IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.417 of 2016(O&M)
Date of Decision-04.11.2016

Purshotam Lal Garg ... Appellant

Versus

Brahma Nath ... Respondent

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

Present: Mr. Arvind Singh, Advocate for the appellant.

Mr. Sanjeev Narang, Advocate for the respondent.

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RAJ MOHAN SINGH, J.

CM No.13987-C of 2016

For the reasons mentioned in the application, the same is allowed. Accompanying documents are part of record of the trial Court, therefore, the same are taken on record.

Application stands disposed of.

CM No.14375-C of 2016

Application is allowed as prayed for.

RSA No.417 of 2016(O&M)

[1]. Defendant-appellant has filed this appeal against the judgment and decree dated 05.11.2015 passed by Additional District Judge, Faridabad vide which judgment and decree dated 17.01.2015 passed by Civil Judge (Junior Division), Faridabad was upheld.

[2]. Plaintiff-respondent filed a suit for eviction, possession and damages along with *pendente lite* and future interest on the ground that the plaintiff was owner of the suit property. He had completed the construction of the house (single story) comprised of three bed rooms with attached bathrooms, drawing/dining room, kitchen and servant quarter in the year 2007.

[3]. The plot was purchased and subsequently the aforesaid construction was raised by the plaintiff with a view to settle down in the house along with his family after retirement. In the year 2007, defendant through his son-in-law Puneet Rastogi contacted the plaintiff and showed his willingness to take the premises on rent for a short period on the representation that the defendant would go to his properties on completion of certain formalities. At the relevant time, Puneet Rastogi i.e. brother-in-law of the defendant was employed in the same company, where plaintiff was working on a senior post. Plaintiff agreed to rent out the property in question to the defendant for a short period on temporary basis. A lease deed was executed in the year 2007 for a period of 11 months. Till 2012, defendant kept on repeating requests and the adamancy of the defendant made the plaintiff to agree to extend the lease period each year by executing a fresh lease deed for 11 months. During all these years, the defendant kept on promising that he will vacate the premises and therefore, plaintiff agreed to extend the lease deed. In May 2012, the defendant again expressed his inability to vacate the premises and requested the plaintiff to extend the lease deed. Plaintiff had no

option but to extend the same, but with a specific direction that the defendant should vacate the premises by the end of 30.04.2013 as the plaintiff was willing to settle in the premises in question and if the defendant ultimately failed to perform his part of obligation, then the plaintiff would be at liberty to have recourse to a lawful action. A monthly consideration of Rs.20,000/- was agreed between the parties. Defendant did not vacate the premises.

[3]. Plaintiff issued a legal notice dated 25.03.2013 to remind the defendant of his obligation to vacate the premises before 30.04.2013. Defendant avoided delivery of notice through registered post, though the same was delivered through other mode. As per agreed terms between the parties, the lessee was bound to deliver the possession and if the possession of the lessee became unauthorized after the expiry of lease period, then he was bound to pay damages to the tune of Rs.1000/- per day. Defendant failed to deliver the peaceful possession of the demised premises, therefore his possession became illegal and unauthorized w.e.f 01.04.2013.

[4]. Plaintiff further alleged that on 13.05.2013, he found that an amount of Rs.20,000/- was deposited in his account through a transfer cheque by the defendant on 3rd/4th May 2013 and the same was done by defendant without the consent and approval of the plaintiff. Plaintiff also alleged that he had refused to treat the defendant as tenant or to accept the amount deposited by him as rent, however this amount could be adjusted towards damages. With this background, suit came to be filed.

