In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 2507 of 2015 (O&M)
Date of Decision: January 29, 2016

Kurukshetra Traders

... Appellant

Versus

Haryana State Agriculture Marketing Board, Panchkula and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

1) Whether Reporters of the local papers may be allowed to see the judgments?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present: Mr. Vishwajeet Singh, Advocate,
for Mr. Keshav Pratap Singh, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J. (Oral)

This regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 16.02.2012 passed by learned Civil Judge (Junior Division), Kurukshetra, whereby suit filed by the appellant/plaintiff for mandatory injunction with consequential relief of permanent injunction has been dismissed, as well as, against the judgment and decree dated 17.01.2015 passed by learned Additional District Judge, Kurukshetra, whereby appeal preferred by the appellant/plaintiff has also been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for mandatory and permanent injunction against the defendants on the ground that plaintiff is a registered partnership firm under the name and style of "Kurukshetra Traders", who is a lease holder of the two godowns, new Anaj Mandi, Kurukshetra of 1660 MT from 19.4.94 to 28.1.96 and 3320 MT from 29.1.2006 onwards. Plaintiff is paying the rent regularly. Actual rate of rent was initially fixed by the defendant No.1 @ 2/- per MT per month, but the defendants have been charging the rent @ 3.56 per MT per month illegally and unlawfully and for said purpose, defendants have also obtained unfilled lease papers from the plaintiff firm and thus, they have charged excess rate of rent from the plaintiff w.e.f. 19.4.1994 to 20.11.2003. Later on, defendants issued letter No.H.S.II-S-4-2004/10988-11993 dated 24.2.2004 as per which defendant No.2 started charging rent of the said godowns @ 5/- per MT per month w.e.f. 21.11.2003 to 30.11.2004. After coming to know about the illegal act of defendants, plaintiff made written request to the defendants to render the accounts and adjust the excess amount so paid with interest but to no effect. It was alleged that instead of adjusting or refunding the said amount, defendants claimed illegal amount of 1,27,820/- from plaintiff @ 5 per MT per month as rent of the said godowns, vide letter No.824 dated 6.7.2005 which is illegal, unlawful and not binding upon the rights of the plaintiff. Plaintiff also served a legal notice dated 16.7.2005 upon defendants which were duly received by them. A false reply has been given by defendants by narrating wrong facts. Hence, suit was filed.

Upon notice, defendants appeared and filed written statement. It is submitted that in the year 2000, a suit for recovery of arrears of rent was filed in the Court of Collector, Thanesar under Sections 5/7 of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972. Plaintiff was in arrears of rent amounting to ₹ 2,95,500/- and matter was decided on 3.5.2000 in favour of defendants. It is also submitted that suit is not maintainable as matter regarding rate of rent has already been decided under the policy of Government and in this regard, intimation was sent to plaintiff vide letter dated 10.2.2014 and same has been acknowledged by plaintiff on 15.3.2004, whereby it admitted and accepted the rate of rent as ₹ 5/- per MT per month. It is further submitted that lease deed was reduced into writing by both the parties and hence, same is binding upon the plaintiff.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

"1. Whether plaintiff is entitled for decree for mandatory injunction as prayed for? OPP

2. Whether plaintiff is entitled for decree for permanent injunction as prayed for? OPP

3. Whether the present suit is not maintainable? OPD

4. Whether plaintiff has concealed the true and material facts from the Court? OPD

5. Whether plaintiff has no locus standi and cause of action to *file the present suit? OPD*

6. *Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD*

7. *Relief.*"

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 16.02.2012. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 17.01.2015. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 18 of grounds of appeal, arise for consideration in this second appeal:-

"*i)* *Whether the defendant cannot charge the lease amount more than what has been defined in the lease deed?*

ii) *Whether no sanction was obtained which mandatory in nature from the ministry of food and supply for enhancing the rate of lease to Rs. 5/- per month per metric tonne?*

iii) *Whether the no penal rate of interest can be charged from the plaintiff which is against the spirit of law and the terms of lease deed?*

iv) *Whether no notice was given to the plaintiff/appellant before enhancing the amount of lease, which was mandatory in nature being in consonance with the principles of natural justice?*

v) *Whether a lawful right available to the plaintiff/appellant was denied by the arbitrary action on the part of the defendant?*

vi) *Whether the impugned judgments and decrees are legally* *sustained in the eyes of law."*

Learned counsel for the appellant contended that the impugned judgments and decrees passed by both the Courts below are the result of misreading of evidence on record. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

Both the Courts below, after appreciating the evidence on record, have recorded findings of fact with regard to the existence of passage. The Court of first instance recorded the following findings:-

