



**138 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.577 of 2025
Date of decision : 03.02.2025**

Rashpal Singh GillPetitioner

Versus

Paramjit KaurRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Manmohan Kaur Dhaliwal, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Tenant is in revision aggrieved of order dated 05.12.2024 passed by Appellate Authority, Ludhiana whereby the petitioner has been directed to pay *mesne* profits @ 15,000/- per month during the pendency of appeal as a condition for staying the operation of the Appellate Authority.

2. Tenant has been ordered to be evicted in a petition filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 by respondent/landlord. Property is in form of residential house measuring 125 Sq. Yards comprised of 3 rooms, 1 bathroom, toilet, kitchen and a store. Petitioner has been ordered to be evicted for non-payment of rent since June, 2000. The petitioner was inducted as a tenant in the year 1995 @ Rs.1900/- per month. Appellate Court has stayed the eviction order subject to payment of Rs.15,000/- per month on account of *mesne* profits.



3. Learned counsel for the petitioner while assailing the impugned order passed by the Appellate Authority submits that the Rent Controller has assessed monthly rent @ Rs.1900/-. Thus, Appellate Authority erred in assessing *mesne* profits @ 15,000/- per month which is almost 10 times the agreed rate of rent. It has been contended that without there being any basis for assessing the *mesne* profits, petitioner/tenant has been directed to pay *mesne* profits @ Rs.15,000/- per month which is illegal and cannot be sustained in the eyes of law.

4. I have heard counsel for the petitioner and have carefully gone through records of the case.

5. It is matter of record that the tenant has been ordered to be evicted by the Rent Controller vide order dated 15.05.2024 for being in arrears of rent since June, 2000.

6. Right of the tenant in appeal against eviction order to remain in possession has been made subject to payment of user charges and *mesne* profits by Supreme Court in the case of '**Aatma Ram Properties (P) Limited vs. Ms. Federal Motors (P) Limited**' (2005) 1 SCC 705 observing as under :

“16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case



of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.

17. In the Delhi Rent Control Act, 1958, the definition of a “tenant” is contained in clause (l) of Section 2. Tenant includes “any person continuing in possession after the termination of his tenancy” [Section 2(l)(ii)] and does not include “any person against whom an order or decree for eviction has been made” [Section 2(l)(A)]. This definition is identical with the definition of tenant dealt with by this Court in *Chander Kali Bai case* [(1977) 4 SCC 402] . The respondent tenant herein having suffered an order for eviction on 19-3-2001, his tenancy would be deemed to have come to an end with effect from that date and he shall become an unauthorised occupant. It would not make any difference if the order of eviction has been put in issue in appeal or revision and is confirmed by the superior forum at a latter date. The date of termination of tenancy would not be postponed by reference to the doctrine of merger.

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In



Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

19. To sum up, our conclusions are:

(1) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.”

7. Thus, the argument raised by counsel for the petitioner that the Rent Controller assessed monthly rent @ Rs.1900/- per month ought not



have assessed the *mesne* profits afresh is without merit and the same cannot be accepted.

8. The issue of assessment of *mesne* profits in the absence of there being any evidence came up before this Court in the case of **Angoori Devi and others vs. Smt. Satya Bhama, reported as 2016(2) Law Herald (P&H) 1200** wherein after discussing the judgments passed in **Atma Ram Properties' case (supra), Anderson Wright's case (supra), Achal Misra's case (supra), Crompton Greaves Ltd. vs. State of Maharashtra, (2005) 11 SCC 547; Pradeep Kumar vs. Hajari Lal, (2008) 3 SCC 299, Niyaz Ahmad Khan vs. Mahmood Rahmat Ullah Khan and another, 2008(1) R.C.R. 596 (S.C.); Surinder Kumar vs. Rattan Lal, reported as 2006(2) R.C.R. (Rent) 26; Chandrakant Dhannu vs. Sharmila Kapur, passed in Writ Petition No.6858 of 2008, decided on 07.01.2009 and The State of Maharashtra and another vs. Super Max International Pvt. Ltd. and others, AIR 2010 SC 722**, Co-ordinate Bench observed as under :

“A perusal of the above judgment indicates that the Courts have drawn a balance between the two competing claims by fixing *mesne* profits at a rate between the contractual rent and the market rent. In the circumstances, it has to be held that there could be no straight jacket formula while fixing the amount of *mesne* profits in such cases and the Courts would have to be guided by the facts of each case and the judgments extracted above.”

9. Following the aforesaid dictum, Appellate Court while passing the impugned order observed as under :



7. In the present case also there are no Rent documents placed on record regarding rate of rent prevailing in area to assess rate of rent in the locality where Impugned premises measuring 125 sq.yards comprising three rooms, one bathroom, toilet and kitchen etc is situated. In the year 1995 premises in question was rented out @ Rs.1900/- per month. In present like cases Court is directed to take guidance from rate of gold which is directly proportional to the rate of inflation. Since the year 1999 rate of gold has increased by 15.25 times. So considering the area of the tenanted premises and the locality where it is so situated and finding that tenanted premise is an independent sufficient residential area Mesne profit @ Rs.15,000/- are assessed. Respondent/appellant Rashpal Singh Gill will pay mesne profit @ Rs.15,000/- per month from the date of eviction order i.e. 15.05.2024. Accordingly present application filed by applicant/petitioner Paramjit Kaur is disposed off with direction to Appellant/Respondent to deposit the arrears of mesne profits within two months and further till the disposal of appeal. He will continue to deposit mesne profits at said rate by 12th of every month and if there is holiday on these day, payment be made on next working day.

10. In view of above, this Court does not find any merit in the present revision petition. There being no ground to interfere in the impugned order, the present revision petition is ordered to be dismissed.

February 03, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No