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

**RSA No.3074 of 2016 (O&M)
Date of Decision: 28.07.2016**

Surinder Kumar @ Surjan

.....Appellant

Vs

Mahant Gomati Dass

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Subhash Aggarwal, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.8229-C of 2016

For the reasons mentioned in the application, appellant
is allowed to make good the deficiency of court fee.

Application stands disposed of.

RSA No.3074 of 2016 (O&M)

[1]. Defendant is in Regular Second Appeal against
concurrent judgments and decrees passed by the Courts below
in a suit for possession of a shop filed by the plaintiff after
issuing notice of termination of tenancy under Section 106 of
Transfer of Property Act,1882 (hereinafter to be referred as 'the
Act').

[2]. Brief facts as gathered from the record are that the plaintiff filed a suit for possession and recovery of arrears of rent on the ground that the property was owned by Raghunath Shiv Mandir. Plaintiff was the *Mahant* of the *Mandir* and was looking after its affairs. The shop was let out to the defendant vide lease deed dated 27.07.1999 @ Rs.800/- per month with 10% increase after every 11 months. Defendant was paying the rent against valid receipts. The last rent paid by the defendant was Rs.1888/- in the month of May 2009. Defendant was claimed to be in arrears of rent since May 2009. Plaintiff terminated the tenancy of the defendant by issuing notice under Section 106 of the Act on 03.05.2010. Since the defendant did not vacate the shop, therefore, suit came to be filed.

[3]. Defendant contested the suit on all counts. Defendant claimed that he was tenant since the year 1994 @ 375/- per month. He was running the business of travel services in the name and style of Priyanka Travel Services. Defendant claimed that the plaintiff had signed the receipts of rent in the name of Priyanka Travel Services. In the year 1999, defendant applied for STD/PCO connection in the concerned department. For that purpose, rent note dated 27.07.1999 was reduced into writing and as per that rent note, defendant started paying rent @ Rs.800/- per month from July 1999 till December 2000.

Thereafter defendant started paying rent @ Rs.850/- per month till March 2010. However, plaintiff stopped issuing of receipts from April 2009. Defendant further submitted that he had never changed the nature of business, nor sublet the shop. The issuance of notice under Section 106 of the Act was denied as the same was never served upon him.

[4]. After filing of replication, parties went to trial on the following issues and additional issues:-

- “1. Whether plaintiff is entitled to the decree of possession? OPP.*
- 1A. Whether plaintiff is entitled to recovery of Rs.36,804/- as arrears of rent from May, 2009 till October, 2010? OPP*
- 2. Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether notice under Section 106 of the T.P.Act was not served by the plaintiff?OPD*
- 4. Whether no proper fee has been affixed? OPD*
- 5. Whether plaintiff has concealed the material facts? OPD*
- 6. Relief.”*

[5]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[6]. After appraisal of the evidence, trial Court decreed the suit vide judgment and decree dated 28.09.2015. Defendant remained unsuccessful in the appeal before the lower Appellate Court which was dismissed by the Additional District Judge, Jalandhar vide judgment and decree dated 05.04.2016.

[7]. I have heard learned counsel for the appellant.

[8]. Learned counsel for the appellant has framed the following substantial question of law in para No.8 of grounds of appeal:-

- “(a) *Whether the instant case is a clear misreading and mis-appreciation of the evidence on record?*
- (b) *Whether the courts below have considered any violation of tenancy in terms of agreement?*
- (c) *Whether there is any basis on which the courts below have ejected the appellant?”*

[9]. Questions of law Nos.(b) and (c) cannot be held to be the question of law much less substantial questions of law. Only question No.(a) can be seen whether judgments and decrees passed by the courts below were on account of misreading of evidence?

