

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

RSA No.3289 of 2016 (O&M)

Date of Decision.18.11.2016

Bharat Sanchar Nigam Limited

.....Appellant

Vs

Shashi Bala and another

.....Respondents

Present: Mr. D.R. Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-defendant No.1 is aggrieved of the concurrent finding of fact whereby suit of the respondent-plaintiff for possession of the premises by removing of the mobile tower along with other equipments installed therein, has been decreed.

Mr. D.R. Sharma, learned counsel appearing for the appellant submits that with effect from 19.06.2006, a lease deed had been executed for taking the aforementioned premises i.e. 5 ½ marlas out of the land comprised in Khasra No.206(3-0) @ Rs.2000/- per month for a period of five years upto 20.06.2011 but the suit had been filed on 05.10.2011 for removal of the aforementioned tower and as well as for vacation of premises. Notice was not sent in accordance with Section 106 of the Transfer of Property Act. The filing of the suit would not tantamount determination of the lease and the status of the appellant-defendant would be of a tenant. The suit was liable to be dismissed for non-compliance of the aforementioned provisions of law, therefore, there is gross illegality and perversity.

Clause 17 of the agreement also envisage that in case the BSNL

the expiry of the lease was required to be sent but the plaintiff had not even given opportunity by resulting into issuance of notice aforementioned i.e. notice dated 29.11.2010.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Sharma, for, sending of the notice and filing of the suit itself tantamounts to determination of the lease. The lease deed and the legal notice have been proved on record. No explanation, much less, cogent has come on record to occupy the premises after obtaining permission thereof. The BSNL should not have contested the cases rather it should have arrived at a compromise or at all attempted to vacate the premises for enabling them to shift the mobile tower at some other place instead of choosing to contest the same by filing appeal before the lower Appellate Court or this Court. The ownership of the plaintiff is not in dispute. All these factors have been taken care of by both the Courts below by decreeing the suit.

The appeal is accompanied by an application seeking condonation of delay of 119 days. The explanation given for delay is not justified, much less, backed by reasonable or cogent reasons.

For the reasons aforementioned, I do not intend to differ with the judgments and decrees rendered by both the Courts below, much less, no ground for interference is made. Accordingly, the second appeal is dismissed both on the ground of limitation as well as on merits.

(AMIT RAWAL)
JUDGE

November 18, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No