7. In the present case, the order was passed by the Financial Commissioner in February, 2004. It has not been pointed out that any steps were taken to immediately point out to the same officer who passed the order that the statement recorded therein was not correct. We are therefore of the opinion that since the order of the Financial Commissioner has in fact been passed on the basis of the statement made by counsel for the petitioners and accepted by the counsel for the respondents, it is virtually an agreed order and therefore no interference is called for in the same.

8. There is yet another aspect of the matter. It is undeniable position that the petitioners in this writ petition had entered into a compromise with the respondents before the Panchayat as to how the property should be partitioned. The compromise was entered into after the Tehsildar inspected the spot amongst the respectable of the village and came to the conclusion that the partition may be made keeping in view the possession. The petitioners have never challenged the said compromise. On this ground also, we are of the opinion that no interference is called for in the orders passed by the authorities impugned in this writ petition.

9. For the reasons stated above, the writ petition is therefore dismissed.

Petition dismissed.

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PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice S.S. Saron

CM 8196-CII of 2005 in Civil Revision No. 6463 of 2001 — Decided on 20.03.2006

Surinder Kumar — Applicant

Versus

Rattan Lal — Non-applicant

For the Applicant: Mr. Ashok Aggarwal, Sr. Advocate, with Mr. Alok Jain, Advocate.

For the Non-applicant: Mr. Baldev Kapoor and Mr. Amarjit Markan, Advocates.

With

CM 15946-CII of 2005 in Civil Revision No. 3447 of 2001

Surinder Singh — Applicant

Versus

Dr. Davinder Mohan — Non-applicant

For the Applicant: Mr. Nipun Mittal, Advocate.

For the Non-applicant: Mr. A.K. Chopra, Sr. Advocate with Mr.

Harminder Singh, Advocate.

With

CM 11452-II of 2005 in Civil Revision No. 833 of 2002

Satinder Singh — Applicant

Versus

Jai Ram Bansal — Non-applicant

For the Applicant: Mr. Chetan Mittal, Advocate.

For the Non-applicant: Mr. M.L. Sarin, Sr. Advocate, with Mr. Jaspal Singh, Advocate.

A. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13, 15(2), 15(5) – Code of Civil Procedure, 1908 (V of 1908), Order 41, Rule 5 -- Ejectment order – Stay of ejectment – When ejectment of the tenants is stayed, the appellate or revisional Court can impose such conditions as it may deem fit for the purpose 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 -- Landlord is entitled to claim damages, mesne profit, compensation for the period of stay -- General principles of the CPC are applicable to proceedings under the Act.

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 demised premises 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 proceeding 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 that of the CPC are applicable to proceedings under the Act.

(Para 9)

B. Transfer of Property Act, 1882 (4 of 1882), Section 107 – Lease deed -- Registration Act, 1908, Section 17(1)(d) -- Un-registered lease deed signed by the lessor and lessee is inadmissible in evidence.

(Para 10)

C. East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 -- Bonafide requirement -- Ground of bonafide requirement of the landlord for seeking eviction of his tenant is applicable in Union Territory of Chandigarh. Rakesh Vij's case 2005(3) PLR 676 (SC) relied.

(Para 10)

Cases referred:

1. Atma Ram Properties (P) Ltd. V. Federal Motors (P) Ltd., (2005) 1 SCC 705.
2. Achal Misra v. Rama Shanker Singh, (2005)5 SCC 531.
3. Anderson Wright and Co. v. Amar Nath Roy, (2005)6 SCC 489.
4. Choeth Ram v. Shri Deep Chand Jain, 1977 RCR 499.
5. Satish Chand Makhan v. Govardhan Das Byas, AIR 1984 SC 143.
6. M/s. Bajaj Auto Limited v. Behari Lal Kohli, AIR 1989 SC 1606.
7. Anothony v. K.C. Ittoop & Sons, (2000) 6 SCC 394.
8. Rakesh Vij v. Dr. Raminder Pal Singh Sethi, (2005-3) 141 P.L.R. 676 (S.C.).

