

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.1819 of 2015 (O&M)

.....

Date of decision:11.5.2015

Naresh Kumar Kansal

.....Appellant

v.

Vikas Khaarb

.....Respondent

.....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ravinder S. Budhwar, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Naresh Kumar Kansal-appellant/defendant against Vikas Khaarb-respondent/plaintiff challenging the judgment and decree dated 28.4.2014 passed by learned Civil Judge (Senior Division), Panchkula as well as the judgment and decree dated 4.3.2015 passed by learned District Judge, Panchkula.

The brief facts of the case are that the plaintiff is owner and landlord of House No.786, Sector 19, Panchkula, which is a double storey house. Ground floor of the aforesaid house was let out on rent of ₹3200/- per month by him to the defendant (appellant herein) in the month of October 2009 and a rent agreement dated 1.10.2009 was also executed between the parties incorporating the terms of the tenancy. The defendant

defaulted in the payment of rent w.e.f. December 2009 and started commercial activities in the premises and had caused damages to the premises. The plaintiff filed an ejectment petition. The arrears of rent amounting to ₹72,628/- as assessed by the Rent Controller were not deposited by the defendant and during the pendency of the petition, he vacated the premises. Thereafter, the plaintiff had withdrawn the aforesaid ejectment petition reserving his right to recover the rent from the defendant. It is also the case of the plaintiff that he deposited the electricity charges and also spent money for installation of electricity meter and repairs, welding of grills etc. and he claimed ₹1,06,967/- along with interest.

On the other hand, the case of the defendant is that the rent of the premises was not ₹3200/- per month but was ₹1800/- per month w.e.f. 10.7.2009, which was increased to ₹1890/- per month and then to ₹1985/- per month. It is also the case of the defendant that he had already paid rent upto August 2011 and had also paid the electricity and water charges. It is further stated that the plaintiff had taken a friendly loan of ₹10,000/- on 18.3.2011 and subsequent loan of ₹30,000/- was taken by him from the defendant on 18.4.2011, which is outstanding from him. It is also stated that the defendant had paid the rent of the premises in question to the plaintiff in the earlier rent petition for the months of October 2011 to December 2011 and he had already paid security of ₹5,400/-.

Both the parties produced the evidence. After appreciating the evidence and after hearing learned counsel for the parties, learned Civil Judge (Senior Division), Panchkula, decreed the suit for recovery of

₹88,000/- along with interest @ 6% per annum (wrongly mentioned as per month in the judgment). It was held that the amount of ₹5,955/- already paid by the defendant would be adjusted towards the decretal amount. Aggrieved from the above judgment and decree, the defendant filed an appeal before the learned District Judge, which was also dismissed vide judgment and decree dated 4.3.2015 by the learned District Judge, Panchkula. Aggrieved against the judgments and decrees passed by both the Courts below, this regular second appeal has been filed.

I have heard learned counsel for the appellant and have gone through the record.

Learned counsel for the appellant argued that the rate of rent was ₹1800/- per month and it was to be increased @5% annually. He also argued that as per the case of the defendant that loan was taken by the plaintiff and rather, the plaintiff has to pay the amount.

After hearing learned counsel for the appellant-defendant and after going through the record, I find that first of all the findings of fact have been given concurrently by both the Courts below. There is nothing on the record to show that the Courts below have not appreciated the evidence in right perspective or the findings given by the Courts below are perverse or against the evidence. There is also nothing on the record to show that the Courts below have misread the evidence.

Learned counsel for the appellant at the time of arguments has not shown as to what substantial question of law arises in the regular second appeal. The oral evidence led by the plaintiff is duly supported by the

documentary evidence that is rent agreement and the electricity consumption bills etc.

On the other hand, the defendant has nowhere denied specifically the execution of the rent agreement. At the time of arguments, he argued that the tenancy was oral, but there is no such plea in the written statement. As per the rent agreement the rate of rent was ₹3200/- per month. Further there is no evidence on record to show that entire rent has already been paid by the defendant. When the defendant says that he had paid the rent, then he has to prove the same by leading cogent evidence. There is also nothing on the record to show that rate of rent was ₹1800/- per month as claimed by the defendant. The learned counsel for the appellant-defendant also argued that the defendant had been dispossessed forcibly, but he has not filed any application before the Court, neither he filed suit for restoration of the possession nor he filed any criminal complaint against the plaintiff before the Police etc. Therefore, his version cannot be believed. The findings of fact given by the Courts below are correct and as per law and evidence on record and do not require any interference from this Court and the findings of both the Courts below are upheld.

Finding no merit in the present regular second appeal and specially when no substantial question of law arises, the same is dismissed.

May 11, 2015.

(Inderjit Singh)
Judge

hsp