

Neutral Citation No. - 2024:AHC:95793

A.F.R.

Reserved On: 17.5.2024

Delivered On :27.5.2024

Case :- S.C.C. REVISION No. - 76 of 2024

Revisionist :- Punjab National Bank Earlier Oriental Bank Of Commerce

Opposite Party :- Sanjeevani Shiksha Samiti

Counsel for Revisionist :- Saurabh Kumar Pandey, Sr. Advocate

Counsel for Opposite Party :- Utkarsh Birla

Hon'ble Neeraj Tiwari, J.

1. Heard Sri P.K. Jain, learned Senior Advocate assisted by Sri Saurabh Kumar Pandey, learned counsel for the revisionist and Sri Atul Dayal, learned Senior Advocate assisted by Mr. Utkarsh Birla, learned counsel for the opposite party.

2. By way of present revision, revisionist is assailing the impugned order dated 27.2.2024 passed in S.C.C. Suit No. 7 of 2008 by the Judge, Small Causes Court/ADJ Court No.7, Ghaziabad.

3. Case was heard on 17.5.2024, Court has passed the following order:-

“1. Heard Sri P.K. Jain, learned Senior Advocate assisted by Sri Saurabh Kumar Pandey, learned counsel for the revisionist and Sri Atul Dayal, learned Senior Advocate assisted by Mr. Utkarsh Birla, learned counsel for the opposite party.

2. Sri P.K. Jain, learned Senior Advocate assisted by Sri Saurabh Kumar Pandey, learned counsel for the revisionists submitted in the present revision impugned order is having two parts; first about the vacation of commercial house in question occupied by the Punjab National Bank Earlier Oriental Bank Of Commerce and second about the decretal amount and enhancement of mesne profit at the rate of 15% per annum.

3. So far first part is concerned, he is ready to vacate the commercial house in question within one year and also pay the monthly rent of Rs. 3,27,000/-

for the same period, which is not objected by Mr. Atul Dayal, learned Senior Advocate appearing on behalf of petitioner.

4. So far second part is concerned, he is having no objection to the decretal amount, but he is challenging the enhancement of mesne profit at the rate 15% per annum.

5. Heard learned counsel for both the parties on this issue.

6. Judgement reserved.

7. Put up this case for order on 27.5.2024.

8. Till the delivery of judgment, parties shall maintain status quo as on date.”

4. Considering the submission made by learned counsel for the revisionist in aforesaid order dated 17.5.2024, he is granted one year time to vacate the commercial accommodation from today with following condition;

(i) Revisionist is directed to file affidavit within two weeks from today before learned Judge, Small Causes Court/ADJ Court No.7, Ghaziabad to vacate the commercial accommodation in question within the time given by the Court.

(ii) Revisionist is directed to deposit all decretal amount within four weeks from today before learned Judge, Small Causes Court/ADJ Court No.7, Ghaziabad. In case, any amount is already deposited, same shall be adjusted against the decretal amount.

(iii) Revisionist is also directed to pay Rs. 3,27,000/- as monthly rent of commercial accommodation in question per month on month to month basis on or before 7th day of every month till the vacation of house.

(iv) In case of failure of fulfilment of any conditions so imposed by the Court, this order would lost the effect and plaintiff- respondent is at liberty to proceed against the defendant-revisionist in accordance with law.

5. Accordingly, the revision is **disposed of** so far it relates to vacate the commercial accommodation in question only.

6. Learned Senior Counsel submitted that in the year 2021 by enactment of State Legislation, Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred to as Act, 2021) came into force, which provides maximum enhancement of mesne profit at the rate of 7% per annum for non residential building, therefore, in all eventuality, mesne profit may not be enhanced beyond 7%. In the present case, it has been enhanced to the tune of 15% per annum. In support of his contention he has placed reliance upon the judgment of Apex Court in the cases of *State of Maharashtra and another vs. Super Max International Private Limited and others reported in (2009) 9 SCC 772* and *Smt. Anguri Devi Since Deceased and 10 others vs. Smt. Sampatti Devi and 10 others* passed in Writ-A No. 2853 of 2024 decided on 26.2.2024.

