

Surinder Kumar Vs. Rattan Lal

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Court : Punjab and Haryana

Decided On : Mar-20-2006

Reported in : (2006)143PLR200

Judge : S.S. Saron, J.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Sections 2(1), 4, 13 15(2), 15(5) anfd 26; [Delhi Rent Control Act, 1958](#) - Sections 38(3); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 12 and Order 41, Rule 5; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; [Registration Act, 1908](#) - Sections 17(1)

Appeal No. : C.M. No. 8196-CII of 2005 in Civil Revision No. 6463 of 2001

Appellant : Surinder Kumar

Respondent : Rattan Lal

Advocate for Def. : Baldev Kapoor and; Amarjit Markan, Adv.

Advocate for Pet/Ap. : Ashok Aggarwal, Sr. Adv. and Alok Jain, Adv.

Judgement :

S.S. Saron, J.

1. CM. 8196-CII of 2005 in C.R. 6463 of 2001, CM. 15946-CI1 of 2005 in C.R. 3447 of 2001, CM. 11452-11 of 2005 in C.R. 833 of 2002.

This order will dispose of the above mentioned three CMs which have been filed during the pendency of the revision petitions as there is common question of law involved.

CM. 8196 CII of 2005.

This CM has been filed by the appellant (landlord-respondent in the petition) seeking vacation of the interim stay granted by this Court pending revision petition. The landlord filed a petition under Section 13 of the [East Punjab Urban Rent Restriction Act, 1949](#) (Act - for short) seeking ejectment of the tenant-non applicant (petitioner) from S.C.F. 84, Section 26, Grain Market, Chandigarh, on the ground that the tenant had changed the user of the demised premises from grain shop to selling tea. In view of this, the Estate Officer, Chandigarh Administration, had initiated proceedings for misuse of the demised premises and had resumed the building vide order dated 8.10.1991. Further revision and appeal against the said order had been dismissed. The other ground for seeking ejectment of the tenant was non-payment of rent and also that the landlord required the demised premises for his personal use and occupation. The petitioner for ejectment of the tenant was dismissed by the Rent Controller on 3.10.1996. The Appellate Authority held that the premises were required by the landlord for his personal use. Accordingly, the petition filed under Section 13 of the Act was accepted and the order of the Rent Controller was set aside by the Appellate Authority on 5.11.2001. Accordingly, the ejectment of the tenant was ordered. The tenant has assailed the order of ejectment passed by the Appellate Authority in this by way of Civil Revision 6463 of 2001 in which notice of motion was issued on 6.12.2001. Thereafter, vide order dated 15.7.2003, dispossession of the tenant was stayed by this Court. The landlord has thus filed the present CM for vacation of said stay in which it is inter alia also prayed that the tenant be directed to compensate the landlord at the market rate for use and occupation of the premises after the passing of decree of eviction. The tenant has filed a reply to the said application in which it is stated that the order granting stay was passed by this Court on

15.7.2003 in presence of both the counsel for the parties. Therefore, the present CM is not maintainable. It is also stated that eviction on the ground of personal necessity in respect of commercial buildings is not maintainable and that S.L.P. in this regard is pending before the Hon'ble Supreme Court.

CM. 15946-C1I of 2005

This CM. has been filed by applicant (landlord-respondent) for fixing mesne profits/damages in respect of the demised premises i.e. S.C.F. 49, Sector 23-C, Chandigarh. It is prayed that non-applicant (tenant-petitioner) is liable to compensate the landlord for use and occupation of the premises w.e.f. the date of passing the ejectment order by the Appellate Authority on 6.5.2001. Reply to this CM has been filed in which it is submitted that there is no provision under the Act in terms of which the relief as claimed can be granted. Besides, Section 4 of the Act provides for determination of fair rent and it is only the learned Rent Controller who can fix fair rent after holding such inquiry as may be deemed fit. Besides, it is stated that the tenant cannot be directed to pay any amount over and above the amount of agreed rent as this Court vide its order dated 11.7.2001 has directed the tenant to continue to pay the agreed rent on or before 10th of every month. Therefore, it is submitted that in fact the landlord seeks a review of the order dated 11.7.2001 passed by this Court which is legally not permissible as there is no provision for review of the order and even otherwise the said order passed in presence of counsel for both the parties.

