

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

**RSA-1045-2011 (O&M)
Date of decision : 17.10.2016**

District Manager, FCI and others

... Appellants

Versus

Gian Chand Jain

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.K.K. Gupta, Advocate
for the appellants.

Mr. Kanwal Goyal, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the concurrent findings of fact, whereby the suit of the respondent-plaintiff for a recovery of ₹ 6,39,365/- along with interest @ 12% per annum from the date of the institution of the suit till its realization, has been decreed by both the Courts below.

Mr. K.K. Gupta, learned counsel appearing on behalf of the appellants-defendants submits that the suit aforementioned was primarily based upon the letter of offer dated 07.10.1980 (Ex.PW-3/B) which was a forged and fabricated document as it never seen the light of the day in the office of the FCI. The respondent-plaintiff did not prove its execution in accordance with law, thus, mere exhibition of the documents does not dispense with its proof, for, prior to the institution of the suit in the year

1984, the respondent-plaintiff-landlord had filed a rent petition seeking eviction of the demised premises and as well as the non-payment of the arrears of rent. The said petition was disposed of in the year 1983 on the statement suffered by the appellants-defendants for vacating the premises. The present suit is claiming the arrears of rent, whereas on the contrary documents (Ex.D1 to Ex.D4) prove that the rate of rent was 2 paise per bag per month of an area measuring 58225 sq. ft. The claim of the respondent-plaintiff, on the basis of the aforementioned letter, was @ 5 paise of an area measuring 72000 sq. ft. The witness of the appellants-defendants had proved on record that the space for storing the gunny bags was only 48420 sq. ft., therefore, the claim was exaggerated, in fact, the rent @ 2 paise already stood paid. The suit was barred by law of limitation as arrears of rent is w.e.f. 09.10.1980 to 19.05.1984. It can restrict for a period of three years as the suit was instituted on 21.05.1984. The respondent-plaintiff proved the certified copy of the letters (Ex.P-2 & Ex.P-3) obtained from the rent petition, in essence, they were required to lead secondary evidence in view of the *ratio decidendi* culled out by the Hon'ble Orissa High Court in **“Bhaskar Sahu V.s Anama Swara and others” AIR 1987 Orissa 138** and the judgment rendered by this Court in **“Oriental Insurance Company Ltd. V/s Chandrawati etc.” Vol. XCV-(1989-1) PLR.**

He further submits that during the pendency of the suit, the FCI moved an application for the amendment of the written statement by taking the objection that the FCI was a necessary party and the same was allowed and therefore, the suit was liable to be dismissed on this ground.

Per contra, Mr. Kanwal Goyal, learned counsel appearing on behalf of the respondent-plaintiff submits that the order relying the

amendment of the written statement was assailed in this Court vide CR No.265 of 1990 and the same was allowed vide order dated 14.03.1991 and therefore, the FCI cannot prevent to raise the objections.

As regards the limitation part, he, on instructions from his clients, submits that he would be confining his relief for a period of three years before the date of the filing of the suit i.e. from 09.10.1981 instead of 09.10.1980. Even the aforementioned letter was allowed to prove on record through the secondary evidence which fact is evident as per the record of the trial Court as vide order dated 09.12.1985, the trial Court had granted permission to lead the aforementioned document by way of secondary evidence. The order has attained the finality and there is no challenge to the same as per the provisions of Order 43 Rule 1-A of the Code of Civil Procedure, thus, urges this Court for affirming the findings under challenge.

In rebuttal, Mr. K.K. Gupta, learned counsel appearing on behalf of the appellants-defendants relies upon the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Ranjeet Mal V/s General Manager, Northern Railway, New Delhi and another” AIR 1977 Supreme Court 1701** qua the mis-joinder and non-joinder of the parties.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a some force in the submissions of Mr. K.K. Gupta viz-a-viz the limitation as the suit is for claiming the arrears of rent. The landlord can only confine the arrears of rent in a suit for a period of 3 years. Now, the question which is required to be answered by this Court is whether letter of offer dated 07.10.1980 (Ex.PW-3/B) can be looked into for determination of the arrears of rent or documents (Ex.D1 to Ex.D4). No doubt, there is a gross difference of rate of rent, much less,

area. The respondent-plaintiff as noticed above was given liberty to prove the document by way of secondary evidence, nothing prevented the FCI to produce on record the copy of the receipt and despatch register to deduce presumption in their favour. Having failed to do so, I am of the view that the respondent-plaintiff has discharged the onus of the aforementioned letter. There is no challenge to the order dated 09.12.1985 as per the Order 43 Rule 1-A CPC. The *ratio decidendi* culled out by the Hon'ble Orissa High Court in "Bhaskar Sahu's case" (supra) and by this Court in "Oriental Insurance Company Ltd.'s case" (supra) would not be applicable to the facts and circumstances of the present case and therefore, the arguments of Mr. K.K. Gupta are hereby repelled.

As regards the mis-joinder and non-joinder of the parties in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in "Ranjeet Mal's case" (supra), I am of the view that this Court in revision petition aforementioned has given the following findings:-

"4. After hearing the learned counsel for the parties, i find merit in this revision petition.

5. Since the plaintiff is not seeking any relief against the Food Corporation of India such, the question of impleading it as a defendant did not arise. In any case, any such objection should have been taken at the earliest. The application filed after more than five years was liable to be dismissed on account of laches alone. It is, therefore, evident that the trial Court has acted illegally and with material irregularity in the exercise of its jurisdiction.

6. Consequently, the revision petition succeeds. The impugned order is set aside and the application for amendment of the written statement is dismissed. The parties have been directed to appear before the trial Court on April 8, 1991. In

case the parties are yet to lead any evidence, they will be given one opportunity each to conclude their evidence at their own responsibility”.

In view of the such findings, I am of the view that once, the amendment has been rejected, the appellants-defendants cannot raise the aforementioned plea and therefore, the argument is totally misplaced.

For the foregoing reasons, the judgment and decree of both the Courts viz-a-viz the execution of the documents and mis-joinder of the parties is hereby upheld, but however, the judgment and decree of the trial Court is modified and it shall confine to arrears of rent from 09.10.1981 till 19.05.1984 and rate of rent would be governed as referred to by Courts below i.e. as per letter dated 07.10.1980. However, the there is no change with regard to the interest qua @ 12% and the same is hereby upheld.

Decree sheet is ordered to be modified.

With the aforesaid observations, the appeal stands partly allowed.

17.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No