

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

RSA-1545 of 2016 (O&M)

Date of decision: 06.04.2016

Gurdeep Singh

...Appellant

Versus

Municipal Committee, Cheeka

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Tushar Gautam, Advocate for
Mr. Harender Singh, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-4256-C-2016

Keeping in view the averments made in the application which is duly supported by an affidavit of the appellant, the same is allowed. The delay of 254 days in filing the present appeal is hereby condoned.

RSA-1545-2014

The suit for declaration filed by the plaintiff/appellant (for short 'the appellant') was dismissed by the trial Court vide judgment and decree dated 16.09.2014.

2. Aggrieved against the findings of trial Court, the appellant filed an appeal which was dismissed by the learned 1st

Appellate Court, vide judgment and decree dated 20.03.2015.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant appeal at the behest of the appellant.

4. The brief facts of the case are that the respondent had constructed a shop in the area of truck union at Patiala Road, Cheeka which was initially used as octroi post/chungi but after removal of the chungi from Cheeka municipality area, the same was used as a shop. The shop in question was rented out to the appellant at the monthly rent of Rs.374/- and the rent was paid upto March, 2012. Due to dilapidated condition of the shop, it was demolished by Municipal Committee, Cheeka with the understanding that after its reconstruction, the shop would be handed over to him at the same rent. Thereafter, the respondent had invited tenders for the construction of the said shop within stipulated period. However, the said work was neither completed within time nor the respondent is taking interest in completion of said shop.

5. It is contended that both the Courts below have failed to appreciate the fact that the respondent had duly admitted that the shop in question was given to the appellant on rent before it was

demolished. It is further contended that the construction work of the shop was to be completed within a stipulated time period but the same was not adhered to, rather, the respondent had taken new stand that the said shop was demolished by the Public Works Department and now the shop is to be constructed at new place. The appellant had duly proved the rent receipts Ex.P3 to Ex.P5, issued by the Municipal Committee, Cheeka which had also been admitted by the respondent, however, both the Courts below have ignored the same. The learned counsel further contended that on the one hand, the respondent had invited tenders for the construction of the said shop and on the other, it was pleaded that the said land belonged to Public Works Department and the same was demolished by the Public Works Department. The contradictory stand of the respondent itself shows that the respondent-Department is trying to deprive the appellant of possessory rights as tenant of the said shop. Even, no document had been produced on record to show that the said land is owned by the Public Works Department but both the Courts below have failed to appreciate and have given findings contrary to the above facts. At the end, the learned counsel prays for acceptance of this appeal.

6. Heard, the learned proxy counsel for the appellant and

perused the record minutely.

7. Undisputedly, the site in question i.e. the shop used as a octroi collection point and after the abolition of octroi, the same had been rented out to the appellant. It is also not in dispute that the said shop had been demolished by the respondent and tenders to reconstruct the same had been invited by the respondent. The appellant has claimed that the respondent is bound to get the construction work of shop done within stipulated period. It is asserted that the respondent had assured to reconstruct the shop and hand over the possession of the shop to him, however, no evidence or document has been placed on record to prove the above fact. The Municipal Committee is a Government body, which acts through resolution. There is no written assurance by the committee that the shop will be reconstructed and then handed over to the appellant on the same rent. The calling of tenders to make construction on the site, does not prove that there was a contract to construct the shop for giving it on rent to the present appellant. Though there is no evidence on behalf of the defendant and its evidence was closed by order, but initial burden to prove his case was upon the plaintiff which he failed to discharge. Further, no document was produced to show that the said work was to be completed within specified time and to hand over the

possession of the said shop to the appellant. Thus, from the perusal of above facts and material on record, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below do not suffer from any perversity or illegality nor any material point has been left un-addressed.

8. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

06.04.2016

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(JITENDRA CHAUHAN)
JUDGE