

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

**Regular Second Appeal No.469 of 2015 (O&M)
Date of Decision: December 15, 2015.**

M/s Goyal Tractors

.....APPELLANT.

VERSUS

M/s Ajit Steel Industries

.....RESPONDENT.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Kaura, Advocate
for the appellant.

SURINDER GUPTA, J.

CM-1303-C-2015

Heard. There is delay of 17 days in filing the appeal.

2. Learned counsel for the appellant submits that after obtaining the certified copy of the judgment of the first Appellate Court, appellant approached him within time and the appeal was prepared well within time but his clerk placed it in the files of admitted cases and same could not be traced, resulting in delay of 17 days in filing the appeal.

3. The application is supported by affidavit. In view of submission of learned counsel for the appellant, the delay of 17 days in filing the appeal is, hereby, condoned.

RSA-469-2015

4. This is regular second appeal against the judgment and decree

passed by Additional Civil Judge (Senior Division), Khanna, whereby suit of the plaintiff(now respondent) for recovery of ₹1,09,500/- was decreed and a decree for mandatory injunction was also issued directing the defendant (now appellant) to deposit the entire balance amount of sewerage charges relating to the property in dispute as per terms and conditions of lease deed dated 23.04.2001 registered on 26.04.2001 (Ex.P1). The appeal filed by the defendant was dismissed and the cross-objections filed by the plaintiff were allowed to the extent that the defendant was directed to pay the suit amount with interest @ 9% per annum from the date that amount has become due till the date of decree and @ 6% per annum from the date of decree till actual payment.

5. A show-room situated at G.T. Road, Khanna was on lease with the appellant-defendant @ ₹6,000/- per month for a period from 01.10.2000 to 30.09.2003 as per the terms of lease deed dated 23.04.2001 registered on 26.04.2001. It was stipulated in the lease deed that in the event of property being not vacated, the lessee shall be liable to pay w.e.f. 01.10.2003 lease money at the enhanced rate of 25%. In view of the above terms, the defendant was liable to pay ₹1500/- per month in addition to the amount of ₹6,000/- per month from 01.10.2003 to 01.04.2005 and for the period w.e.f. 01.04.2005 to 01.07.2006, he was liable to pay ₹1,09,500/-. Out of due amount ₹30,000/- paid by the defendant were deducted. A cheque of ₹6,000/- dated 16.05.2006 drawn at Oriental Bank of Commerce, Khanna issued by the defendant was, however, dishonoured. The defendant had also not deposited the sewerage charges w.e.f. 1.4.2006 to 31.03.2007 with

6. The appellant-defendant contested the claim of respondent-plaintiff inter-alia pleading that he had taken the premises on lease as per the terms of the lease deed dated 08.11.1993. The terms of the lease deed were revised from time to time and last revision was vide lease deed dated 23.04.2001. The clause regarding enhancement of rent was not intended to be acted upon and the rent was never enhanced from ₹6,000/- per month to ₹7,500/- per month. The defendant paid rent upto 31.07.2006 including ₹30,000/- paid through cheque and pay order and remaining amount was paid in cash to the respondent-plaintiff without receipt.

7. The plea raised by the appellant-defendant that there was no term for enhancement of rent or that he had paid the entire rent up to 31.07.2006 were discarded and the suit seeking recovery of ₹1,09,500/- was decreed.

8. I have heard learned counsel for the appellant and perused the paper book with his assistance.

9. Admittedly, the premises i.e. show-room was in possession of appellant under a lease agreement upto 30.09.2003 at the monthly rent of ₹6,000/-. It was stipulated in the lease deed that in the event of appellant-defendant continuing in possession of the leased property after 01.10.2003, he will have to pay the agreed amount of rent along with 25% enhanced amount i.e. ₹7,500/- per month.

10. Learned counsel for the appellant has argued that the appellant continued to be in possession of the disputed premises up to the year 2010 and under oral settlement, he was paying rent @ ₹6,000/- per month which

was accepted by the plaintiff, as such, both the Courts below have committed

grave error of law and fact while reaching conclusion that the suit amount as claimed by the plaintiff is due towards arrears of rent.

11. Learned Additional Civil Judge (Senior Division), Khanna discarded the plea of appellant that the lease money after the expiry of lease period on 30.09.2003 remained ₹6,000/- per month and has rightly observed that when the rate of rent mentioned in the lease deed is established and admitted by the appellant, no amount of oral evidence can be taken into consideration to contradict the terms and conditions of the lease deed. Both the Courts below have relied on the terms and conditions of lease deed (Ex.P1) while reaching the conclusion that respondent-plaintiff is entitled to recover the suit amount. The findings of the Courts below are based on evidence on record and on perusal of the judgments of the Courts below, I do not find any legal or factual infirmity therein calling for interference.

12. The plea raised by the appellant that there was some oral settlement between the parties was not proved and under the terms of lease deed, he is liable to pay the lease money after 01.10.2003 @ ₹7,500/- per month.

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

14. Dismissed.

December 15, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE