

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.514 of 2013 (O&M)

Date of Decision: September 11, 2015

Manjit Kaur

...Appellant

Versus

Sub Divisional Officer, Sirhind Canal Department & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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 Bhanot, Advocate,
for the appellants.

Mr.Rajesh Mehta, Addl.A.G.Punjab,
for the State.

AMIT RAWAL, J.

Civil Misc.Nos.1387-C & 1388-C of 2013

For the reasons mentioned in the applications, which are duly supported by affidavit, the delay of 15 days in filing and 94 days in re-filing the appeal is condoned.

Applications stand disposed of.

Regular Second Appeal No.514 of 2013

The appellant-plaintiff is in the Regular Second Appeal against the concurrent findings of both the Courts below, whereby the suit for permanent injunction restraining the defendants from recovering, realizing or collecting the amount, alleged to be the rent for the relevant period, and

as well as challenge to the order dated 9.6.2006 passed by the SDM-cum-Collector, Ropar and order dated 9.4.2007 passed by the Deputy Commissioner exercising the powers of the Commissioner under the Punjab Public Premises and Eviction Rent Recovery Act, 1973 (for short “1973 Act”), has been dismissed.

Mr.Amit Bhanot, learned counsel appearing on behalf of the appellant-plaintiff submits that both the Courts below, while deciding the matter, have not looked into the statement of DW-1 Gurmail Singh, who unequivocally admitted that the written statement did not bear his signatures and, therefore, he had no authority to appear and depose. He further submits that a petition under the 1973 Act was filed, but no relief of recovery of rent and damages as envisaged under Section 7 of 1973 Act was sought. The matter was remanded back by the Commissioner, but the SDM-cum-Collector instead of deciding the controversy, issued a fresh notice under Section 4(1) of 1973 Act ignoring the original notice on the basis of the original proceedings and lacked reasons. He, thus, submits that both the Courts below have dismissed the suit on merits and as well as found that as per the provisions of Section 10 of the 1973 Act, the Civil Court did not have jurisdiction to entertain and try the controversy. He further submits that where the order has been passed without jurisdiction and is erroneous on the face of it, the Civil Court would have jurisdiction, even if there is an alternative remedy available.

Mr.Rajesh Mehta, learned Additional Advocate General, Punjab appearing on behalf of the State submits that the Courts below have exercised the jurisdiction vested in them in a correct perspective. There is

no illegality and perversity, much less, no substantial question of law arises for determination by this Court as there is an alternative remedy available to the appellant-plaintiff for challenging the action initiated under 1973 Act.

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

It is a matter of record that against the proceedings initiated under Section 4 of 1973 Act, the appellant-plaintiff had filed an appeal before the Commissioner. The matter was remanded back and again the SDM-cum-Collector initiated proceedings under Section 4 of 1973 Act. It is the said action which has been challenged by the appellant-plaintiff. Instead of taking up the plea with regard to the jurisdiction of the Collector in initiating the proceedings afresh under the aforementioned Act, the suit, aforementioned, was filed and both the Courts below noticed the fact that as per Section 10 of the 1973 Act, the Civil Court did not have the jurisdiction to entertain and try the controversy between the parties, much less, even the record of the authorities reflected that sufficient opportunities were given to the appellant-plaintiff to defend the case.

In view of what has been observed above, there is no illegality and perversity in the findings recorded by both the Courts below, which are based on appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

The appeal is accordingly dismissed.

September 11, 2015
ramesh

(AMIT RAWAL)
JUDGE