

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

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Regular Second Appeal No.4883 of 2015 (O&M)

Date of Decision: December 18, 2015

Mohd. Munir

...Appellant

Versus

Mohd. Rafiq and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Mohd. Salim, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.11692-C of 2015

Prayer in this application is for making good the deficiency in the Court fee.

For the reasons mentioned in the application which is duly supported by the affidavit of the Clerk of the counsel, the deficiency in Court fee which has been made good, is accepted.

The application stands allowed.

CM No.11691-C of 2015

Prayer in this application is for condonation of delay of 18 days in filing the present appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of the applicant-appellant, the present application is allowed.

Delay of 18 days in filing the present appeal is condoned.

CM No.11689-C of 2015

Prayer in this application is for condonation of delay of 159 days in refiling the present appeal and the reason for the said delay is that

after the filing of the appeal, Registry had raised certain objections, which were in the process of being removed in the office of the counsel but the file was misplaced because of the renovation work being carried out. The file was retraced with great difficulty and the appeal was filed, which has resulted in the delay of 159 days in refiling the appeal. The application is duly supported by the affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the same is allowed.

Delay of 159 days in refiling the present appeal is condoned.

RSA No.4883 of 2015

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Malerkotla, dated 21.03.2011, whereby the suit filed by the respondents-plaintiffs for declaration to the effect that they are the owners of the suit property (shop) and possession with recovery of the arrears of rent, has been partly decreed, appeal against which preferred by the appellant-defendant stands dismissed by the Additional District Judge, Sangrur, on 24.09.2014.

2. It is the contention of learned counsel for the appellant that the appellant-defendant was given the shop in question on rent by his brother, who was predecessor-in-interest of the respondents-plaintiffs. He contends that the possession of the property was, therefore, permissible. He contends that as the rent was being regularly paid to Balkees Begum wife of Mohd. Shakar, thus, the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. On considering the submissions made by learned counsel for the appellant and on going through the impugned judgments, this Court

does not find any illegality in the said judgments.

4. The respondents-plaintiffs have been able to prove on the basis of the evidence brought on record the ownership of the property in question, rather the stand of the appellant-defendant was that he was in possession of the shop as a tenant but unfortunately he has not produced any evidence in support of the said contention. In the absence of the evidence on the part of the appellant-defendant, the findings as recorded by the Courts below relying upon the pleadings and the evidence of the respondents-plaintiffs, cannot be faulted with.

5. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.11690-C of 2015, stands disposed of as infructuous.

December 18, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE