

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

RSA No.2926 of 2012
Date of decision : 09.02.2016

Continental Construction Ltd. and another

...Appellants

Versus

Rehmat and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. V.B. Aggarwal, Advocate for the appellants.

Mr. D.K. Mittal, DAG, Haryana.

AMIT RAWAL, J. (Oral)

The appellant-defendant Company is aggrieved of the judgment and decree of the lower Appellate Court, whereby suit filed by the respondent-plaintiff for permanent injunction, has been decreed, in essence, the judgment and decree of the trial Court dismissing the suit has been, reversed.

Mr. V.B. Aggarwal, learned counsel appearing on behalf of appellants-defendants submits that suit for permanent injunction restraining defendant from removing scrap and girders etc. from the plaintiff's land, described in the headnote of the plaint, without payment of ₹2,00,000/- as

per the agreement dated 02.11.1999, was not maintainable, in essence, they had right to seek either damages. In the absence of the same, injunction could not have been granted. The trial Court on the basis of oral and documentary evidence gave the finding that respondent-plaintiff has not been able to prove the payment of rent to the appellant-defendant company. In essence agreement dated 02.01.1999 Ex.P2 has not been proved through the testimony of any independent witness. However, the lower Appellate Court has erroneously reversed the findings.

As per the office report, respondent No.1 has been served, but there is no representation. This fact was noted by the Court vide order dated 26.03.2015, therefore, I proceed to decide the appeal on merits.

In my view, the appeal involves substantial question of law for determination:-

1. Whether suit for injunction seeking restraint order against defendant as alleged to be tenant of the respondent-plaintiff without payment of amount of ₹2,00,000/- as per the agreement dated 02.11.1999, was maintainable or not?
2. Whether there is illegality and perversity in the judgment and decree rendered by the lower Appellate Court?

I have heard learned counsel for the parties and appraised the paper book and of the view that suit ex facie was not maintainable.

The plaintiff had remedy to claim damages and not in the manner and mode as has been adopted. The trial Court rightly declined the relief while dismissing the suit filed by the respondent-plaintiff, for want of

the payment of rent by the appellant-defendant company, in essence, the execution of the agreement has not been proved and as found not to have signed by the duly authorized person.

Keeping in view the aforementioned fact which has not been noticed by lower appellate Court, impugned judgment and decree of the Lower Appellate Court is set aside.

Accordingly, question of law as noticed above are answered in favour of appellant-defendant company and against the respondents-plaintiffs. Suit is accordingly dismissed.

Appeal stands allowed.

09.02.2016

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**(AMIT RAWAL)
JUDGE**