

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2651 of 2016 (O&M)

Date of Decision : 29.07.2016

Sunil Padan

....Appellant

Versus

Gian Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Sarika Gupta, Advocate
for the appellant.

Surinder Gupta, J.

Plaintiff-Gian Singh is owner of suit property, which comprised of a shop as fully described in the headnote of plaint. Case of plaintiff, in brief, is that it was let out to defendant no.1-Satish Kumar at the monthly rent of ₹650/- in January, 1998, who sub-let the same to defendant no. 2-Sunil Padan (appellant). This fact came to notice of plaintiff when he came to India from USA and found that defendant no. 2-Sunil Padan was carrying on the business of cable operator in the demised premises. A legal notice was served on defendant no. 1 as well as defendant no. 2 calling upon them to vacate the premises. On their failure to comply with terms of notice, instant suit was filed.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. In joint written statement, defendants pleaded that disputed shop was taken on rent by defendant no. 2-Sunil Padan w.e.f. 01.01.2000 and defendant no. 1-Satish Kumar was never inducted as tenant. Defendants also denied service of any legal and valid notice on them.

4. The suit was dismissed by learned Civil Judge (Junior

Division), S.B.S. Nagar on the ground that defendant no. 2-appellant had been able to establish that the demised premises was let out to him. It is defendant no. 2 who had been depositing rent in the account of plaintiff. Learned Civil Judge (Junior Division) observed that defendant no. 2 had deposited rent in the account of plaintiff till 12.09.2013 i.e. even after service of notice dated 05.09.2008, as such, notice stood waived. It was also held that Ranjit Kaur was not authorized to file present suit against defendant no. 1-Satish Kumar. However, it was held as proved that notice as required under Section 106 of Transfer of Property Act (later referred to as 'the Act') was duly served on appellant.

5. On appeal, learned Additional District Judge, S.B.S. Nagar reversed the findings recorded by learned Civil Judge (Junior Division) but affirmed the findings of learned Civil Judge (Junior Division) that notice as per terms of Section 106 of 'the Act' was duly served on the appellant and observed in para 13 of the judgment as follows:-

“13.As regards the service of Legal Notice upon defendant no. 2, he has denied having received the same but perusal of the acknowledgment Ex. P-7, shows that it bears signatures of Sunil Padan, defendant no. 2. The testimony of Sunil Padan as DW-2 as regards with receipt of Registered Notice stood falsified when he admitted that he received the court summons dated 27.10.2008 at the same address i.e. r/o Near Punjab & Sind Bank, Main Bazar, Village Behram, Tehsil & District Nawashahr, where registered Legal Notice dated 05.09.2008 was sent. It cannot be believed

that he received the summons issued by court at the given address but did not receive the registered postal letter, which was sent vide postal receipt Ex. P-6. It is pertinent to note that Section 27 of General Clauses Act, 1897 provides that a service of notice shall be deemed to be effected by properly addressing, pre-paying and posting the notice by registered post and it also incorporates a presumption of law with regard to service when notice to terminate the tenancy is sent under section 106 of Transfer of Property Act by registered post. Therefore, it can be safely assumed that the notice under section 106 of T.P. Act was duly served upon the defendant no.1. Furthermore, it is pertinent to mention here that defendant no.1 has stated in cross-examination that defendant no.2 was his brother-in-law and both the defendants have engaged a common counsel to contest the suit and PW-1, Satish Kumar/defendant no.1 has admitted that he had asked his counsel to give reply to the Legal Notice Ex. P-4. In such a situation, it is extremely hard to believe that defendant no.2 was not aware of the Legal Notice dated 05.09.2008 and therefore he cannot wriggle out of the same. It is not the case of defendants that signatures of Sunil Padan was obtained by fraud on the Acknowledgment Ex. P-7 and even in his affidavit Ex.DW2/A, DW-2/Sunil Padan has not disputed his signatures on Ex. P-7. He has not dared

to compare the signatures on Ex. P- 7 with his standard signatures. Even in the absence of any scientific comparison of signatures, a simple glance at the signatures on Acknowledgment Ex. P-7 with the signatures of Sunil Padan at Ex. PX (receipt of court summons) and with his signatures on his affidavit Ex.DW2/A shows that they are from the hands of one person i.e. Sunil Padan.”

