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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1742-2015[O&M]

Date of Decision : December 7th, 2015

Satbir Singh

.... Appellant

Versus

Agroha Vikas Trust Dham and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

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

Present Mr. Amit Jain, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

For the reasons mentioned in CM No.3742-LPA-2012, which is supported by an affidavit, delay of 34 days in filing the appeal is condoned.

Main Appeal

1. Present intra-court appeal under Clause X of the Letters Patent has been filed by the appellant against the order dated 25.08.2015 passed by learned Single Judge, whereby Civil Writ Petition No. 16786 OF 2013 filed by Agroha Vikas Trust Dham, respondent No.1 herein, was allowed.
2. The minimal facts required for disposal of the present appeal are
- Respondent No.1 became the owner of the property in question on the basis of registered Gift Deed No. 8332 dated 11.3.2002. Mutation No.

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5689 was sanctioned on 12.5.2002. The petitioner in order to recover the rent filed an application before the Assistant Collector Ist Grade, Hisar on Form No. L in terms of Section 9(1)(ii) of the Punjab Securities of Land Tenure Act, 1953 [for short, "the Act"] for recovery of rent of 1/3rd share to the tune of Rs.1,60,000/- along with interest @ 8% and costs of the application from the appellant.

3. Originally, three writ petitions being CWP No. 16786 of 2013, CWP No. 22404 of 2013 and CWP No. 22319 of 2013 were filed by respondent No.1 and learned Single Judge disposed of all the three writ petitions vide common order dated 25.08.2015. However, CWP No. 16786 of 2013, which is the subject matter of the present appeal, was allowed and order passed by the Financial Commissioner dated 12.3.2013 was set-aside.

4. On filing of Form L by respondent No.1, before the Assistant Collector Ist Grade, Hisar, notice was issued to the present appellant, who had put in appearance on 16.1.2013 and the following order was passed by Assistant Collector Ist Grade :-

"Missal is presented. Counsel for the applicant is present. From the side of respondent power of attorney is submitted. Out of the total share of 4,80,000/- from Haari 1992 to Rabi 2002, the answering respondent is ordered to make payment of 1/3rd share i.e. 1,60,000/- + interest 8% and cost of the application before 30.1.2003 before the Court."

5. Thereafter, on the adjourned date, the appellant paid Rs.5,000/- alongwith interest, but without the cost of the application alleging that the said amount is being paid under protest as he had already paid the entire rent to the previous owner. Assistant Collector Ist Grade passed the

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following order on 30.1.2003:-

“Missal is presented. Counsel for the parties are present. The answering respondent has paid Rs.5,000/- along with interest and without cost of application. Case is adjourned for filing reply on 28.2.2003.”

6. Subsequently, Assistant Collector 1st Grade, Hisar decided the matter that the appellant [respondent No. 3 in the writ petition] had paid only an amount of Rs.5,000/- with interest but without the cost of the application. Plea was taken that the entire rent had already been paid to the earlier owner, but the appellant failed to prove the payment of rent having been made to the earlier owner and as such, the Assistant Collector 1st Grade passed the eviction order. The said order was unsuccessfully challenged before the Collector and thereafter before the Divisional Commissioner. However, when the matter went before the Financial Commissioner, the same was remanded back with the order that the tenant be given one more opportunity to deposit the rent before he is ordered to be evicted.

7. Learned Single Judge, after considering the entire matter, set-aside the order dated 12.03.2013 [Annexure P/4] passed by the Financial Commissioner as the same is contrary to the provisions of Section 14-A(i) of the Act and consequently, Civil Writ Petition No. 16786 of 2013 was allowed. Hence, the present appeal is before this Court.

Learned counsel for the appellant mainly submitted that learned Single Judge has completely ignored the fact that the appellant was required to make assessment of interest and costs while passing the order dated 16.1.2003, but that has not been done. More so, the appellant had taken the plea that he had already made the payment whichever was

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due to the earlier land-owner and that plea was not considered on merits. The order passed by the Financial Commissioner was set-aside without assigning any reason. So, the present appeal be accepted and the order passed by Financial Commissioner, dated 12.3.2013 [Annexure P/4] be restored.

8. We have considered the submissions made by learned counsel for the appellant and are of the view that Assistant Collector Ist Grade had passed the order dated 16.1.2003 strictly in accordance with law. He had given the details that out of total share of Rs.4,80,000/-, the appellant was required to make payment of 1/3rd i.e., Rs.1,60,000/- plus interest @ 8% and costs. The appellant failed to comply with the said order and simply deposited a sum of Rs.5,000/- on 30.1.2003. Thus, the order passed by Assistant Collector Ist Grade on 16.1.2003 was not complied with. He has also failed to prove before Assistant Collector Ist Grade that he actually made the payment to the previous owner. Consequently, Assistant Collector Ist Grade rightly passed the order for ejectment of the appellant. The said order was duly maintained by the Collector and the Divisional Commissioner. The Financial Commissioner on 12.3.2013 [Annexure P/4] simply passed the order that one more opportunity be given to the present appellant to deposit the rent before eviction. Though, there is no such requirement as earlier the appellant was given opportunity to pay the arrears of rent, thus, there was no basis to set-aside the orders passed by Assistant Collector Ist Grade, Collector and Divisional Commissioner. The appellant was given clear directions on 16.1.2003 to make payment of 1/3rd share i.e. Rs.1,60,000/- plus interest @ 8% and costs of the application, but that has not been done and the Financial Commissioner

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completely ignored this fact. Resultantly, learned Single Judge rightly set-aside the order dated 12.3.2013 [Annexure P/4] passed by the Financial Commissioner. We do not find any illegality in the order passed by learned Single Judge dated 25.08.2015 and the present appeal stands dismissed being devoid of any merit.

(SATISH KUMAR MITTAL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

December 7th, 2015
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