[10]. Apparently, the property was situated out side the

municipal limits, therefore, provisions of East Punjab Urban Rent Restriction Act is not applicable. Even DW-1 Surinder Kumar/appellant has admitted the fact that the property was situated in the village where no Municipal Corporation existed. Plaintiff gave notice dated 03.05.2010 (Ex.P-5) under Section 106 of the Act and terminated the tenancy. Admittedly, plaintiff was the landlord as per admitted case of the defendant himself in his pleadings as well as cross-examination. Plaintiff was authorised vide proceedings (Ex.P-1) to depose in case. Resolution of the Mandir was Ex.P-2, whereby Trust was formed. Certificate of registration of Societies was Ex.P-3. As per rent agreement, there was clause of 10% increase after every 11 months. The cross examination of defendant proved his admission that rent note was executed on 27.07.1999 and there was enhancement clause of 10% after every 11 months.

[11]. The arrears of rent was not offered by the defendant on the date of hearing before the Courts below in terms of Order 15 Rule 5 CPC, the defence of the defendant was to be struck off. The plea of defendant regarding non-service of notice under Section 106 of the Act cannot be considered as filing of suit itself is notice/intention of the landlord to evict the tenant.

[12]. Provisions of the Transfer of Property Act in terms of Section 106 of the Act are not applicable in the State of Punjab,

however only equitable principles are applicable. Issuance of notice under Section 106 of the Act is not mandatory, rather intention of the landlord to eject the tenant is to be inferred. Even filing of suit amounts to serving of notice under Section 106 of the Act.

[13]. This Court while relying upon **V. Dhanapal Chettiar vs. Yesodai Ammal, 1979(2) RCR (Rent) 352** has observed that by not taking a particular ground of ejectment in the advance notice, if served at all, will not debar the landlord from seeking ejectment on that ground. While relying upon the aforesaid judgment this Court held that merely because in the notice of termination some grounds were not disclosed, the same has no effect and will not debar the landlord from getting ejectment of the tenant. Further the view expressed in **M/s Nopani Investments (P) Ltd., vs. Santoksh Singh (HUF), 2008(1) RCR (Civil) 270** is on the same premise, that notice to quit under Section 106 of the Act is not required to be served on the tenant as filing of eviction suit under general law is itself a notice to quit on the tenant.

[14]. This Court has further relied upon the view expressed in **Harikesh vs. Smt. Narain Devi (Widow) and Ors., (2010) 157 PLR 506** to hold that if the suit has been filed under general law then it is a notice to quit and no notice is required to be

issued under Section 106 of the Act for getting the tenant evicted. The question arises whether the contractual tenancy between landlord and tenant is liable to be terminated merely by filing of an eviction petition?

The Hon'ble Apex Court in the aforecited judgment held that no notice to quit is required under Section 106 of the Act when the suit is filed under general law for getting the respondent evicted.

[15]. Both the Courts below have decided the case on the basis of factual findings. The allegation of change of use was not adverted to in favour of plaintiff as rent note was executed for the purpose of getting STD connection, therefore, it was admitted by the plaintiff himself in his cross-examination, however with the issuance of notice under Section 106 of the Act, it was held that there was a valid termination of tenancy of the defendant and thereafter filing of the suit to terminate the tenancy under general law by giving 15 days notice under Section 106 of the Act in order to give time to the tenant to make alternative arrangement of his business. With the service of summons, the same amounted to notice and the suit cannot be dismissed on the ground of non-service of the summon, even the service of summon under Section 106 of the Act was proved. Both the Courts below on this factual matrix held that

there was lawful termination of tenancy and issue No.1-A was held decided in favour of plaintiff, thereby entitling him to recover the amount of Rs.14,450/- towards arrears of rent.

[16]. In considered opinion of this Court, no question of law much less substantial question of law is involved in the appeal. Judgments and decrees passed by the Courts below are not the result of misreading of evidence and cannot be faulted with. The decision of the Courts below have not suffered with any perversity as well. Consequently, the present appeal is found to be totally worth less and is accordingly dismissed.

July 28, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No