CM. 11452-CII of 2005

The applicant (landlord-respondent) has filed this CM for fixing mesne profits/damages in respect of the demised premises i.e. S.C.F. 1, Sector 23-C, Chandigarh. The tenant is stated to be in occupation of half front portion of the ground floor measuring 194 sq. ft approximately i.e. the shop portion along with the store at a monthly rent of Rs. 180/- and Rs. 15/- as water charges, total Rs. 195/- per month. The applicant (landlord-respondent) filed ejectment petition on 21.12.1995 which was allowed by the Rent Controller on 6.12.1999. The appeal against the same was dismissed by the Appellate Authority on 7.11.2001. The tenant filed revision petition against the said order and his dispossession was

stayed vide order dated 6.2.2002. It is claimed that in another adjoining booth i.e. No. 20-21, Sector 23, Chandigarh, a registered lease deed (Annexure A2) had been entered into between the parties in respect of the area measuring 250 sq. ft on 3.2.2005 at a monthly rent of Rs. 21,500/-. Besides another booth No. 16, Sector 23, Chandigarh measuring 126 sq. ft had been rented out @ Rs. 10,000/- per month. Therefore, it is claimed that the landlord is entitled to mesne profits/damages pending the revision petition.

2. Mr. Ashok Aggarwal, Senior Advocate appearing with Mr. Alok Jain, Advocate, Mr. Nipun Mital, Advocate and Mr. Chetan Mital, Advocate, appearing for the respective landlords-applicants have vehemently contended that the landlords-applicants are entitled to mesne profits/damages for use and occupation of the shops given by them on rent to their respective tenants-petitioners as the order of ejectment has been passed by the Appellate Authority under the Act in their favour and, therefore, the tenants are liable to compensate them for use and occupation of the premises at the market rate of rent. In support of their contentions, strong reliance is placed on the judgment of the Apex Court in *Atma Ram Properties (P) Ltd. v. Fedral Motors (P) Ltd.* : (2005)1SCC705 , *Achal Misra v. Rama Shanker Singh* : (2005)5SCC531 and *Anderson Wright and Co. v. Amar Nath Roy and Ors.* (2005) 6 S.C.C. 489. In terms of the same, it is contended that once an order of ejectment has been passed against the tenant, it is with effect from that date the tenant is liable to pay mesne profits/damages/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 at the market rate. It is also contended that the market rate is liable to be fixed on the basis of material as may be produced on record subject to final adjustment, for determination of mesne profits.

3. In response, Mr. M.L. Sarin, Senior Advocate appearing with Mr. Jaspal Singh; Mr. Ashwani K. Chopra, Senior Advocate appearing with Mr. Hartninder Singh and Mr. Baldev Kapoor, Advocate and Mr. Amarjit Markan, Advocate for the non-applicants (respective tenants) have vehemently contended that the applications of the respective landlords are absolutely misconceived and the landlord are not entitled to any mesne profits after an order of ejectment has been passed. It is contended that the judgments referred to by the learned Counsel appearing for the

landlords are not applicable to the case in hand as they relate to the provisions of the [Delhi Rent Control Act, 1958](#) (Delhi Act-for short) which are materially different from the provisions of the Act in hand. It is submitted that in Atma Ram Properties case (supra), the Hon'ble Supreme Court had passed the order for payment of rent in a case under the [Delhi Rent Control Act, 1958](#) in which the definition of a tenant is materially different from that under the Act. It is contended that under the Delhi Act a tenant includes any person continuing in possession after the termination of his tenancy but does not include any person against whom an order or decree has been made whereas there is no such provision under the Act. It is contended that the expression 'tenant' under the Act means any person by whom or on whose account rent is payable for a building on rented land and includes a tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart stand or slaughter-house or of rents for shops has been farmed out 'or leased by a municipal, town or notified area committee. It is also contended that in respect of the Delhi Act there is no specific provision conferring power on the Tribunal to grant stay of the execution of eviction passed by the Controller, but Sub-section (3) of Section 38 confers the Tribunal with all powers vested in a Court under the Code of Civil Procedure (CPC - for short) while hearing an appeal. It is, therefore, contended that the provisions of Order 41 Rule 5 CPC were invoked for grant of stay which otherwise confers power on the Appellate Court to grant stay for sufficient cause being shown and in terms of Clause (c), security for the due performance of the decree or order as may ultimately be passed, can be ordered to be furnished as a condition precedent to the grant of stay. Besides, the Appellate Court can impose other conditions. This power, it is contended, is not provided under the Act. Therefore, it is contended that the case law referred to by the learned Counsel for the landlords-applicants is inapplicable to the case in hand. In addition to the above, Mr. M.L. Sarin, Senior Advocate, has contended that an order for furnishing mesne profits is not liable to be even otherwise passed as there is no mode for determining the mesne profits by the Court staying the execution of the order and the lease deeds which have been produced on record in the case, is inadmissible in evidence for want of registration. It is contended that an unregistered lease