7. Per Contra, Sri Atul Dayal, learned Senior Advocate assisted by Mr. Utkarsh Birla, learned counsel for the opposite party has vehemently opposed and submitted that present impugned order has been passed pursuant to S.C.C. Suit No. 7 of 2008 and at that point of time Act, 2021 was not in force. Even U.P. Act No. 13 of 1972 was also not applicable. He firmly submitted that only way to fix the enhancement of mesne profit is market rate. He has produced the market rate through affidavit before the SCC Court, which was neither denied nor controverted by any affidavit contrary to that and considering the same mesne profit alongwith enhancement of 15% has been fixed. In support of his contention, he has placed reliance upon the judgment of Apex Court as well as this Court in the cases of *Atma Ram Properties (P) Ltd. Vs. M/s. Federal Motors Pvt. Ltd. reported in 2005 (2) ARC 936* & *Union of India and another vs. Smt. Suman Gupta and others reported in 2004 (1) ARC 330*.

8. I have considered the rival submissions advanced by the learned counsel for the parties and perused the judgment relied upon. The submission of learned counsel for the petitioner is that Act, 2021 provides for enhancement of mesne profit only at the rate of 7% in case of non residential accommodation beyond that no enhancement can be made.

There is no doubt on the issue that suit was filed in the year 2008 and on that date Act No. 2021 was not in existence, therefore, any provision of Act would not be applicable.

9. Apart that I have also perused the Section 9 of Act, 2021, which provides Revision of Rent. Same is being quoted herein below:-

“8. Rent Payable. The rent payable in respect of a premises shall be the rent agreed to between the landlord and the tenant in accordance with the terms of the tenancy agreement or as revised under Section 9 or determined under Section 10.

9. Revision of Rent.-(1) The revision of rent between the landlord and the tenant shall be in accordance with the terms of the tenancy agreement.

(2) Where, after the commencement of tenancy, the landlord has entered into an agreement in writing with the tenant prior to the commencement of the work and has incurred expenditure for carrying out improvement, addition or structural alteration in the premises occupied by the tenant, which does not include repairs necessary to be carried out under Section 15, the landlord may increase the rent of the premises by an amount as agreed to between the landlord and the tenant, and such increase in rent shall become effective from one month after the completion of such work.

(3) Subject to any agreement in writing, where the premises have been let out before the commencement of this Act, the rent thereof shall be liable to be revised for a further period of two years from the commencement of this Act, according to the formula indicated below-

(a) where the premises have been let out prior to 15.07.1972, it shall be deemed to have been let out on 15.07.1972;

(b) where the premises have been let out on or after 15.07.1972, the date for revision of rent shall be one year after the date of commencement of tenancy.

The rate of rent payable in above cases shall be liable to be increased at the rate of 5% per annum in case of residential accommodation and 7% per annum in case of non-residential premises, and the rate of increase of rent shall be compounded on an yearly basis. The amount of rent so arrived at shall again be liable to be increased at the aforesaid rates per annum in similar manner up to the commencement of this Act.

Notwithstanding anything mentioned above, if rent of premises had been revised during continuance of tenancy after 15.07.1972, the formula of revision of rent mentioned above shall be applicable from the date of such revision of rent:

Provided that notwithstanding anything mentioned above, the revised rent payable as per formula indicated in aforesaid provision, shall be payable as below from the date of commencement of this Act:

(i) in the first year, half of the rent so computed; and

(ii) in the second year, full amount of rent so computed.

(4) Notwithstanding anything contained in sub-section (1) of Section 3 wherein any premises referred to, has been let out to a tenant, the landlord of such premises shall also be entitled for revision of rent in accordance with provisions of clause (3) and the relevant provisions of this Act shall apply to such cases.

(5) In the case of tenancy entered into before the commencement of this Act the landlord shall, by notice in writing to the tenant, demand the enhanced rate of rent as specified under sub-section (3) and the rate of rent so enhanced shall be payable within 30 days of the service of notice. In such event the tenancy agreement shall be deemed to be amended and enhanced rate of rent shall be the rent payable under Section 8:

Provided that if there was no tenancy agreement before the commencement of this Act, the landlord and the tenant may mutually agree to execute tenancy agreement for enhanced rate of rent failing which the rent authority shall determine the enhanced rent subject to the provisions of Section 10.

(6) No arrears of aforesaid enhanced rent shall be payable or recoverable for the period prior to commencement of this Act.”

