

2022 LiveLaw (SC) 568

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
INDIRA BANERJEE; J., J.K. MAHESHWARI, J.

July 06, 2022

CIVIL APPEAL NOS. 4646-47 OF 2022 [ARISING OUT OF SLP(C) NOS.20243-44 OF 2019

M/s. Martin & Harris Private Limited & Anr. Versus Rajendra Mehta & Ors.

Tenancy & Rent Control Law - Mesne Profits - After passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises - Once a decree for possession has been passed and the execution is delayed depriving the decree holder to reap the fruits, it is necessary for the Appellate Court to pass appropriate orders fixing reasonable mesne profits which may be equivalent to the market rent required to be paid by a person who is holding over the property - Appellate Court does have jurisdiction to put reasonable terms and conditions as would in its opinion reasonable to compensate the decree holder for loss occasioned by delay in execution of the decree while granting the stay.

[Followed : Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. and Another – (1999) 2 SCC 325, Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. – (2005) 1 SCC 705, State of Maharashtra vs. Super Max International Pvt. Ltd. and others - (2009) 9 SCC 772]

(Arising out of impugned final judgment and order dated 18-05-2018 in SBCMSA No. 750/2017 01-04-2019 in SBCRP No. 95/2018 passed by the High Court of Judicature for Rajasthan at Jaipur)

For Petitioner(s) Ms. Arti Singh, AOR

For Respondent(s) Mr. Upendra Pratap Singh, Adv. Ms. Kheyali Singh, Adv. Mr. D. K. Devesh, AOR
Mr. Harsh Singh Rawat, Adv. Ms. Sneha U. Kanzarkar, Adv.

J U D G M E N T

J.K. Maheshwari, J.

Leave granted.

2. Plaintiffs/Respondents being the owners of the suit property situated at Plot No.1, Block No.D-1, Nagar Nigam No.2844 known as Khinduka Bhawan, New Colony, Jaipur filed a suit bearing No.4/2016 (9/2002) for eviction, possession, recovery of rent and permanent injunction. The said suit was filed in November 2002 invoking the Provisions of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred as 'Old Act'). The suit was decreed vide judgment dated 03.06.2016 passed by Senior Civil Judge No.7, Jaipur. On filing the appeal bearing No.11/2016 before Additional District Judge No.10, Jaipur, it was dismissed on 10.01.2017 confirming the judgment of the Trial Court. The Second Appeal No.144/2017 was filed challenging both the judgments before the High Court which was admitted vide order dated 14.10.2017 granting stay on ejection. The order of stay was extended time to time. On filing an application under Order XLI Rule 5 read with Section 151 of the Code of Civil Procedure (in short 'CPC') by the Plaintiffs/Respondents asking mesne profit due to continuation of stay on eviction decree it was decided vide order dated 18.05.2018. Whereby the appellants were directed to pay the mesne profit @ Rs.2,50,000/- per month

from the date of filing of the application i.e. 20.12.2017 till disposal of the appeal. The directions have also been issued to deposit the arrears of mesne profits upto April 2018 by depositing the same in the bank account of the Plaintiffs within six months, with further direction to pay mesne profits from May 2018 consecutively by 15th date of every succeeding month. Failing to deposit the amount of mesne profit in future for four months consecutively, Plaintiffs would have right to get execute the decree of eviction. The Plaintiffs were granted liberty to withdraw the amount subject to furnishing surety and undertaking to re-deposit the mesne profits so withdrawn with 9% interest in case they lose in the second appeal. The said order was challenged by filing the Special Leave Petition No.19863/2018 before this Court, which was dismissed as withdrawn with liberty to the Appellants to file review petition before the High Court. On filing the review petition bearing No.95/2018, it was dismissed vide order dated 01.04.2019 which led to file the present appeals challenging the order dated 18.05.2018 as well as the order passed in review dated 01.04.2019 questioning the grant of mesne profit.