[5]. Suit was contested by the defendant on numerous counts. Maintainability of the suit was questioned on the strength of Section 13 of Haryana Urban (Control of Rent and Eviction) Act 1973. The concealment of fact was alleged. It was submitted that the plaintiff had earlier taken an amount of Rs.3,00,000/- from the defendant in cash without interest till 01.11.2008 and thereafter, at the simple interest of @ 12.5% per annum. Subsequently, plaintiff had availed an amount of Rs.1,50,000/- on 01.02.2010 on which interest was to be calculated from 01.11.2008 @ 12.5% per annum. The receipt was in writing and was duly signed by the plaintiff. After the interest was calculated, the amount was shown in principal amount and interest. Statement of account was prepared on 29.05.2012 on which both the parties signed. Thereafter, due amount was also calculated in writing and amount total of all the dues came to be Rs.2,85,299/- as on 28.02.2013. The settled rent of the premises was paid to the plaintiff either through bank RTGS transactions and the rent amount was to be credited in the bank account of the plaintiff.

[6]. Defendant alleged that the filing of the suit was the result of coercing the defendant to increase rent as the plaintiff never required the tenanted house for his personal use. Plaintiff has already settled in House No.1305, Vindhyachal Apartments, Kaushambi, Ghaziabad (UP). On merits, the existence of lease deed was admitted between the parties. The period of lease was shown with a view to avoid the registration fee. Condition of penalty to the tune of Rs.1000/- per day was claimed to be illegal and was not

enforceable between the parties. Defendant claimed that the plaintiff was liable to pay an amount of Rs.2,85,299/- with interest @ 12.5% per annum or the amount in question be adjusted in the monthly rental.

[7]. Replication was filed by the plaintiff in which it was averred that the premises was constructed in the year 2007 and therefore, Rent Act was not applicable. The year of construction i.e. 2007 was sought to be demonstrated with reference to sanction letter, DPC certificate and completion certificate issued by HUDA and MCF etc. The receipts of the amount were claimed to be irrelevant as they did not have any connection with the cause of action. The receipts did not find mention in the lease deed executed between the parties on 29.05.2012. Plaintiff further pleaded that the rent was paid upto 30.04.2013 by the defendant.

[8]. Both the parties went to trial on the following issues:-

> *“1. Whether the plaintiff is entitled for a decree of eviction, as prayed for? OPP*
>
> *2. Whether the plaintiff is entitled for a decree of recovery of rent, as prayed for? OPP*
>
> *3. Whether the plaintiff is entitled for an order directing the defendant to pay use and occupation charges, as prayed for? OPP*
>
> *4. Whether the suit of the plaintiff is not maintainable in the present form? OPD*

5. Whether the plaintiff has not come to the Court with clean hands? OPD

6. Whether the plaintiff has no cause of action to file the present suit? OPD

7. Relief."

[9]. Both the parties led their respective evidence to prove their case. Trial Court found that the construction was raised in the year 2007 and the provisions of Rent Act were not applicable to the newly constructed buildings. Plaintiff and defendant entered into a lease deed which expired on 30.04.2013. Lease under Section 111 of the Transfer of Property Act expired by efflux of time as well as by a notice for determination of lease deed. Plaintiff was found entitled to a decree of eviction. Damages to the tune of Rs.1000/- per day were found to be excessive and coercive. Rent of Rs.20,000/- per month was fixed between the parties as per lease deed. After 30.04.2013, a natural increment in rent by 10% of Rs.20,000/- was expected. Plaintiff was contesting the case since May 2013. An amount of Rs.3000/- per month was found to be adequate as compensation payable to the plaintiff by the defendant. Plaintiff was found entitled for recovery of Rs.25,000/- per month from the defendant since 01.05.2013 till the date of decree and further mesne profit of Rs.30,000/- per month from the date of decree till actual handing over the possession. Since an amount of Rs.20,000/- per month was being tendered by the defendant, therefore, appropriate deduction was ordered to be made from the mesne profit so

calculated. Consequentially ejectment was ordered and the defendant was directed to handover the possession of the premises within two months from the date of passing of the judgment, failing which plaintiff was held entitled to take possession by way of execution of decree. Defendant was directed to make payment of mesne profit @ Rs.25,000/- per month from 01.05.2013 till the passing of the decree. The amount already paid by the defendant was to be deducted from the mesne profit. Further defendant was directed to pay Rs.30,000/- per month from the date of decree till actual handing over of possession to the plaintiff.

