dated 19.05.2017. The said petition was allowed by the learned Rent Controller, Bathinda vide order dated 09.10.2023 (Annexure P3). The said order was challenged by the petitioner before the learned Additional District Judge, Bathinda by way of RA No.23/2023, which is pending.

8. In the said appeal, the respondent No.1 filed an application dated 'Nil' (Annexure P4), for assessment of mesne profits asserting there in that the petitioner was in arrears of rent at the rate of Rs.850/- per month from 17.05.2017; and that the prevailing rate of rent for premises having lesser area was Rs.41,000/- per month and other shops in the nearby locality were drawing rent at the rate of Rs.1.5 lakh per month. Reply thereto dated 29.02.2024 (Annexure P5), was duly filed



by the petitioner deny the above said assertions of the respondent/landlord. Vide impugned order dated 30.04.2024 (Annexure P1), the said application of the respondent No.1 for assessment and grant of mesne profits has been allowed.

9. It is the contention of the petitioner that the mesne profits have been assessed on a higher rate than the prevailing rate of rent in the nearby premises. However, the said argument of the petitioner is contrary to the facts on record as it was found that the demised premises are situated on the Railway Station, Bathinda abutting the GT road and were in a highly active commercial area of the town. On the basis of evidence led by the parties including the lease deeds of nearby shops presented by respondent No.1, the learned Appellate Authority concluded that rent of similarly situated buildings nearby was Rs.1.5 lakh per month. It is also admitted fact on record that the demised premises are situated on the Railway Road near the Railway Station which would obviously be a very busy and commercially active area.

10. It has next been submitted that the petitioner has also submitted an affidavit dated 06.03.2024 (Annexure P12) before the learned Appellate Authority, wherein he had voluntarily offered for enhancement of rent. In the said Affidavit, the petitioner has mentioned certain citations. It is contended that the said case law has not been dealt with by the learned Appellate Authority while passing the impugned order. The said contention of the petitioner is also incorrect as a perusal



of Paras 12, 13, 14, 15 and 16 of the impugned order dated 30.04.2024 shows that the case law cited by the petitioner has been duly considered and rejected by way of cogent reasoning.

11. It is also to be noted that vide the impugned order, the mesne profits have been made payable from the date of eviction order i.e. 09.10.2023 until decision of the appeal on merits.

12. In view of the above, I find the mesne profits as assessed vide the impugned order to be just and fair in the facts and circumstances of the case. Present petition accordingly stands **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

10.01.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No