

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4298 of 2008 (O&M)

Date of decision : 09.10.2015

Nagar Panchayat Rayya and another

...Appellants

Versus

Smt. Kiran Kalia and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sandeep Khunger, Advocate for appellants.

Mr. Prateek Mahajan, Advocate for respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the judgment and decree dated 08.08.2008 of the Lower Appellate Court, whereby suit in toto for recovery of ₹25,36,448/-, which contains element of rent plus 18% interest, has been decreed.

Mr. Sandeep Khunger, learned counsel appearing on behalf of appellants-defendants submits, that respondents-plaintiffs, prior to filing of the suit, had instituted the rent petition i.e. Rent Case No.7 of 17.11.1993 and sought eviction of the appellants on the grounds of arrears of rent. The Rent Controller vide ejectment order dated 31.08.1998 ordered the eviction on the ground that appellants-defendants were in arrears and had not assessed rate of rent. He further submits that aforementioned order attained

finality and ultimately possession was handed over to the Decree Holder-respondents-plaintiffs. The landlord-respondents instituted the suit on 03.11.1999 claiming the aforementioned amount, which contains element of rent and interest @ 18% p.a.

He further submits that assuming for the arguments sake, appellants-defendants are liable to pay entire rent, the total amount of rent allegedly due would be ₹7,05,800/- and the rest of the amount at the rate of 18% p.a. interest cannot be claimed as no evidence has been led at the behest of the respondents. He further submits that trial Court while decreeing the suit restricted the prayer of respondents-plaintiffs to the extent of only to 36 months and further directed that plaintiffs shall be entitled to interest at the rate of 12% p.a. from the date of filing of the suit and future interest at the rate of 6% p.a. till payment of decretal amount. He submits that lower Appellate Court has committed illegality and perversity in decreeing the suit in toto, which contains element of interest at the rate of 18% p.a. and thus following substantial questions of law arises for determination:-

- i) Whether the findings recorded by the Ld. First Appellate Court reversing the findings of the Ld. Trial Court below is sustainable in the eyes of law?
- ii) Whether the respondents/plaintiffs are entitled to the arrears of rent beyond the period of three years prior to the filing of the suit?
- iii) Whether the Ld. Lower Appellate Court was justified in concluding that the rent was assessed and determined by the

Ld. Rent Controller in the order dated 31.08.1998?

- iv) Whether the conclusions drawn by the Ld. First Appellate Court is erroneous, being arrived at without evidence/inadmissible evidence?
- v) Whether the Ld. First Appellate Court have failed to record the applicability of the case law cited by the appellant/defendants?"

He further submits that since the rent was not determined as tendered rent, therefore, respondents-plaintiffs could not have claimed the same at the rate of ₹7800/- per month.

Mr. Prateek Mahajan, learned counsel appearing on behalf of respondents-plaintiffs submits, that there is no illegality and perversity in the findings rendered by the lower Appellate Court for the reasons that Rent Controller had determined the arrears of rent w.e.f. 01.10.1985 to 31.03.1994 at the rate or ₹2800/- per month for ground floor and thereafter ₹7800/- per month.

Since the appellants-defendants had been paying the rent at the rate of ₹800/- per month and after deduction of the amount already paid, a sum of ₹7,05,800/- towards rent was due against the tenant-defendants, thus, submits that there is illegality or perversity in impugned judgment and decree.

I have heard learned counsel for parties and appraised the paper book.

I am in agreement with the contention made on behalf of Mr. Sandeep Khunger, that respondents-plaintiffs failed to lead oral and documentary evidence on claiming the interest at the rate of 18% p.a. There

was no commercial transaction between the parties to the lis, which would entail the plaintiff to claim interest at the rate of 18% p.a. As per the East Punjab Urban Restriction Act, 1949, landlord is entitled to claim 6% interest, in case the tenant is found to be in arrears of rent.

I do not subscribe to the plea that plaintiff would be entitled to claim arrears of rent only for a period of 36 months for the reasons that ejectment order passed on 31.08.1998 and preceding to the filing of suit, respondents-plaintiffs served legal notice dated 15.12.1998. Suit, noticed above was filed on 03.11.1999. Once the appellants-defendants have been found in arrears of rent, it was recurring cause of action for respondents-plaintiffs to claim arrears of rent.

Accordingly, impugned judgment and decree of the lower Appellate Court is modified and shall be construed vis-a-vis interest @ 6% and not 18%. The following substantial question of law is answered in favour of appellants-defendants and against respondents-plaintiffs:-

- 1) Whether the respondents-plaintiffs are entitled to claim interest at the rate of 18% p.a. or not.?

It is made clear that respondents-plaintiffs shall be entitled to claim arrears of rent i.e. ₹7,05,800/- alongwith interest at the rate of 6% p.a. from the date when ejectment petition i.e. 31.08.1998 till realisation.

Decree sheet be prepared accordingly.

Accordingly, appeal is partly allowed.

09.10.2015

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**(AMIT RAWAL)
JUDGE**