[10]. Judgment and decree dated 17.01.2015 passed by Civil Judge (Junior Division), Faridabad was upheld by the lower Appellate Court vide judgment and decree dated 05.11.2015. That is, how, the present appeal came to be filed.

[11]. I have heard learned counsel for both the parties.

[12]. Appellant has framed the following questions of law in para No.1 of the grounds of appeal:-

> *"I. Whether the entries in Municipal record maintained for fiscal purposes can be held legal document to prove the age of construction?*
>
> *II. Whether the defendant is entitled to a decision on the set off as set up in the written statement along with the decision of the suit?*

III. Whether a contract of tenancy for ten years of a house can be terminated earlier on the ground of personal necessity when the plaintiff is owner of another house?

IV. Whether the judgments and decrees passed by ld. Courts below are based on misreading of the evidence?"

[13]. Learned counsel for the appellant vehemently argued that the plaintiff did not disclose the factum of taking loan of Rs.3,00,000/- from the defendant in cash without interest till 01.11.2008 and thereafter, at the simple interest @ 12.5% per annum. Plaintiff again took loan of Rs.1,50,000/- on 01.02.2010 on which interest was to be calculated from 01.11.2008 @ 12.5% per annum. The receipt was duly executed by the plaintiff in this regard. A sum of Rs.2,85,299/- was found due towards the plaintiff as on 28.02.2013. Learned counsel further submitted that it was settled between the parties that wife of the defendant will retire in the year 2017 and the property should not be got vacated before that.

[14]. Learned counsel for the appellant referred to statement of PW 1 when he was recalled for cross examination in which he has admitted to the question that rent of June and July 2013 was received through cheque and he can only reply to the question after seeing the passbook. The amount which was deposited in the bank account of the plaintiff was not given to the plaintiff in cash, rather the same was deposited by the defendant without the consent of the plaintiff. Plaintiff also submitted in his cross examination that he did not issue any notice to the person who had deposited the amount in

his bank account, because there was no name in the bank entry as only TRF was mentioned. The witness admitted that the suit was filed on 20.05.2013. The written statement was filed by defendant on 02.11.2013 and the reply to the application under Order 39 Rule 10 CPC was also filed by the defendant. He had read both the written statement and reply to the application. The witness pleaded ignorance as to whether defendant was depositing rent in the account continuously. He thought it appropriate not to give notice to the defendant as he was receiving amount as per contract/agreement as damages. To a specific question as to whether the plaintiff had received an amount of Rs.3,00,000/- on 01.11.2008 @ 12.5%, the reply was vague enough to admit the loan, but volunteered stated that the same has nothing to do with the present case. The reply to a specific question as to whether an amount of Rs.1,50,000/- was returned to the defendant on 01.02.2010, the answer was that no such loan was taken by the plaintiff. The witness volunteered that he had seen Ex.D1 and the same was in his handwriting. He had also seen point 'A' and point 'B' where his signatures were existing and the same were identified by him. He further volunteered that document Ex.D1 was executed for some different purpose which was not valid as on date. He had seen Ex.D2 where his signatures were appended at point 'A'. He further stated that this document was never given to the defendant and he did not know from where this document came in possession of the defendant. The replication was filed only after reading written statement. He had denied the aforesaid document and stated that these documents have nothing to do with the case in hand. The witness further stated that Ex.D1 has nothing to do with the case.

[15]. Learned counsel for the appellant further stated that in preliminary objection No.3, specific averments were made by the defendant that the plaintiff had concealed the material facts in respect of an amount of Rs.3,00,000/- which he had taken in cash without interest till 01.11.2008 and thereafter at simple interest @ 12.5% per annum was to be paid by the defendant to the plaintiff. Plaintiff again took an amount of Rs.1,50,000/- on 01.01.2010 on which interest was to be calculated from 01.08.2010 as per earlier settled interest @ 12.5% per annum. Loan writing Ex.D1 was executed which was duly signed by the parties. Plaintiff had admitted signing of Ex.D1 and Ex.D2. Learned counsel claimed that an amount of Rs.2,85,299/- as on 28.02.2013 was to be set off as per pleadings and prayer of the written statement.

