

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

**Regular Second Appeal No.2250 of 2013 (O&M)
Date of Decision: January 15, 2015.**

Surinder Kumar and others

.....APPELLANT(s).

VERSUS

Hans Raj Sardana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.S. Bali, Senior Advocate with
Mr. Amrinder Vir Singh, Advocate
for the appellant (s).

Mr. Deepak Bhardwaj, Advocate
for the respondent.

SURINDER GUPTA, J.

Respondent, who is owner of flat No.8/3-C situated in Rail Vihar, New Mansa Devi Complex, Panchkula, had let out the same to Prem Lata (since deceased) and after her death, the appellants succeeded her tenancy.

The respondent filed a petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Rent Act') seeking ejectment of the tenant from the demised premises. In preliminary objections No.4 of reply, Prem Lata tenant took the objection that construction of the building was completed less than ten years prior to filing of petition and the provisions of Rent act were not applicable to the suit property under Section 1 (3) of the Rent Act, as such, Rent Controller had no jurisdiction to adjudicate the matter.

In view of the objection raised by the tenant, the rent petition filed by the respondent was allowed to be withdrawn vide order dated 06.01.2006 which reads as follows:-

“Respondent stated to be expired. On the other hand, counsel for the petitioner made statement to withdraw the present petition with permission to file a fresh suit. Opposite counsel has no objection. Keeping in view statement made by the Id.counsel for the petitioner present petition is hereby dismissed as withdrawn and permission is granted to the petitioner to file civil suit against the respondent or her Legal Hair, if so advised.”

It is clear from the perusal of the above order that counsel for the appellants had no objection to the permission being allowed to the respondent to file a fresh suit.

After complying with the required provisions of serving notice etc. respondent filed suit for possession by evicting the appellant from the demised premises.

In the written statement, though the appellant contested the suit but nowhere took the plea that premises in question was constructed more than 10 years before filing of the suit, provisions of Rent Act were applicable. The suit was contested on the other grounds challenging the rate of rent, rent deed etc.

Vide judgment dated 28.07.2011, Civil Judge (Junior Division), Panchkula dismissed the suit holding that the provisions of Rent Act were applicable and the civil suit was not maintainable. The appeal filed by the respondent was accepted and the suit of the respondent-plaintiff was decreed for possession by way of eviction of the appellant from the demised premises.

Learned counsel for the appellants has argued that for the tenanted premises, the ejectment of tenant can be sought under the provisions of Rent Act. Only those buildings construction of which have not completed ten years, from the date of filing of suit, are exempted from the operation of the provisions of the Rent Act.

While elaborating his arguments, learned counsel for the appellants has argued that the appellants had relied on a document i.e. certificate Ex.P2 to prove that the building was completed on 15.12.1997, as such, being a construction less than ten years old on the date of filing of the suit i.e. 21.09.2006, the provisions of Rent Act were not applicable, but this document was not duly proved. The first Appellate Court has also observed that the above document was not proved but still rejected the plea raised by the appellants.

On perusal of the paper book and record of the Courts below, I find that the above argument advanced by learned counsel for the appellants is without any basis and is liable to be rejected. It was on the plea of tenant in the petition filed by respondent that the provisions of Rent Act were not applicable as the construction of demised premises had not completed ten years, the respondent-landlord withdrew the ejectment petition. At that time, the tenant had no objection in the event of fresh civil suit being filed; secondly in the written statement, the respondent had not raised any specific plea that the demised premises as per provisions of Section 1 (3) was not exempted from the provisions of the Rent Act. In the absence of any plea in the written statement, this objection could not be raised before the Courts below or even in this appeal.

Learned counsel for the appellants has argued that objection was

taken regarding the maintainability of the suit and this covers the maintainability of the suit on all aspects. The above argument carries no weight and is discarded. After the withdrawal of the rent petition, the respondent had filed the instant civil suit. The appellants were very well aware that the rent petition had been withdrawn on his objections to the jurisdiction of the Rent Controller and the consent had been given for the filing of the civil suit. This deters the appellant from taking the plea that construction of the demised premises was completed more than ten years ago, as such, they could be ejected only under the provisions of Rent Act. When an objection, raised on facts, is to be taken, it is required to be specifically pleaded and proved. In this case, neither there are any pleading nor the respondent-plaintiff when appeared as PW1 was ever suggested that the construction of the demised premises was completed more than ten years prior to the filing of the suit to attract the provisions of Section 1 (3) of the Rent Act.

No other argument has been addressed assailing the judgment of the first Appellate Court.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 15, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE