

106.

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

Regular Second Appeal No.6198 of 2014 (O&M)

Date of decision: 08.12.2015

Subhash Sharma

... Appellant

versus

Rajender Kumar Taneja and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjay Mittal, Advocate,
for the appellant.

K.Kannan, J. (Oral)

The defendant is the appellant before this court. The plaintiff filed a suit for recovery of possession on a plea that the defendant had been his tenant upon a lease brought between them on 25.06.2004 and after the tenure expired, a notice was issued terminating the tenancy and the suit was instituted on 27.10.2008. The jurisdiction of a civil court was invoked on a plea that showed that the property which was rented out to the defendant was on a new building having been constructed within a period of 10 years prior the institution of the suit and hence, the statutory protection under the Rent Act was not applicable to the defendant.

2. Since the crucial issue was with reference to the age of the building and the exclusion of application of Rent Act, the trial

Court allowed for parties to bring evidence on when the construction was completed. The plaintiff had filed a plan submitted to the Municipal authority for admission for building that got approved in December, 1998 and the plea was that the shop constructed after the plan was submitted to that authority and later let in possession to the defendant. The defendant pointed out that there had been no reference to a shop in the plan and there had been any reference to some rooms and, therefore, the age of the building cannot be ascertained from the date when the sanction plan was approved. The trial court and the appellate court rejected the defence and allowed the decree to be passed.

3. The objection that the plan did not show the shop ought to be seen in the context of either that the room itself was used as a shop or a shop existed even before the sanction plan was obtained. There was no suggestion in the case for the defendant that the shop existed before the approval of the plan in December, 1998. That would bring down the curtains for the defendant and would make unavailable any plea to be pressed as a substantial question of law before this court.

4. Second appeal is dismissed on the above terms.

(K.KANNAN)
JUDGE

08.12.2015
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