

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

**Regular Second Appeal No.3688 of 2013 (O&M)
Date of Decision: January 14, 2015.**

M/s Jagdamba Steel and Electronics

.....APPELLANT(s).

VERSUS

Subhash Chawla

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Keshav Partap Singh, Advocate
for the appellant (s).

Mr. O.P. Goel, Senior Advocate with
Mr. Ranjeet Singh Kang, Advocate
for the respondent.

SURINDER GUPTA, J.

In this regular second appeal, appellant-defendant challenges the judgment and decree passed by District Judge, Faridabad affirming the judgment and decree of Civil Judge (Senior Division), Faridabad dated 10.11.2012 decreeing the suit of respondent-plaintiff for possession by way of ejectment of respondent-defendant from the demised premises.

Respondent-plaintiff claimed the possession of the shop measuring 14' X 22' forming part of House No.1-H 31, Arya Samaj road, NIT Faridabad, which was let out to the appellant vide rent agreement dated 17.02.2004. It was pleaded that the appellant committed default in making payment of rent and respondent filed a petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Rent Act'), which was declined on the ground of maintainability by holding that premises in question was constructed in the year 2004 and under

Section 1(3) of the Rent Act, the petition was not maintainable.

The appellant was in arrears of ₹1,10,060 as rent. After issuance of legal notice terminating his tenancy, the present suit was filed claiming possession of the demised premises and also the mesne profits.

Appellant admitted title of the respondent over the demised premises. He took the objection regarding the maintainability of the suit and denied that the respondent required the shop for his personal bona fide necessity.

I have heard learned counsel for the parties and perused the paper book with their assistance.

There is no dispute regarding the tenancy or rate of rent. It is also admitted that in the execution, the respondent had already taken the possession of the demised premises from the appellant.

Learned counsel for the appellant has argued that the suit was not maintainable as the respondent had himself earlier filed a rent petition seeking ejectment of the appellant, which was dismissed. Once the respondent has pleaded that the Rent Act was applicable to the demised premises he could not wriggle out and file civil suit for possession.

The above plea was also raised before the first Appellate Court and was discussed in detail and rightly repelled in para 17 and 18 of the judgment as follows:-

“17. If the plea raised by the appellant-defendant that provisions of the Rent Act have become applicable, in view of the earlier stand of the plaintiff in the rent petitions, it will virtually amounting to closing all the doors to the plaintiff to seek the remedy. No doubt, the previous rent petitions were filed by the plaintiff-respondent assuming that the provisions of the Rent Act were applicable to the

demised premises. But on the basis of the plea raised by the appellant with respect to the maintainability of the rent petition, the learned Rent Controller as well as the learned appellate authority have returned the findings that as building in question was constructed within ten years from the date of filing the petition, the provisions of the Rent Act were not applicable and the rent petition was not maintainable. The plaintiff had a remedy to file the civil suit for possession. The aforesaid findings were returned by the learned Rent Controller as well as the learned Appellate Authority accepting the contentions/plea raised by the present appellant. Now when the plaintiff has filed the civil suit in view of the findings given in the previous rent petition, the appellant has shifted the stand that the building in question is covered under the provisions of the Rent Act. In the affidavit Ex.PY filed in the previous rent petition, the plaintiff has categorically pleaded that the construction of the shop in question was completed in January, 2004. The present suit has been filed on 12.08.2010 i.e. before the completion of ten years since January, 2004 the date of construction mentioned by the appellant in his affidavit Ex.PY. So, virtually the appellant-defendant is approbating the reprobating in the same breath. When the rent petition was filed he challenged the maintainability of the rent petition by raising the plea that the provisions of Rent Act were not applicable and when the present civil suit was filed for possession the plea is being raised that the demised premises are governed by the provisions of the Rent Act. The appellant is stopped to shift his hand in this manner. In case **“Indermull Loniya Vs. Subordinate Judge, Secunderabad and others” AIR 1958 Andra Pradesh 779** it was laid down as under:-

‘A party who successfully took a plea and got a judgment in his favour cannot be allowed to take an inconsistent position in any action arising

out of the said judgment. This principle has been applied even to cases where a question of jurisdiction is involved.'

It was further laid down that

'on the facts of the case that the petitioner lessee who had successfully taken the plea in the eviction proceedings against his sub-lessee before the Rent Controller that he had jurisdiction in the matter, could not be allowed to deny the truth of the said plea in the subsequent proceeding for fixing reasonable and fair rent of the cinema house which the sub lessee was obliged to resort to on account of the decision of the Rent Controller.'

18. The same legal position has been re-iterated by our Hon'ble High Court in case "Durga Dass Vs. Sansar Singh and others(Supra). Thus, as the appellant has obtained the judgment in his favour in the previous rent petition by successfully taking the plea that the provisions of the Rent Act were not applicable, now he cannot be allowed to raise plea that the civil suit is not maintainable and the demised premises are governed by the provisions of the Rent Act."

The plea of the appellant that the civil suit was not maintainable, cannot be accepted as he himself has earlier raised the plea that the provisions of Rent Act are not applicable to the demised premises under Section 1 (3) of the Rent Act.

On perusal of paper book and record, I find no legal or factual infirmity calling for any interference in the judgments of the Courts below.

No substantial question of law requiring determination arises and this appeal has no merits. Dismissed.

**(SURINDER GUPTA)
JUDGE**

January 14, 2015.