3. The facts unfolded are that the Plaintiffs purchased the property through six different registered sale deeds executed on 23.12.1985 . By virtue of those sale deeds, Plaintiffs became the owner of the tenanted premises. Appellants were tenant to the erstwhile owner and after selling the premises they became tenant of Plaintiffs/Respondents by attornment. Earlier a suit under Section 6 of the Old Act was filed by the Plaintiffs/Respondents against the Appellants bearing No.61 of 2002 for determination of the standard rent. During the pendency of the suit an application under Section 7 of the Old Act was filed for fixing the provisional rent which was decided vide order dated 09.01.2004 fixing provisional rent @ Rs.1,00,000/- per month. The said order was challenged, which was confirmed by the High Court vide order dated 18.04.2007. The Appellants had filed a Special Leave Petition bearing No.9775 of 2007 wherein this Court fixed the ad hoc provisional rent @ Rs.60,000/- per month vide order dated 12.11.2007 with direction to the Trial Court to decide the issue of standard rent expeditiously. The Trial Court vide judgment dated 12.08.2009 decreed the said suit and fixed the standard rent @ Rs.45,000/- per month. The appeals filed by both the parties against the said order are pending before the High Court.

4. In the present appeals the order of the High Court directing to pay the mesne profits @ Rs.2,50,000/- per month with other ancillary directions have been questioned. It is contended by learned counsel for the Appellants that as per Section 20 of Rajasthan Rent Control Act, 2001 (hereinafter referred as 'New Act'), the maximum amount of mesne profit may be payable three times of the standard rent in case the premises is let out for commercial purposes. It is said the mesne profit, as determined by the High Court, is excessive without looking to the year of construction of premises, location of the property which is on inside road of colony and also without taking note of the DLC rate, therefore, the order impugned may be set aside and the quantum of mesne profits may be revised to three times of the amount of rent making it Rs.1,35,000/- per month.

5. Per contra, learned counsel representing the Plaintiffs has strenuously urged that Section 20 of the New Act do not apply to the suit or proceedings initiated under the Old Act and were pending on the date of applicability of the New Act i.e. 01.04.2003, notified in the official gazette. The argument of the Appellants to fix mesne profits only three time

to the standard rent relying the provisions of the New Act is meritless. The High Court said that the suit property is located on the main road of New Colony, Jaipur situated in the heart of the City being commercial area rightly fixed mesne profit. It is also urged that the order passed by the High Court to fix mesne profit is equitable, just and reasonable with a direction to re-deposit of mesne profits with 9% interest in case of withdrawal by Plaintiffs or the Plaintiffs loses in the second appeal. In such circumstances, interference in these appeals is not warranted.

6. After having heard learned counsel appearing on behalf of both the parties, it is not in dispute that in the previous proceedings bearing No.61 of 2002 filed under Sections 6 and 7 was under the Old Act, wherein the standard rent was fixed Rs.45,000/per month to the suit property. During those proceedings, the present suit seeking decree of eviction was filed by Plaintiffs under the provisions of Old Act in November 2002 prior to commencement of the New Act. Thus, on the date of commencement of the New Act, the present suit was pending and vide judgment dated 03.06.2016 Trial Court decreed the suit, which was confirmed in appeal by Lower Appellate Court on 10.01.2017. Challenging the judgment and decree concurrently passed by the two Courts, Second Appeal No.144/2017 has been filed by the Appellants, which has been admitted on 14.10.2017 and stay of ejection passed by the High Court which was extended quite a few times. Thereafter, on filing an application under Order XLI Rule 5 read with Section 151 of CPC asking mesne profits by Plaintiffs, it was allowed vide order dated 18.05.2018. Against which the Special Leave Petition bearing No.19863/2018 filed by Appellants was dismissed as withdrawn with liberty to file a review petition after noting the submissions made before this Court. The said order dated 06.08.2018 is relevant, therefore, for ready reference reproduced as under:

“Mr. Mukul Rohatgi, learned Senior Counsel appearing on behalf of the petitioners, submits that under Section 20 of the Rajasthan Rent Control Act, 2001, the maximum that is payable by way of mesne profits is three times the rent in the case of premises let out for commercial purposes. He submits that the standard rent for the premises has been fixed at Rs.45,000/- as a result of which, three times would amount to a figure of Rs.1,35,000/-. What has been awarded, however, by the High Court is Rs. 2,50,000/- per month.

