

The learned trial Court determined the interim rent from 30.06.1981 till 30.08.2007(326 months) @ Rs.100/- p.m. with interest @ 6%. Vide order dated 7.9.2007.

The suit for eviction and recovery of rent later came to be dismissed by the trial Court vide judgment and decree dated 18.2.2008 but decreed by the District Court directing the appellant-tenant to handover physical possession of the demised property and ensure the payment of rent @ Rs.100/- P.M. for use and occupation till the date of handing over the possession.

The judgment and decree dated 5.10.2018 came to be challenged by the appellant/tenant in second appeal before the High Court of Judicature for Rajasthan at Jaipur.

In the pending appeal, application for mesne profit came to be filed by the respondent/landlord under Rule 5 Order 41 CPC. The High Court adverted to the submissions made by the parties determined the mesne profit @ Rupees 1 Lakh per month vide Order dated 19.9.2019 noticing the facts as indicated hereunder:-

"It is submitted by the learned counsel for the plaintiffs-respondents that the disputed property under the tenancy is situated at Devipura Circle, Bajrang Kant,

Sikar, which is in the heart of the Sikar City and is also at most prime location in the Sikar City. The premises is measuring 425 sq.yards. The area in dispute which is taken on rent by one Mr.Goverdhan Singh Shekhawat is having area of 17747 sq.ft. Only and the rent of the same is Rs.6.11 lakh per month. The another premise measuring 197.35 sq.yards which is towards eastern side of the disputed property has been let out on rent @ Rs.59,000/- per month. The DLC rate of the tenanted property is Rs.80,000/- per sq.meter.

Learned counsel for the appellants submits that there was no supporting/cogent evidence on record available before the High Court to determine Rupees One Lakh per month as the mesne profit under the order impugned which is not sustainable in law and needs to be interfered by this Court.

Per contra, learned counsel for the respondents, while supporting the order of the High Court impugned submits that it is the very old property used for commercial purposes and the adjacent property of which a reference was made, the rent is six times more than the mesne profit which has been fixed by the High Court under the impugned order and it does not call for any interference.

We have considered the submissions made by learned counsel for the parties and perused the record.

The principles in determining the mesne profit under Rule 5 Order 41 CPC has been considered by a two Judge Bench in Atma Ram Properties(P) Ltd. Vs. Federal Motors(P) Ltd. 2005(1) SCC 705 which is reproduced as under:-

"(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."

Taking note of the exposition of law on the subject, we are of the view that the mesne profit which has been determined by the High Court on the basis of the evidence on record is much on the higher side and in totality of the facts and circumstance of the case, we consider it appropriate to observe that the appellant shall pay the mesne profit @ Rs. 50,000/- per month from the date of the order, i.e. October, 2018.

The impugned order stands modified accordingly. The appeals on the terms indicated stand disposed of.

Pending application(s), if any, stand disposed of.

.....J.
[INDU MALHOTRA]

.....J.
[AJAY RASTOGI]

New Delhi;
February, 03, 2020

ITEM NO.8 +44

COURT NO.14

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION(C)NO.2141-2142/2020

MADAN SINGH (DECEASED) THROUGH HIS LEGAL REPRESENTATIVES ETC.ETC.
Appellant(s)

VERSUS

GIRDHARI DAS (DECEASED) THROUGH HIS LEGAL REPRESENTATIVES ETC.ETC.
Respondent(s)

(FOR ADMISSION and I.R. and IA No.11694/2020-ADDITION / DELETION /
MODIFICATION PARTIES and IA No.11692/2020-EXEMPTION FROM FILING
O.T.)
WITH DIARY NO.3085/2020

Date : 03-02-2020 These appeals were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s) Mr.Vikas Singh,Sr.Adv.
Mr.Yunus Malik,Adv.
Ms.Saroj Bala,Adv.
Mr.MNA Chaudhary,Adv.
Mr.Satvik,Adv.
Mr. Samir Malik, AOR

For Respondent(s) Mr. Naresh Bakshi, AOR
Mr.Tushar Bakshi,Adv.
Mr.Shovit Singh,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending application(s) stand disposed of.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT

(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER

(signed order is placed on the file)