deed is inadmissible in evidence as held by this Court in Choeth Ram v. Shri Deep Chand Jain and Anr. 1977 R.C.R. 499.

4. Mr. Ashok Aggarwal, Senior Advocate, has however, contended that the fixation of mesne profits is to be done on the basis of material as available on record which is subject to final adjudication.

5. I have given my thoughtful consideration to the respective contention of the learned Counsel for the parties.

6. The questions that require consideration in all the above mentioned three CMs is whether the landlord is entitled to mesne profits or damages for use and occupation of the shops pending revision petitions filed by the respective tenants against their ejectment orders passed by the Appellate Authority and whether the stay granted by this Court is liable to be vacated for non-payment of the rent. An ancillary question that requires consideration is that in case the landlords-applicants are entitled for mesne profits/damages, then what would be the mode for determining the same. A reading of the judgment of the Hon'ble Apex Court in Atma Ram Properties case (supra) would show that the questions that arose for consideration were:-

i) In respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and

ii) Up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent to the landlord?

The Hon'ble Supreme Court after referring to the provisions of Order 41 Rule 5 C.P.C. held that while passing an order of stay under Order 41 Rule 5 C.P.C, 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 it was observed, needless to say shall be reasonable. The conclusions

were summoned up by the Hon'ble Supreme Court in the following terms:-

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.

This position was reiterated by the Hon'ble Supreme Court in Achal Misra's case (supra) wherein the provisions of UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act - for short) as also the Rules framed there under were considered. Following Atma Ram's case (supra) it was held that the tenant would be liable to pay rent equivalent to mesne profits with effect from the date from which their tenancy was terminated and for such period the landlord's entitlement cannot be held pegged down to standard rent. In Anderson Wright's case (supra) also, it was held that once a decree for eviction had been passed and in the event of the execution being stayed, the appellants can be put on such reasonable terms as would in the opinion of the Appellate Court reasonably compensate the decree holder for loss occasioned by delay in execution of the decree by the grant of stay in the event of the appeal being dismissed. It was held that w.e.f. the date of decree of eviction, the tenant is liable to pay mesne profits or compensation for use of the premises at the same rate at which the landlord would

have been able to rent out the premises on being vacated by the tenant. Besides, while determining the quantum of amount so received by the landlord, the landlord is not bound by the contractual rate of rent which was prevalent prior to the decree. In the said case, the landlord was also permitted to move or pursue an application under Order 20 Rule 12 C.P.C. for determination and recovery of mesne profits which they would be entitled to recover from the appellants for the period between the date of institution of the suit till the date of recovery of possession in the event of the appeal being dismissed.

7. A reading of the aforesaid case law laid by the Hon'ble Supreme Court evidently shows that mesne profits or compensation is to be awarded to a landlord in case an order of ejectment is passed in his favour against the tenant. In fact in Atma Ram's case (supra) it was observed that the rationale for this is that there was a need to deter the tenant from, perpetuating the life of litigation and thereby robbing the landlord of the fruits of the litigation even if successful. The contention of the learned Counsel for the tenants, however, is that in case of the Delhi Act, a tenant does not include any person against whom an order or decree for eviction has been made as provided under Section 2(1)(ii) thereof whereas this is not the position under the Act in the case in hand. In I Section 2(i) of the Act, 'tenant' has been defined as follows:-

'Tenant' under the Act means any person by whom or on whose account rent is payable for a building or rented land and includes a tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal, town or notified area committee.

