

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

Regular Second Appeal No.4824 of 2009 (O&M)

Date of decision: 13.7.2015

Gian Chand

... Appellant

Versus

DHBVNL and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Shalender Mohan, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The only document which could have established relationship of landlord and the tenant between the parties would have been a rent note when the tenancy is stated not to have been oral. If there was a rent note, that would have been the best evidence possible to determine the rights and liabilities of the parties to this appeal.

Learned counsel admits that the rent note was not pleaded in the plaint nor was produced in evidence by the plaintiff, the appellant in the present case. It is also not known as to what was the tenure of the tenancy or was it fixed by time, the tenant holding over. The appellant being the landlord of the property permitted the tenant to install an electricity meter in the shop by letting him obtain a direct connection from the Nigam, the

electricity supplier. If the tenant left bills unpaid before he vacated the premises, it was the responsibility of the landlord to have ensured that up to date rent was discharged and if it was not, the amount could have been adjusted from the rent due, if any, or by other lawful means. It is not the case of the appellant that the tenant took flight overnight and disappeared out of sight leaving behind no contact address or of his whereabouts. If he regained possession from the tenant peacefully, then he will remain liable to the Nigam to defray the pending bills and would remain free to recover money from the tenant by a separate action. Neither did he implead the tenant as a defendant in the suit so that the truth could have been made known or if the defendant did not appear despite summons and notice of suit for permanent injunction against the recovery notice issued by the Board when landlord applied for an electricity connection in his name to first pay the outstanding dues, then an adverse inference could have been drawn against the tenant, but nothing of the kind was done.

The only dispute is with respect to an amount of ₹ 30,000/- and odd which has been deposited by the plaintiff under protest with the Nigam to secure a connection for himself. Learned trial court decreed the suit but the lower appellate court reversed the findings and dismissed the suit on the strength of the policy circular issued by defendant Nigam in 2001 to meet such exigencies, which was the main plank in defence of the suit, and refused injunction. The circular was not challenged by the appellant by amending the suit, even when it was pleaded in the written statement, and therefore to his notice. Besides, effective alternative remedies were available to the appellant before the authorities in the Nigam but were not

resorted to. The argument raised by counsel that the appellant was not a consumer of the connection given by the Nigam to the tenant without knowledge of the landlord does not make him liable when he was neither consumer nor guarantor is a misplaced contention since the appellant allowed it to happen in his premises for which he received rent and was not an innocent bystander in front of his shop let out. It was the rent note which could have indicated as to what were the terms in it with respect to payment of electricity charges but there is nothing on record absolving the appellant of vicarious liability to pay the outstanding dues to the Nigam to entitle him to an independent metered power supply. The view formed by the court of first appeal on the evidence and the circular suffers from no legal infirmity, perversity or irrationality. It is a possible and a plausible one which could have been taken on facts and circumstances of the case and calls for no interference in second appeal as it fails to give rise to a substantial question of law. It is well to remember that the court of first appeal is the last court of fact and law. Even mere errors of fact and law which do not involve substantial questions of law are not to be entertained in proceedings in Section 100 of the CPC.

For the foregoing reasons, this court is not inclined to intervene in the matter and the appeal is declined.

(RAJIV NARAIN RAINA)
JUDGE

July 13, 2015

Paritosh Kumar