We note this submission and permit the learned Senior Counsel to withdraw this petition and approach the High Court in review.

In view of the above, the Special Leave Petition is dismissed as withdrawn.

In the event the review petition is dismissed, liberty is granted to challenge the original order as well.”

On perusal of the order, it is clear that the Appellants raised a plea that maximum payable mesne profits as per Section 20 of the New Act can be three times of the rent in case the premises let out for commercial purposes. It was said that the standard rent was fixed @ Rs.45,000/- per month as a result of which three times would come to Rs.1,35,000/-, however, the direction of mesne profits @ Rs.2,50,000/- per month by the High Court is unjust. This Court without expressing any opinion with respect to fixing the quantum of mesne profits directed to approach the High Court by filing the review.

7. On filing the review petition bearing No.95/2018, the appellants have taken the said plea and also stated that the Court in the order under review wrongly mentioned the

let-out area as 407 sq. yard including 1200 sq. ft. court yard passage, in fact, the said area was a common passage for all. Therefore, the mesne profit of the said area cannot be determined against Appellants. The High Court noted that the case in hand shall be governed by the provisions of the Old Act. In the light of the said undisputed factual position, it was observed that the argument regarding applicability of Section 20 of the New Act is misconceived. The Court also observed that in a review petition the Court cannot sit as an Appellate Court over the order under review until an error apparent on the face of the record has been pointed out. With the said observation, the High Court dismissed the review petition.

8. In the above said facts, the argument advanced by the Appellants in the matter of grant of mesne profit to the extent of three times to the standard rent in terms of Section 20 of the New Act is required to be addressed first. Section 20 of the New Act deals with the execution of the orders of the Rent Tribunal in the manner so prescribed. Sub-section (3) makes it clear that if the tenant does not vacate premises within three months of the date of issue of certificate for recovery of the possession, in that event he is liable to pay mesne profits at the rate of 2 times the rent in case premises let out for residential purposes; at the rate of three times the rent in case of premises let out for commercial purposes as applicable in the facts of the present case. On the said pretext, it is contended that the direction of mesne profits more than three times is contrary to the said provisions. The other side contends that the New Act has come into force on 01.04.2003 by way of notification published in the Official Gazette. As per Section 32 of the New Act, the repeal and savings of the Old Act has been specified. For the said purpose Section 32 is relevant, therefore, it is reproduced as thus:

“32. Repeal and savings. - (1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No. 17 of 1950) shall stand repealed with effect from the date notified under Sub-sec. (3) of Sec. 1 of this Act.

(2) The repeal under Sub-section (1) shall not affect,-

(a) anything done or suffered under the enactment so repealed; or

(b) any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.

(3) Notwithstanding the repeal under Sub-section (1).

(a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any Court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the Suit, out of which such appeal or proceeding originated, was filed;

- (b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of thereunder;
- (c) all prosecutions instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law;
- (d) any rule or notification made or issued under the repealed Act and in force on the date of commencement of this Act shall continue to govern the pending cases.”