A reading of the above definition shows that tenant means any person by whom or on whose account the rent is payable for a building or rented land and includes a tenant continuing in possession after termination of the tenancy in his favour. This, however, does not include a person continuing in possession after an order of ejectment has been passed. The object of the payment of mesne profits, damages

or compensation as has been spelt out by the Hon'ble Supreme Court, is to deter the tenant from perpetuating the life of litigation. Therefore, once this is the object, the position as regards the applicability of no ground for stay being provided for in terms of Section 38(3) of the Delhi Act would be the same keeping in view the rationale indicated by the Hon'ble Supreme Court. Even otherwise, it is appropriate to note that the petition by the tenants in these cases have been filed in terms of Section 15(5) of the Act which reads as under:-

The High Court may, at any time on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereof as it may deem fit.

Therefore, this provision is in the nature of revisional jurisdiction and there is no provision for stay provided under the said Act. Therefore, when the ejectment of the tenants is stayed from the demise, remises in their possession, the appellate or revisional Court can impose such conditions as it may deem fit for the purpose of the decree which has been passed in favour of the landlord or for reasonably compensating the-landlord for the delay taken due to the pendency of the appeal or revision before the appellate or revisional Court as the case may be. The provisions of Section 15(2) of the Act which envisages the stay of further proceedings in the matter pending decision on an appeal; though it is not specifically provided for security for due performance of the decree, yet it is well known that general principles of the CPC are applicable to proceedings under the Act.

8. The other questions that requires consideration is the mode of determination of the mesne profits or compensation payable. In this respect, it is appropriate to note that the same is to be done on the basis of materials placed on record by the parties. The parties would be at liberty to place cogent evidence by way of recent registered lease deeds of the locality to show their amount of rent which is payable. It is on the basis of such convincing material that a provisional assessment of the compensation/damages which the tenant is liable to pay the

landlord pending his appeal or revision against an order of ejectment, can be determined. This provisional assessment that has been made would be subject to adjudication at the time of final disposal of the appeal or revision as the case may be. If the final adjudication by the appellate or revisional Court in respect of the damages or compensation payable by the tenant is at variance with the provisional order, the landlord would be liable to reimburse or refund the excess amount deposited by the tenant and in case of deficient deposit, the tenant shall be liable to make good the deficient amount. In fact in *Atma Raw Properties case* (supra), the Hon'ble Supreme Court held that reversal of interim orders passed at the interim stage due to final decision going against the party securing the interim order in its favour would entitle the successful party to demand (a) restitution of benefit earned by the opposite party under the interim orders or (b) compensation for what it has lost. It was observed that to grant such relief is the inherent jurisdiction of the Court and application of the above principle by analogy to support imposition of conditional or periodical deposit of reasonable sum in Court is the pre condition for grant of stay of execution of decree for eviction. Therefore, in case the party filing the appeal or seeking revision of the order is successful it would be entitled to restitution of the interim benefit which has been granted to the respondent in the appeal or the revision. Insofar as the objection of Shri M.L. Sarin, Senior Advocate as regards the inadmissibility of documents on account of the lease deed being inadmissible for want of registration, it is appropriate to note that there is no dispute to the said proposition that an un-registered lease deed signed by the lesser and lessee is inadmissible in evidence, as has been held in several decisions, c.f. *Satish Chand Makhan v. Govardhan Das Byas* : AIR 1984 SC143 , *Bajaj Auto Limited v. Behari Lal Kohli* A.I.R. 1989 S.C. 1606 and *Anthony v. K.C. Ittoop and Sons and Ors.* (2006) 6 S.C.C. 394. It has already been held that the provisional assessment is to be made on the basis of cogent and credible evidence which would necessarily mean that inadmissible evidence like un-registered lease deeds which are required to be registered compulsorily in terms of Section 17(1)(d) of the [Registration Act, 1908](#) are not taken into account. It was contended on behalf of the tenants-petitioners that the question whether personal necessity as a ground for eviction is applicable in Union Territory of Chandigarh is pending before the Hon'ble Supreme Court and, therefore, this matter should be

kept in abeyance till such decision. However, this would now no longer be available as the Hon'ble Supreme Court in Rakesh Vij v. Dr. Raminder Pal Singh and Ors. (2005-3) 141 P.L.R. 676 (S.C.) has held that the ground of bona fide requirement of the landlord for seeking eviction of his tenant is applicable in Union Territory of Chandigarh.

9. In view of the above, these CM applications are allowed and the landlords would be entitled to claim damages/compensation for the period of stay that has been granted by this Court.

10. Since the arguments were addressed only on the point as to whether such an application is maintainable, the case be now put up for consideration for hearing on the quantum of amount payable which would be separate in the facts and circumstances of each case.

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