> *"20. After careful perusal of the oral and documentary evidence available on the case file and after bestowal of thoughts, this court is of the considered view that plaintiff has failed to prove his assertions and to discharge the onus which was upon its shoulders. It is most pertinent to mention that plaintiff has failed to prove that it has paid any excess amount to defendants. Most importantly, the relevant lease deeds placed on the case record as Ex.P14, Ex.P15, Ex.R1, Ex.R2, Ex.P15 clearly reflects the monthly rent of godown was fixed at the rate of Rs.3.56 per MT per month. Similarly, the same position is reflected in the lease deed Ex.P14. Moreover, lease deed Ex.R1 also reflects that monthly rent of godown was fixed at the rate of Rs.3.56/- per MT per month.*
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> *21. It is further pertinent to mention that Ex.R2 is another material document which reflects that monthly rent of godown was fixed at the rate of Rs. 5/- MT per month. Therefore, the very assertions of plaintiff that actual rate of rent was initially fixed by defendant no.1 at the rate of Rs.2/- per MT per month*

is completely not established on the case file. It is relevant to mention that deposition of PW-1 and PW-2 is completely non-cogent to establish any such pleadings of the plaintiff. Mere vague assertions that rate of rent initially was fixed at the rate of Rs.2/- per MT per month is completely not established on the case file. It is relevant to mention that deposition of PW-1 and PW-2 is completely non-cogent to establish any such pleadings of the plaintiff. Mere vague assertions that rate of rent initially was fixed at the rate of Rs.2/- per MT per month is not established on the case file. It is admitted by PW-1 in his cross examination that lease deeds were executed at the time when the godowns were taken on record. Therefore, the available lease deeds on the case file completely gives strength to the assertions of defendants that rate of rent was certainly fixed at the rate of Rs.3.56/- per MT per month. Moreover, this court is convinced with the arguments of learned counsel for defendants that rate of rent was fixed by the parties before execution of lease deed. One of the ground taken by plaintiff is that defendants obtained the signatures of plaintiff on printed papers. However, the above mentioned ground is completely not established on the record. In such a case, it was the bounden duty of plaintiff to establish by cogent evidence on the case file, however, there is no such reliable evidence to believe that rate of rent was later filled up by defendants on the printed proformas.

22. It is pertinent to mention that plaintiff has also admitted in his cross examination that not remember the last time when he paid the rent. He has also admitted that he has not paid the rent during the time of pendency of present proceedings. Defendants have taken a strong ground that plaintiff is a regular defaulter. Therefore, no explanation has been tendered on the case record as to under what circumstances, the necessary rent was not deposited by plaintiff. The available *record of the case certainly strengthen the case put forth by defendants that rate of godown was never fixed at the rate of Rs.2/- per MT per month, rather the rate of rent was fixed and charged at the rate of Rs.3.56/- per MT per month as is clear from the contents of lease deed executed in favour of Chief Administrator, H.S.A.M. Board. Moreover, the available documents placed on the case record clearly reflects that rate of rent of all the godowns throughout the state for private parties was increased to Rs.5/- per M.T. and in this regard, lease deed was also executed by plaintiff. Furthermore, this court is convinced that rate of rent which was fixed at the rate of Rs.3.56/- per MT per month was charged till the revision of rate of rent at the rate of Rs.5/- per MT per month i.e. 16.3.2005. Learned counsel for plaintiff has further submitted that various circulars are arbitrary and illegal and they cannot be given any retrospective effect. This court is however, of the opinion that there is nothing on the case record to establish that any particular circular are arbitrary or illegal, rather there is nothing on the case record to establish that any excess rent has been charged from plaintiff arbitrary and illegally and without any notice.*

23. This court is further of the opinion that plaintiff was in the knowledge about the rate of rent as well as in the knowledge of increased rate of rent from the very beginning. It is further pertinent to mention that document Ex.P16 clearly reflects that rate of rent was increased to Rs.5/- per MT per month. Further, document Ex.P18 also reflects that plaintiff was duly intimated that they have not deposited the rent from December 2004 to Feb.2006. Learned counsel for plaintiff has further invited the attention of the court towards documents Ex.DW1/E and submitted that defendants have no right to charge rate of rent of Rs.9/- per MT per month, however, they have charged so from 10.5.2009. This court is, however, of the *opinion that circular dated 17.8.2009 i.e. Ex.DW1/C clearly reflects that minimum rate of rent to be charged from private agencies should be 50% more than the Government rate of Rs.6/- per MT per month i.e. Rs. 9/- per MT per month. Furthermore, even as regards the penal interest, Ex.DW1/D clearly makes a provision that since some agencies do not vacate the godowns after the expiry of the lease period, therefore, a penal clause regarding 20% penal rent in addition to the normal rent would be charged from the agency in case of non-vacation of godowns on due dates.*

24. This court is its thoughtful view is of the opinion that it was for the plaintiff to lead convincing evidence on record to establish that defendants have charged any excess rate of amount from plaintiff, however, the available documentary evidence on the case file fails to given any strength to the case put forth by the plaintiff. Moreover, deposition of PW-1 is non-cogent and vague and therefore fails to establish the assertions put forth by plaintiff. Furthermore, nothing material was extracted in cross examination of DW-2 to give any strength to the case of plaintiff that initially the rate of rent was fixed at the rate of Rs.2/- per MT. .....”

Learned counsel for the appellant has failed to show that the findings of fact recorded by both the Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

In view of concurrent findings of fact recorded by both the Courts below, I do not find any illegality or perversity in the impugned judgments and decrees passed by both the Courts below. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

January 29, 2016 **[Paramjeet Singh Dhaliwal]**
vkd **Judge**