From the aforesaid for the present case only sub-section (3) is relevant, which has been given overriding effect to other provisions by which the applications or suit or other proceedings filed under the Old Act (Repealed Act) pending on the date of commencement of the New Act before any Court shall be continued and disposed of in accordance with the provisions of the Old Act (Repealed Act) as the Old Act had continued in force and this Act had not been enacted. Thus, it is clear that the suit or proceedings, if any, pending on the date of notification issued by the State Government for applicability of the New Act such proceedings would continue under the Old Act and New Act has no application. Therefore, in our considered view, the High Court has rightly rejected the contention while dismissing the review petition and rightly held that Section 20 of the New Act, by which three times mesne profits to the standard rent was made permissible for the suit or proceedings started under the New Act, have no application in suit or proceedings initiated under Old Act and pending on the date of commencement of New Act. In our considered opinion the reasoning given in the order dated 01.04.2019 , while rejecting the review petition by the High Court, is perfectly in consonance to the spirit of Section 32 of the New Act.

9. Before the High Court, while passing the original order dated 18.05.2018 , it was contended by the Appellants that they are not in possession of 469.92 sq. meter (5058 sq. ft.). The said issue has been dealt with on the admitted fact in the earlier proceeding between the same parties regarding fixation of standard rent in which the parties came before this Court. In the order Court referring the affidavit of the Appellants filed before this Court admitted that the total covered area is 2100 sq. ft. and an open area of 1200 sq. ft. having total area of 407 sq. yards is a tenanted premises. In our view also the affidavit filed before this Court in previous proceedings if considered by the High Court, now the Appellants are estopped to take different plea disputing the area of tenancy. Thus, the finding of fact recorded by the High Court do not warrant any interference.

10. Now, reverting on the issue of determination of the amount of mesne profits @ Rs.2,50,000/- per month is concerned, the guidance may be taken from the judgment of **Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. and Another – (1999) 2 SCC 325**, in which this Court held that once a decree for possession has been passed and the execution is delayed depriving the decree holder to reap the fruits, it is necessary for the Appellate Court to pass appropriate orders fixing reasonable mesne profits which may be equivalent to the market rent required to be paid by a person who is holding over the property. In the case of **Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. – (2005) 1 SCC 705**, this Court held that Appellate Court does have jurisdiction to put reasonable terms and conditions as would in its opinion reasonable to compensate the decree holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that

on passing the decree for eviction by a competent Court, the tenant is liable to pay mesne profit or compensation for use and occupation of the premises at the same rate at which the landlord would have able to let out the premises in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have 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 later date.

11. Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in the case of **Atma Ram (supra)** has been reaffirmed in the case of **State of Maharashtra vs. Super Max International Pvt. Ltd. and others - (2009) 9 SCC 772** by three Judges Bench of this Court. Therefore, looking to the fact that the decree of eviction passed by Trial Court on 03.03.2016 has been confirmed in appeal; against which second appeal is pending, however, after stay on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just equitable and reasonable.

12. The basis of determination of the amount of mesne profit, in our view, depends on the facts and circumstances of each case considering place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential are and the rate of rent precedent on which premises can be let out are the guiding factor in the facts of individual case. In the case at hand, the High Court in the impugned order observed that the tenanted property is located on the main road of New Colony near Panch Batti which is a commercial area in the heart of Jaipur City. The said finding has been arrived considering the voluminous documentary record dispelling the plea taken by the Appellants. However, the Court in the facts and circumstances found it reasonable to determine Rs.2,50,000/- per month as mesne profit. As per the discussion made hereinabove so far as the area of the tenanted premises and the location of the property is concerned, the findings of fact have been recorded by the High Court, in our considered opinion, those findings are based on the material brought on record which are neither perverse nor illegal. The amount of mesne profit as fixed @ Rs.2,50,000/- is also just and proper looking at the span of time i.e. 10 years from the date of fixing of the standard rent and six year from the date of passing of the decree of eviction. Therefore, the amount of mesne profit has rightly been decided by the High Court while passing the order impugned.

13. In view of the foregoing discussion, in our considered opinion, the order fixing the mesne profit and the order passed on the review petition, filed by the Appellants, are just and proper which do not warrant any interference. Therefore, both the appeals are dismissed.