

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5019 of 2012

Date of Decision.11.07.2016

Dalip s/o Sh. Chandgi Ram

.....Appellant

Vs.

Raj Kumar and others

.....Respondents

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

Mr. V.K. Sandhir, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the ejection of the shop in question has been ordered.

Mr. Akshay Bhan, Senior Advocate assisted by Mr. Santosh Sharma, Advocate appearing on behalf of the appellant submits that question of tenancy, though had been admitted, but under the provisions of Section 106 of the Transfer of Property Act, much less, the quantum of rent was seriously disputed. The respondent-plaintiff/landlord alleged the rent @ ₹450/- per month whereas there is a finding that it was ₹250/- per month. The respondent-plaintiff did not step into the witness box but only wife of plaintiff No.2 appeared and thus, the appellant-defendant has been prevented from putting the specific question in the cross-examination. In

not to have decreed the suit and thus, urges before this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr. V.K. Sandhir, Advocate appearing for the respondents-plaintiffs submits that no doubt the lower Appellate Court had after appreciation of the oral and documentary evidence found that the rent was ₹250/- per month instead of ₹450/-. The appellant-defendant was in arrears of rent w.e.f. 01.10.1998 till the termination of tenancy on 04.09.2001 and even the rent subsequent to the ejectment has also not been paid and thus, it is inequitable for seeking interference as no substantial question of law arises for consideration.

I have heard learned counsel for the parties, appraised the paper book and of the view that the submission made by the learned senior counsel appearing for the appellant sans merit. Once the relationship of landlord and tenant has been admitted, the absence of the non-appearance of the plaintiff in the witness box would not fetter the right of defence of the defendant. It is not a case of contract where the other party is deprived of certain acts to be performed by the plaintiffs. Since the lower Appellate Court has on the basis of oral and documentary evidence found that the rent was ₹250/- per month and the factum of payment of arrears of rent has not been proved, it rightly found the appellant-defendant in arrears of rent and passed the order of ejectment along with payment of arrears of rent. Since the premises were exempted from the applicability of prevailing rent laws, the respondent-plaintiff shall avail the remedy as admissible under law. In my view, the concurrent finding with regard to ejectment does not require to be interfered with, however, the finding of the lower Appellate Court qua the rate of rent at ₹250/- is upheld.

There is no substantial question of law arises for consideration in the second appeal. The regular second appeal is accordingly dismissed.

(AMIT RAWAL)
JUDGE

July 11, 2016
Pankaj*