

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 911/2018

Rajendra Kumar Shrimal S/o Not Known

----Appellant

Versus

Shri Vardhman Sthanakvasi Jain Shrawak Sangh

----Respondent

Connected With

S.B. Civil First Appeal No. 1056/2018

Shri Vardhaman Sthanakwasi Jain Shrawak Sangh

----Non-applicant

Versus

Rajendra Kumar Shreemal S/o Unknown

----Applicant

For Non-applicant (s) : Mr. Mahendra Kumar Jain

For applicant (s) : Mr. Mudit Singhvi

HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA

Date of Order

:::

1/09/2023

S.B. Civil First Appeal No. 911/2018

Matter comes up on an application regarding mesne profit.

Learned counsel for the respondent-applicant submits that applicant-Rajendra Kumar Shrimal has challenged the judgment and decree dt. 18.8.2018 passed by the trial court by which trial court had passed the decree of eviction and directed the non-applicant to pay mesne profit @ Rs.11,000/- per month from the date of judgment i.e. 18.8.2018 till handing over the possession of the suit property. Learned counsel for the applicant submits that hearing of appeal may take time and disputed property is situated in the main market, which can fetch rent of Rs.48,600/- per month. He further submits that applicant has filed valuation report

regarding rent of the disputed premises. So, application filed by the applicant be allowed and mesne profit @ Rs.48,600/- per month be awarded from date of decree till handing over possession of the disputed premises.

Learned counsel for the non-applicant has opposed the arguments advanced by learned counsel for the applicant.

Learned counsel for the non-applicant submits that the trial court wrongly determined the mesne profit of @ Rs.11,000/- per month and valuation report filed by the applicant is contradictory. Non-applicant did not have roof in his possession and disputed shop is in the old city, where parking facility is not available. He further submits that applicants in their evidence admitted the fact that if whole possession of the disputed property is not received, then that they would not be able to use the disputed property as per their requirements. So, application filed by the applicant regarding mesne profit be dismissed.

Learned counsel for non-applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of Sumer Corporation vs. Vijay Anant Gangan reported in AIR 2022 SC 5756. He also relied upon the judgment of this court in the case of Datu Mal & ors. vs. Seth Madan Gopal & ors. in S.B. Civil Misc. Stay Application No.2937/2001 decided on 26.7.2007; Dilip Kumar and Ashok Kumar vs. Banwari Lal in S.B. Civil Misc. Stay Application No.1120/2010 decided on 12.7.2011.

I have considered the arguments advanced by learned counsel for the applicant as well as learned counsel for the non-applicant.

Trial court while passing the eviction decree in favour of the applicant, awarded Rs.11,000/- per month as mesne profit. It is an admitted position that disputed property is situated Chaura Rasta, Jaipur which is the heart of the city. So, taking into consideration the size, area and location of the property in question, in my considered opinion, disputed property can fetch rent of Rs.20,000/- per month.

The appeal has already been admitted.

Looking to the over all facts of this case, which include size of the premises, its location as well as the valuation report, the application filed by the applicant deserves to be partly allowed and in view of the above, it would be reasonable to fix mesne profit @ Rs.20,000/- per month from September, 2023 till getting possession of the disputed premises. All arrears of mesne profit, if any, up to August, 2023 shall be deposited in the Bank account of the applicant by the non-applicant within two months from today. It is made clear that from September, 2023, the non-applicant shall deposit use and occupation charges/mesne profit @ Rs.20,000/- per month by 15th of every succeeding month in the Bank account of the applicant. The applicant shall furnish the details of his bank account to the non-applicant within 10 days from today.

Further, in case the non-applicant fails to deposit the amount of mesne profit in the bank account of the applicant as directed above and/or the non-applicant fails to make the payment of future use and occupation charges/ mesne profit consecutively for

four months, the applicant shall be free to execute the decree without further reference to the Court.

Further, the applicant shall furnish a solvent security an undertaking to the effect that in case the non-applicant ultimately succeed in this appeal, the amount of mesne profit and/or use and occupation charges so received by the applicant, shall be paid by him to the non-applicant with interest @ 7.5% per annum.

The application for mesne profit is partly allowed as indicated above.

(NARENDRA SINGH DHADDHA),J

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