

RSA No. 2835 of 2014

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

RSA No. 2835 of 2014 (O&M)

Date of Decision: August 25, 2015

Dalip Mata

...Appellant

Versus

M/s Aya Ram Kanshi Ram & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.6767-C of 2014

Prayer in this application is for condonation of delay of 13 days in filing the appeal.

The reason assigned for the delay is that the applicant-appellant was suffering from viral fever, because of which, he could not travel to Chandigarh, to engage the counsel.

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 13 days in filing the appeal is condoned.

RSA No. 2835 of 2014

Challenge in this appeal is to the judgment and decree passed by the Additional District Judge, Rewari, dated 04.12.2013 by

which the judgment and decree dated 09.04.2011 passed by the Additional Civil Judge (Senior Division), Rewari, dismissing the suit of the plaintiff-respondent has been set aside.

It is the contention of the learned Senior Counsel for the appellant-defendant No.1 that as per the requirement of Section 120 of the Haryana Municipal Act, 1973, no notice was required to be given to the tenant (respondent-plaintiff) as according to the said Section, notice was required to be given to the owner of the property which has been duly served upon the appellant-defendant No.1 and it is on the basis of the inspection carried out by the Municipal Authorities that a report was submitted indicating therein that the said building was totally unsafe for human habitation and therefore, required demolition. This report is based upon an application submitted by one of the neighbour of the property, namely, Om Parkash, which indicates that the building being unsafe is a constant danger to his own property. He, thus, contends that the judgment and decree passed by the Additional District Judge, Rewari, deserves to be set aside.

I have considered the submissions made by the learned Senior Counsel for the appellant-defendant No.1 and have gone through the impugned judgment.

Section 120 of the Haryana Municipal Act, 1973 reads as follows:-

“120. Building etc. in dangerous state. - Should

any building, well or structure, or anything affixed thereto, or any bank or tree, be deemed by the Committee to be in a ruinous state or in any way dangerous, or there be any fallen building or debris or other material which is unsightly or is likely to be in any way injurious to health, it may, by notice, require the owner thereof either to remove the same, or to cause such repairs to be made to the buildings, wall, structure or bank, as the Committee may consider necessary for the public safety, and should it appear to be necessary in order to prevent imminent danger, the Committee shall forthwith take such steps, at the expense of the owner, to avert the danger, as may be necessary.”

A perusal of the above, although mentions that the notice has to be issued upon the owner of the property, however, the tenant who is in possession of the said property is an equally interested person in the property. The intention of the legislature is that the occupant should be given an opportunity to explain the position with regard to the condition of the property and in any case, the principle of natural justice would be fulfilled by doing so and thus, notice on the occupier of the property is essential. The Lower Appellate Court has rightly relied upon the ratio of the judgments of this Court in **Raj Masih Vs. Municipal Corporation, Amritsar through its Commissioner and another, 1987 SLJ 127 (P&H)** and **Improvement Trust, Ludhiana and another Vs. Rajinder Singh 1999 (1) PLR 455 (P&H).**

In the present case, admittedly, no notice has been given to the respondent-plaintiff and the report which has been submitted and relied upon by the appellant with regard to the building being not fit for human habitation, has been prepared in the absence of the respondent-plaintiff and thus, not binding on the respondent-plaintiff.

The findings recorded and the conclusions drawn by the learned Lower Appellate Court cannot be faulted with.

In any case, the permanent injunction which has been granted by the Court, is only for restraining the defendants from interfering into the possession of respondent-plaintiff over the demised premises and from demolishing the suit property in any manner except in due course of law. The Court is obvious of the fact that if the requirement of the statute is duly complied with, necessary steps in accordance with law, can be initiated for either demolition of the suit property or for taking any other course whichever may be permissible in law.

There being no illegality in the order passed by the learned Lower Appellate Court, the present appeal being without merit deserves dismissal. That apart, no substantial question of law is involved in the present appeal which requires consideration of this Court.

The appeal, thus, stands dismissed.

(**AUGUSTINE GEORGE MASIH**)
JUDGE

August 25, 2015