[16]. Learned counsel further highlighted that handwriting on Ex.D1 and signatures were admitted by the plaintiff on portion 'A' and portion 'B'. In Ex.D2 signatures were admitted by the plaintiff at portion 'A'. The entry of interest from 01.11.2008 to 31.12.2008 i.e. for two months was calculated to be Rs.6250 thereby making balance to the tune of Rs.3,06,250/-. These entries continued even in Ex.D3 and the remaining total was found to be Rs.2,85,299/-.

[17]. On the other hand, learned counsel for the respondent has vehemently submitted that as per testimony of DW 2-Ashwani Malhotra while admitting the execution of Ex.D2 where at point 'A', the signatures of plaintiff existed and the same were signed before him. The second signature on Ex.D2 was of defendant which was signed before him. The witness also saw Ex.D3 which was prepared on computation. The cross examination of the witness revealed that he came to the Court on the asking of the defendant. He never received any summon from the Court. He was employed in the company in the year 2007. Defendant used to come in his company on every third day. He was having good relation with him. The witness did not remember as to when he met the plaintiff for the last time. Document Ex.D2 did not contain any recital that who has to pay the amount in question to whom. The document Ex.D3 contained signatures of only P.L. Garg. By referring to aforesaid settlement, learned counsel for the respondent argued that the liability of the defendant cannot be fastened on the plaintiff solely on the strength of documents Exs.D1, D2 and D3.

[18]. Learned counsel further referred to para Nos.7 and 20 and prayer clause of the plaint and submitted that the suit was lawfully instituted and the plaintiff was entitled to the relief granted by the Courts below.

[19]. I have considered the rival submissions made by learned counsel for the parties.

[20]. From the record, I found that rent was being paid regularly till the expiry of the tenancy on 30.04.2013. Perusal of lease deed Ex.DW1/5 would reveal that it was executed on 29.05.2012 for a period from 01.06.2012 to 30.04.2013. The factum of Ex.D1 and Ex.D2 was not recorded in the aforesaid lease deed, even though date of Ex.D2 was also 29.05.2012. Execution of the aforesaid lease deed was not in dispute. There was no such stipulation in the lease deed that the same was extendable upto the year 2017 when the wife of the defendant would retire. The lease deed was found to be of 11 months. A lease beyond 11 months was required to be registered, therefore the plea of the defendant that the lease was extendable upto the year 2017 was rightly turned down by the Courts below.

[21]. Apparently, the lease had expired on 30.04.2013. A notice Ex.PW1/6 was sent by the plaintiff to the defendant. The notice was received by the defendant as per postal receipt Ex.PW1/6A. Defendant was required to vacate the premises on 30.04.2013. Though postal envelop Ex.PW1/6A was received unserved with the report that the addressee was not found available despite numerous visits of the Server. Courts below found that the defendant was in knowledge of the notice and did not collect the same from the post office. The tenancy between the parties stood terminated on 30.04.2013. Subsequent notice Ex.PW1/7 dated 06.05.2013 was also sent through registered post vide receipts Ex.PW1/7A and Ex.PW1/7B. The factum of earlier notice dated 25.03.2013 was duly

recited. This notice was also sent on correct address. The postal envelop was received back with the report that the house was found locked. The addressee was not found available despite numerous visits. Despite the aforesaid notices, defendant did not vacate the premises even after efflux of time.

[22]. Evidently the defendant avoided the services of notices despite knowing the fact that period of tenancy has already expired. The payment of Rs.3,00,000/- even though admitted in the statement, but was claimed to be in some different context. There was no recital in the lease deed that payment given to the plaintiff was to be adjusted against payment of rent. Even as per receipts Exs.D1 to D3, there was no reference that any rent was to be adjusted against these payments.

