

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2396 of 2015 (O&M)
Date of Decision: July 13, 2015

Charanjit Singh

...Appellant

Versus

Baldev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Munish Gupta, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant No.1 Charanjit Singh has filed this regular second appeal against respondent-plaintiff Baldev Singh and proforma-respondents Kulwant Kaur and others, challenging the impugned judgment and decree dated 16.01.2015 passed by learned Addl. District Judge, Hoshiarpur vide which judgment and decree dated 18.12.2012 passed by learned Civil Judge, Hoshiapur, was modified.

The brief facts of the case are that plaintiff-respondent Baldev Singh filed a suit for recovery of mesne profits by way of damages for use and occupation from 20.10.2008 @ ₹5000/- per month till the date of delivery of possession along with interest @ 12% per annum till realization against the defendants Charanjit Singh and others. As per the case of the plaintiff, the shop situated on railway

road was on rent with the defendants @ ₹400/- per month. The Ejectment petition was filed by the defendants, which was allowed vide order dated 20.10.2008 by Rent Controller, Hoshiarpur. Then appeals were filed upto Hon'ble Supreme Court. The possession was delivered back on 27.01.2011. Therefore, plaintiff claimed mesne profits for use and occupation after the ejectment order was passed.

Notice was given to the defendants but they did not appear and were proceeded against ex parte. The plaintiff examined himself as PW-1, Nachhatar Singh as PW-2 and after tendering documents, the evidence was closed and learned Civil Judge, Hoshiarpur, vide judgment and decree dated 18.12.2012, decreed the suit by granting damages for use and occupation of the shop in dispute from the defendants w.e.f. 20.10.2008 to 27.01.2011 @ ₹400/- per month with 6% interest.

Aggrieved from the above-said judgment and decree, plaintiff filed an appeal for enhancement of the amount whereas defendants filed cross-objections. The cross-objections of the defendants were dismissed and no regular second appeal against the dismissal of cross-objections, has been filed nor it was pressed at the time of arguments. Learned Addl. District Judge, Hoshiarpur, in the appeal, enhanced the rate from ₹400/- to ₹4750/- per month along with interest @ 6% per annum till actual realization.

Aggrieved from the above-said judgment and decree dated 16.01.2015, present regular second appeal has been filed by appellant-defendant No.1.

At the time of arguments, learned counsel for the appellant argued that learned Addl. District Judge, Hoshiarpur has wrongly modified the judgment and decree passed by learned Civil Judge, Hoshiarpur by increasing use of occupation charges to ₹4750/- per month. He argued that it should be ₹400/- per month, which was the rent of the shop.

After hearing learned counsel for the appellant and after going through the record, I find that the argument of learned counsel for the appellant has no merit. The rate of rent cannot be the base for fixing use and occupancy charges after the ejectment order. It is to be assessed as per the rent prevalent in the locality. Admittedly, this shop is situated on railway road. Plaintiff has examined himself as PW-1, to support and corroborate his version. Secondly, plaintiff examined PW-2 Nachhatar Lal, Rent Clerk of Municipal Council, Hoshiarpur, who deposed that the Committee had given on rent one shop No.9 to one Balbir Singh on 27.03.2002 and the rent of the said shop has been increasing after every three years and on 12.04.2008, the rate of rent of the shop No.9 was ₹4824/- per month which was increased upto ₹5789/- on 12.04.2011. This witness has further deposed that the Committee had given one shop No.8 to one Rakesh Kumar on rent and on 12.04.2008, the rate of rent of that shop was ₹4752/- which was increased upto ₹5703/- per month on 12.04.2011 and these shops are situated on the railway road and rate is entered in the rent register of the Committee and the Committee is receiving the same rent. So far as the fact that neighbour has not been

examined, learned Addl. District Judge has discussed that the shop adjoining to the shop in question was not on rent. Otherwise also, no rebuttal evidence has been led by the defendant-appellant before the trial Court, rather, they were proceeded against ex parte.

In view of the above discussion, I find that the judgment and decree passed by learned Addl. District Judge, Hoshiarpur is correct, as per law and does not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 13, 2015
Vgulati

(INDERJIT SINGH)
JUDGE