JUDGMENT

S.S. SARON, J. -- C.M. 8126-CII of 2005 in C.R. 6463 of 2001, C.M. 15946-CII of 2005 in C.R. 3447 of 2001, C.M. 11452-II 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

2. This CM has been filed by the applicant (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 SCF 84, Sector 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 petition 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 Court 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 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 SLP in this regard is pending before the Hon'ble Supreme Court.

C.M. 15946-CII of 2005

3. This CM has been filed by applicant (landlord-respondent) for fixing mesne profits/damages in respect of the demised premises i.e. SCF 49, Sector 23C, 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 was passed in presence of counsel for both the parties.

CM 11452-CII of 2005

4. The applicant (landlord-respondent) has filed this CM for fixing mesne profits/damages in respect of the demised premises i.e. SCF 1, Sector 23C, 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 6.12.1991. 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. Nos. 20-21, Sector 23, Chandigarh, a registered lease deed (Annexure A-2) 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.

5. Mr. Ashok Aggarwal, Senior Advocate, appearing with Mr. Alok Jain, Advocate, Mr. Nipun Mittal, Advocate and Mr. Chetan Mittal, 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. Federal Moters (P) Ltd., (2005) 1 SCC 705 ; Achal Misra v. Rama Shanker Singh, (2005)5 SCC 531** and **Anderson Wright and Co. v. Amar Nath Roy and ors., (2005)6 SCC 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 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.

6. In response, Mr. M.L. Sarin, Senior Advocate appearing with Mr. Jaspal Singh; Mr. Ashwani K. Chopra, Senior Advocate appearing with Mr. Harminder 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 landlords 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 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 lease 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 RCR 499.**

7. 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.

I have given by thoughtful consideration to the respective contention of the learned counsel for the parties.

The questions that require consideration in all the above mentioned three CMs are 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 of the landlord?

The Hon'ble Supreme Court after referring to the provisions of Order 41, Rule 5 CPC held that while passing an order of stay under Order 41, Rule 5 CPC, 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 summed 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 thereunder 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 CPC for determination and recovery of mesne profits or to pursue such remedy as may be available to them under the law for determination and recovery of the 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.

8. 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 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 the 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 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."

9. 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 demised premises 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 proceeding 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 that of the CPC are applicable to proceedings under the Act.

10. The other question 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 Ram 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 the said proposition that an un-registered lease deed signed by the lessor and lessee is inadmissible in evidence, as has been held in several decisions, c.f. **Satish Chand Makhan v. Govardhan Das Byas, A.I.R. 1984 S.C. 143 ; M/s. Bajaj Auto Limited v. Behari Lal Kohli, A.I.R. 1989 S.C. 1606** and **Anthony v. K.C. Ittoop and Sons and others,**

(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 others, (2005-3) 141 P.L.R. 676 (S.C.)** has held that the around of *bonafide* requirement of the landlord for seeking eviction of his tenant is applicable in Union Territory of Chandigarh.

11. 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.

12. 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.

Adjourned to 20.3 .2006.

Applications allowed.

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PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice Jasbir Singh

Civil Writ Petition No.2274 of 1996 Decided on 3.5.2006

Chaman Lal Angra and another Petitioners

Versus

The Sate of Punjab and others Respondents

For the Petitioners: Mr. M.S. Bedi, Advocate.

For the Respondents: Mr. Ashwani Prashar, Advocate.

Punjab Co-operative Societies Act, 1961 (25 of 1961), Section 13 – Amalgamation of societies – Only two members out of 1000 members are aggrieved by amalgamation – Aggrieved members can claim refund of their shares.

JUDGMENT

JASBIR SINGH, J. -- Petitioners are member of erstwhile Nawanshahar Urban Cooperative Bank Limited, Nawanshahar. Vide order, under challenge, the said bank was ordered to be amalgamated with