[23]. I have considered the rival submissions made by learned counsel for both the parties. So far as the applicability of Rent Act is concerned, I found that the property was constructed in the year 2007 and the suit was filed on 20.05.2013. Rent Act was not applicable for a period of 10 years from the completion of construction. The applicability of rent act was rightly negated by the Courts below. Questions No.(I) and (III) as framed by the appellant are liable to be negated inasmuch as that the factum of construction having been raised in the year 2007 was proved on record with reference to testimony of Kapil Kumar, Clerk, MCF, Old Faridabad and on the strength of documents Ex.PW1/2, Ex.PW1/3 and

Ex.PW1/4. The building plan Ex.PW1/2 was sanctioned on 25.05.2007. DPC certificate Ex.PW1/3 was sanctioned on 06.06.2007 and the construction was shown to be completed upto plinth level. The occupation certificate Ex.PW1/4 was issued by Municipal Council, Faridabad on 20.12.2007 and the same was applied by the plaintiff on 25.05.2007. The issuance of occupation certificate on 20.12.2007 further demonstrated that the building was completed or deemed to be complete on 20.05.2007, therefore provisions of Rent Act were not applicable for 10 years from the date of completion of the building. Accordingly, there was no misreading of evidence on this front and questions No.(I), (III) and (IV) framed by the learned counsel for the appellant are to be negated. Only question No.(II) is required to be dealt with on the basis of evidence on record. The claim of the appellant is in respect of set off for the amount which was advanced to the plaintiff.

[24]. So far as ejectment of the defendant-appellant from the demised premises is concerned, I am of the view that both the Courts below have concurrently and rightly held that the defendant is liable to be ejected. The amount towards mesne profit from 01.05.2013 till the passing of the decree was also rightly assessed. Defendant was also directed to pay an amount of Rs.30,000/- per month as mesne profit from the date of decree till final handing over the possession to the plaintiff. Trial Court had already granted a relief to the defendant thereby entitling the defendant to deduct the amount already paid to the plaintiff towards the mesne profit, though

the plaintiff has denied the factum of receipt of amount in the present context. Lower Appellate Court has also opined that the amount advanced to the plaintiff has no relevancy in the present controversy. To the extent of aforesaid plea, I found from the record more particularly from the cross examination of PW 1 on being recalled that the plaintiff has admitted to a specific question that he did not issue another notice to the defendant, neither filed any protest against the deposit of the amount in the bank, nor he verified as to who had deposited the amount in the bank, only TRF was returned. The witness also admitted that the filing of replication was only after reading stand in the written statement as well as to the application under Order 39 Rule 10 CPC. The witness did not thought it appropriate to issue notice to the defendant as he considered the deposit to be as per contract/agreement damages. To a further question in respect of an amount of Rs.3,00,000/-, the witness gave a very vague reply denying the loan transaction, but volunteered that the same has nothing to do with the case. The witness has admitted his signatures on Ex.D1 and Ex.D2. From the record, I found that the testimony of the plaintiff to this extent was vague. The factum of payments were admitted by the plaintiff, but he replied in a very vague and uncertain term that such transaction has nothing to do with the present case. Plaintiff even failed to spell out the other transactions in which the obligation was created on the plaintiff to pay back the amount in question. He only replied in vague terms. To this extent, I found that defendant had advanced certain amount to the plaintiff for which he had also pleaded set off in the prayer clause of the written statement.

[25]. Though reply given by the plaintiff in the context of receiving amount of Rs.3,00,000/- and Rs.1,50,000/- was vague and was alleged to be in different context, but perusal of Exs.D1 to D3 did not specify as to whom the payment was to be made and at whose instance the same was to be made. Be that as it may, it is proved on record that some payments were received by the plaintiff even after expiry of the lease period. To that extent, the judgments and decrees of the Courts below are clarified that the defendant is entitled to deduct the amount paid to the plaintiff from the computation of mesne profit in accordance with law. For this exercise, there is no necessity of relegating the defendant to some other remedy.

[26]. With the aforesaid clarification, this appeal is dismissed. Both the parties are left to bear their own costs.

(RAJ MOHAN SINGH)
JUDGE

04.11.2016
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No