

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

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Date of decision: 11.02.2025

CR-6282-2024 (O&M)

Asha Rani

...Petitioner(s)

Vs.

Rajesh Rajput & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kartik Gupta, Advocate
for the appellant.

NIDHI GUPTA, J.

Petitioner/tenant has filed the present petition under Article 227 of the Constitution of India seeking setting aside of impugned order dated 16.11.2023 (Annexure P10) passed by learned Appellate Authority, Hoshiarpur as illegal, ultra vires, void and without jurisdiction and further that the application (Annexure P8) filed by the respondent No.1 for assessment of mesne profits/damages for use and occupation of the house in dispute, be dismissed.

2. Learned counsel for the petitioner/tenant inter alia submits that the impugned order is unsustainable on account of the fact that admittedly vide order dated 10.08.2016 (Annexure P-5), the Rent Controller had assessed the rent of the demised premises at the rate of Rs.100/- per month keeping in mind the fact that the demised premises are in a very dilapidated condition. It is contended that as per judgment of the Hon'ble Supreme Court in "**Mohammad Ahmad & Another Vs. Atma**



Ram Chauhan & Others” Law Finder doc ID # 253506, rent could have been increased thereafter, only at the rate of 10%. Whereas, in the present case vide the impugned order the same has been assessed as ₹5000/- per month that is, the rent has been increased by 500%. It is accordingly prayed that the impugned order is unsustainable and deserves to be set aside.

3. No other argument is made on behalf of the petitioner.
4. I have heard learned counsel for the petitioner and perused the case file in great detail.
5. Perusal of record of the case shows that the petitioner was inducted as a tenant in the demised premises on 14.05.2014 at the mutually agreed rate of rent of Rs.4,000/- per month. As the petitioner had failed to pay rent, the landlord/respondent No.1 herein had moved an application dated 12.10.2015 (Annexure P1) under Section 13 of the East Punjab Rent Restriction Act, 1949 for ejection of the petitioner from the house/demised premises on the grounds of arrears of rent, personal necessity, and the dilapidated condition of demised premises. It was the case of the respondent/landlord that rent was payable at the rate of Rs.4,000/- per month. However, during pendency of the said proceedings at the time of determining the provisional rent, the petitioner had placed on record rent receipts as per which the rate of rent is mentioned as Rs.100/- per month. As such, the Rent Controller had determined the arrears of rent at the rate of Rs.100/- per month from 14.09.2014 (the



date from which petitioner had failed to pay rent) to 13.10.2015 (till the filing of the petition). As such, it is very misleading for the petitioner to submit that the rent was determined by the Rent Controller to be Rs.100/- per month.

5(i) Thereafter vide order dated 19.10.2022 (Annexure P6), the rent application of the respondent was allowed with costs and the petitioner was directed to hand over vacant physical possession of the entire premises in dispute to the respondent/landlord within two months from the date of passing of order. The said order was challenged by the petitioner before the learned Appellate Authority by way of Appeal dated 14.11.2022 (Annexure P7). In the said proceeding, the respondent filed application dated 19.07.2023 (Annexure P8) for assessment of mesne profit/damages for use and occupation of the house in dispute at the rate of Rs.15,000/- per month as per market/area rate till the decision of the appeal. It is in the said application of the respondent/landlord that the learned Appellate Authority vide impugned order dated 16.11.2023 has assessed the mesne profits at the rate of Rs.5,000/- per month. It is pertinent to note the direction given in the impugned order as follows:-

“As such, tenant/ appellant is directed to pay mesne profits @ Rs.5000/- per month to the petitioner/ respondent/ landlord from the date of judgment and decree dated 19.10.2022 till the handing over the vacant possession of the demised premises. Thus, the application for mesne profits stands disposed of accordingly.

At the same time as tenant/appellant is directed to pay the mesne profits till the handing over the vacant possession of the demised premises, so no prejudice is going to be caused



to the landlord if the operation of impugned eviction order is stayed. Accordingly, the operation of the impugned order is stayed.”

6. The said order has been challenged by the petitioner before this Court by way of the present petition filed on 24.10.2024. From the above facts, it would appear that the petitioner has enjoyed the stay granted by the learned Appellate Authority without payment of mesne profits for over one year till date.

7. Be that as it may, the sole contention of the petitioner is that as per judgment of the Hon’ble Supreme Court in **Mohammad Ahmad (supra)** mesne profit could not have been enhanced beyond the rate of 10%. The said argument is utterly misleading as it is clearly stated in the said judgment that “*..The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years...*”. Thus, I find no infirmity in the impugned order. The argument of the petitioner is based on a misreading of the above judgement.

8. The present petition is accordingly, **dismissed**.

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

11.02.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No