

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 2474 of 2014

Date of decision : April 5, 2016

Suresh Kumar Yadav and another

..... Petitioners

Versus

Smt. Seema Yadav

..... Respondents

CR No. 2603 of 2014

Suresh Kumar Yadav and another

..... Petitioners

Versus

Smt. Seema Yadav

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Viren Jain, Advocate
for the petitioners.

Mr. Sudhir Aggarwal, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

This order of mine shall dispose of two civil revisions bearing CR No. 2474 and 2603 of 2014.

In C.R.No. 2474 of 2014 the petitioners are aggrieved of the order 15.4.2013 whereby defence of the petitioner-defendant has been closed by order.

Learned counsel for the petitioner submits that the trial court ought not to have struck off the defence of the petitioners as on the date petitioners had filed application under Order 7 Rule

11 CPC. He further submits that his client is willing to file written statement in case one opportunity is granted subject to terms and conditions which this Court will impose.

Keeping in view the facts and circumstances of the case, and in order to advance justice between the parties to the *lis*, so that there is no miscarriage of justice, the impugned order is set aside. The petitioners-defendants are granted one opportunity to file written statement i.e. 15 days from today to file written statement subject to payment of costs of ₹5,000/-.

The revision petition stands allowed.

As regards C.R.No.2603 of 2014 petitioner-defendant is aggrieved of the order dated 18.11.2013 whereby the application filed under Order 7 Rule 11 CPC for rejection of plaint has been dismissed.

Learned counsel for the petitioner submits that Section 39 of Specific Relief Act, 1963 provides a remedy to the petitioners where there is a breach of obligation viz-a-viz registration qua relationship of alleged licensor and licensee, the court fee qua value of the suit property is required to be paid. These aspects have not been noticed by the courts below.

Learned counsel appearing on behalf of the respondents submits that the petitioners-defendants were licensees. The license was revoked vide legal notice dated 30.10.2012. The suit was filed in 2012 after two months of expiry of the notice, therefore suit for mandatory injunction is maintainable, thus, urges this court to affirm the impugned order.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the submissions of learned counsel for the petitioners for the reason that it is a settled law that after revocation of the license, the suit for mandatory injunction was filed and in case the party chooses to seek possession then the suit for injunction is maintainable and if chooses to file the suit after expiry of one year or later, the suit for possession would lie. This view of mine is supported by the law laid down by Hon'ble Supreme Court in **Sant Lal Jain Vs. Avtar Singh 1985 AIR (SC) 857 and of High Court of J&K In Th.Milka Singh and others Vs. th.Diana and others 1964 AIR (J&K) 99.** In view of the aforementioned settled law, I am of the view that the averments in the plaint have to be seen and not defence or the contents of the application. Since the respondents-plaintiffs have sought possession of the property in dispute after revocation of license, in my view, the suit for mandatory injunction is maintainable and does not require affixation of ad valorem court fee.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition No. 2603 of 2014 is devoid of merits. Accordingly the same is dismissed.

April 5, 2016
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(AMIT RAWAL)
JUDGE