10. From perusal of the heading of section, it is apparently clear that it deals with revision of rent and has nothing to do with the mesne profit. In the present case, in light of notice under Section 106 of Transfer of Property Act, 1882, tenancy is to be terminated, the status of petitioner would be trespasser and he cannot take any benefit or advantage of any provision of Act, 2021. It is not the case of payment of rent, but mesne profit, therefore, even in case Act, 2021 is applicable, petitioner is not entitled for benefit of Section 9 of Act, 2021.

11. The similar issue was before this Court in the matter of **Smt. Suman Gupta (Supra)**. Relevant paragraph of the said judgment is quoted hereinbelow:-

“6. Learned counsel for the applicants relied upon Dwarka Prasad vs. Central Talkies, Collectorganj, Kanpur (AIR 1956 All 187). In that case the defendant was paying Rs.550/- per month as rent. The plaintiff landlord demanded Rs.1500/- per month as rent in the notice and also claimed damages at the rate of Rs.1500/- in the suit. It was held that the damages in the suit should be equal to such amount, which the defendant could have realized as rent of the premises the amount which the landlord can be said to get from the premises in suit would be equal to the maximum permissible rent under the Control of Rent and Eviction Act, and he is not entitled to anything more under the guise of damages on the alleged basis of high offers of rent to him by persons who may not have any chance of getting an allotment made in their favour. This Case is entirely distinguishable. In that case the Rent Control Act was applicable to the building in dispute. In cases where the Rent Act applies the rate of rent is regulated by statute. On

termination of tenancy by notice under Section 106 Transfer of Property Act the tenant in such cases still continues to enjoy the protection of the Rent Control Act as a statutory tenant and his tenancy comes to end only after the order of eviction. The measure of damages in such cases is therefore at the rate of rent permissible under the Rent Act in cases where the Rent Control Act does not apply there is no statutory restriction and the measure of damages after termination of tenancy by notice under Section 106 of Transfer of Property Act would be the market rent.”

12. This Court has taken view that in case of termination of tenancy by notice under Section 106 of Transfer of Property Act, 1882, enhancement of mesne profit shall be determined on the basis of market rate not on the basis of provision of any statutory provision.

13. The Apex Court has considered the very same issue in the matter of ***Atma Ram (Supra)***. Relevant paragraph of the said judgment are quoted hereinbelow:-

“In Shyam Sharan Vs. Sheoji Bhai & Anr., (1977) 4 SCC 393, this Court has upheld the principle that the tenant continuing in occupation of the tenancy premises after the termination of tenancy is an unauthorized and wrongful occupant and a decree for damages or mesne profits can be passed for the period of such occupation, till the date he delivers the vacant possession to the landlord. With advantage and approval, we may refer to a decision of the Nagpur High Court. In Bhagwandas Vs. Mst. Kokabai, AIR 1953 Nagpur 186, the learned Chief Justice of Nagpur High Court held that the rent control order, governing the relationship of landlord and tenant, has no relevance for determining the question of what should be the measure of damages which a successful landlord should get from the tenant for being kept out of the possession and enjoyment of the property. After determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the rent control order. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value. We find ourselves in agreement with the view taken by the Nagpur High Court.”

14. The Apex Court has held that after determination of tenancy, the position of tenant is akin to that of a trespasser and he cannot claim that the measure of damages, should be awarded under the provision of Rent Control Order. In case the real property is higher than the rent earned, amount of compensation for use and occupation of property can be assessed at the higher value.

15. In light of discussion made hereinabove as well as law laid down by the Court, this Court is also of the view that once after service of notice under Section 106 of Transfer of Property Act, 1882, tenancy is terminated, the status of tenant would only be trespasser and mesne profit shall be determined, based upon market rate prevailing in the area. Provisions of Rent Control Act would not be applicable.

16. In the present case, the facts are entirely same, notice was served, tenancy was terminated and status of petitioner became trespasser. Mesne profit with the enhancement at the rate of 15% per annum is based upon the market rate produced by the plaintiff respondent not controverted or denied by the petitioner-defendant.

17. Therefore, under such facts and circumstances, law laid down by this Court as well as Apex Court, I found no illegality or irregularity in the impugned order.

18. Accordingly, the revision is **dismissed**, affirming the judgment of trial Court so far it relates to payment mesne profit at the rate of 15%.

Order Date :- 27.5.2024

Junaid