

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

**R.S.A No.3518 of 2016 (O&M)
Date of decision :17.10.2016**

General Manager, B.S.N.L and another

..... Appellants

Versus

Sumehdha Sud

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

DARSHAN SINGH,J

CM No. 9211-C of 2016

This application has been moved under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 68 days in re-filing the appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 68 days in re-filing the present appeal is hereby condoned.

CM No. 9212-C of 2016

This application has been moved under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 70 days in filing the appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 70 days in filing the present appeal is hereby condoned.

R.S.A No. 3518 of 2016 (O&M)

The present appeal has been preferred against the judgment and decree dated 21.09.2015 passed by the learned District Judge, Pathankot, whereby the appeal filed by appellants-defendants against the judgment and decree dated 02.08.2014 passed by the learned Addl. Civil Judge (Sr. Division), Pathankot, has been dismissed with proportionate costs with modification of the aforesaid judgment and decree passed by the learned trial Court.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent Sumedha Sud has filed the suit for recovery of Rs.9 lacs along with interest @ 18% per annum against the appellants-defendants on the grounds *inter alia* that the property owned by the plaintiff-respondent situated within the municipal limits of Municipal Council, Pathankot were let out to the appellants-defendants on monthly rent of Rs.6750/- for a period of 5 years w.e.f. 15.09.1998 to 15.09.2003. Defendants failed to vacate the premises even after the termination of the lease. Plaintiffs filed the suit for possession with damages for use and occupation of the building from May, 2004 onwards. In the present suit plaintiff-respondent has claimed the use and occupation charges at the rate of Rs.25,000/- per month w.e.f. 16.12.2005

to 15.12.2008. Hence the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that before the expiry of the lease period they requested to continue with the lease w.e.f. 15.09.2004 onwards at the rate of Rs. 8750/- per month. But, the plaintiff insisted to increase the rent from Rs. 6750/- to Rs. 25,000/- per month, which was not justified. They are making the payment of the rent at the rate of Rs. 6750/- per month to the plaintiff and are ready to enhance the rate of lease money from Rs. 6750/- to Rs. 8750/- on execution of the standard lease deed. Appellants-defendants denied that the plaintiff is entitled to recover the use and occupation charges at the rate of Rs. 25,000/- per month w.e.f. 16.12.2005 to 15.12.2008. With these pleas, the appellants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to recovery of Rs. 9,00,000/- as prayed for?OPP
2. Whether suit of the plaintiff is not maintainable?OPD
3. Whether plaintiff has not come to the Court with clean hands and suppressed material facts from the court?OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Relief.

6. Learned trial Court on appreciating the evidence on record and contentions raised by the parties decreed the suit filed by the plaintiff-respondent with costs. Plaintiff was held entitled to recover the *mesne* profit at the rate of Rs. 20,000/- per month from 16.12.2005 to 15.12.2008 along with *pendente lite* interest at the rate of 6% per annum till realization.

7. Aggrieved with the aforesaid judgment and decree dated 02.08.2014, appellants-defendants preferred the appeal. Learned First Appellate Court modified the decree passed by the learned trial Court and held the plaintiff entitled to recover a sum of Rs. 5,36,956/- along with interest at the rate of 6% per annum from the date of institution of the suit till realization. With this modification, the appeal filed by the appellants was dismissed with proportionate costs. Hence this Regular Second Appeal.

8. I have heard Mr. D.R.Sharma, Advocate, learned counsel for the appellants and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellants contended that there was no criteria to assess the use and occupation charges. In the absence of any foundation for computing the mesne profit the decrees passed by the learned Courts below are illegal. He contended that the rate of rent was only Rs. 6750/- per month. The learned First Appellate Court has wrongly taken the rate of rent to be Rs. 8750/- per month. Exorbitant increase of 15% per annum, has also granted wrongly. Thus, he contended that exorbitant amount has been awarded.

10. I have duly considered the aforesaid contentions.

11. Learned trial Court has awarded the *mesne* profit at the rate of Rs. 20,000/- per month. But the learned First Appellate Court has modified the judgment and decree and has taken Rs. 8750/- per month as the basic *mesne* profit which the appellants were ready to pay on extension of the lease. There is nothing wrong in the said amount to be taken into consideration to determine the *mesne* profit as the appellants-

defendants have themselves offered to pay Rs. 8750/- per month to the plaintiff-respondent on extension of the lease period.

12. Learned First Appellate Court has further awarded the increase at the rate of 15% per annum over and above the aforesaid amount. There is no dispute that the rent of the commercial buildings situated in urban areas increases rapidly with the passage of time. The increase of 15% per annum awarded by the learned First Appellate Court cannot be stated to be unreasonable. So, no fault can be found with the calculation of the *mesne* profit payable by the appellants to the plaintiff-respondent by the learned First Appellate Court.

13. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

14. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

15. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 17, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No