6. It was also observed by learned Ist Appellate Court that tenancy of defendant no. 2 was also held as terminated after service of notice. This observation of learned Civil Judge (Junior Division) that notice stood waived as the rent was deposited by appellant, was also reversed with the observation in para 14 , which reads as follows:-

14. Ld. counsel for the respondents by drawing force from the judgment passed by Ld. Trial Court argued that no doubt the plaintiff had claimed to have terminated the tenancy, but the Notice for termination of tenancy stood waived by his own conduct because he continued to accept the rent deposited by defendant no.2. This contention raised by ld. counsel for respondents is also not tenable because receipt of rent by the plaintiff would not negate the force of Notice dated 05.09.2008 i.e. Ex. P4, vide which the tenancy was terminated. Perusal of said Notice shows that the defendants were given time period of one month from the date of issuance of Notice to hand over the vacant possession of the shop to the

plaintiff. The defendants did not send any reply to the Notice Ex.P4 and remained in possession of the demised premises. The plaintiff immediately filed the suit for possession after the passage of one month i.e. on 25.10.2008, which shows that he never intended to waive the Notice for termination of tenancy. Mere receipt of rent, during the pendency of the suit would not disentitle the plaintiff to claim the relief of possession of the demised premises on the basis of Notice of termination of tenancy Ex.P4 issued by him.”

7. I have heard learned counsel for the appellant and perused the paper-book with his assistance.

8. The tenancy of defendant no. 2-appellant stood terminated by service of legal notice under Section 106 of 'the Act'. It is hardly material that he was a tenant or sub-tenant. Defendant no. 2 claimed that he is a tenant in the demised premises and not a sub-tenant and even if plaintiff fail to prove his plea and contention of defendant no. 2 be believed that he is direct tenant under plaintiff, still his tenancy stood extinguished with the service of notice. Learned Civil Judge (Junior Division) also upheld the plea of plaintiff about service of legal notice on defendant no. 2 and no appeal or cross-objection was filed by defendant no. 2 (appellant) against this observation of the Court below.

9. Learned counsel for the appellant has argued that service of notice under Section 106 of 'the Act' was denied by the appellant and while appearing as DW-2, he has stated that no notice was received by him.

10. Above submission of learned counsel for the appellant is liable

to be rejected in view of observation of Ist Appellate Court in para 14 referred above.

11. The observation of learned Civil Judge (Junior Division) that notice served on appellant stood waived because of the fact that defendant no. 2 had deposited rent in the account of plaintiff till 12.09.2013, has rightly been dissented by learned Ist Appellate Court with the observation in para 14 (quoted above). After service of notice and giving one month's time to defendants to vacate the shop this suit was filed on 25.10.2008, which shows the intention of plaintiff to adhere to the terms of notice. He had been hotly pursuing the case and the mere fact that defendant no. 2 had been depositing the rent in his account, cannot be taken as waiver of terms of notice. Defendant no. 2, continued to be in possession of shop, as such, was liable to pay rent, and deposit of rent by him in the account of plaintiff, is in discharge of duty of defendant no. 2, and cannot be termed as waiver of notice served on him.

12. Learned counsel for the appellant has raised another plea that power of attorney in favour of Ranjit Kaur to file suit was not valid. This argument has been raised for the first time in this appeal. Even otherwise, Ranjit Kaur had placed on record power of attorney dated 01.09.2008 executed by plaintiff in her favour as Ex. P-1. No suggestion was given to her that power of attorney in her favour is not a valid document. Learned counsel for the appellant has drawn my attention to one line in cross-examination of Ranjit Kaur where she has stated that power of attorney is in dispute. Before Civil Judge (Junior Division) or learned Ist Appellate Court this point was never raised that power of attorney in favour of Ranjit Kaur executed by plaintiff was not valid or authorize her to file suit, as such, this

submission made by learned counsel for the appellant is liable to be rejected.

13. Learned counsel for the appellant has raised the plea that a sub-tenant cannot be ejected under Section 106 of 'the Act'. This argument of learned counsel for the appellant has no substance. Section 106 of 'the Act' reads as follows:-

“106. Duration of certain leases in absence of written contract or local usage:-

- (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.
- (2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.
- (3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that

sub-section.

- (4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

14. Plaintiff has alleged that shop was let out to defendant no. 1- Satish Kumar. Even if he fails to prove this plea and the plea of defendant no. 2-appellant is accepted that he is tenant in the disputed shop and his lease stood terminated on service of valid notice and he is liable to vacate the same irrespective of the fact whether plaintiff is alleging him to be a tenant or sub-tenant. The argument of learned counsel for the appellant to this effect has no force and is rejected.

15. During the course of arguments, learned counsel for the appellant has not been able to make out that findings of fact recorded by learned Ist Appellate Court are based on misreading of evidence or any material document has either been ignored or wrongly interpreted calling for any intervention.

16. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

July 29, 2016

jk

(SURINDER GUPTA)

JUDGE

Whether speaking/non-speaking

Yes/No

Whether Reportable

Yes/No