

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

RSA No.4871 of 2016 (O&M)

Date of decision:21.09.2016

Guddi Devi

... Appellant

Vs.

The Tribune Trust

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Satyaveer Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.12667-C-2016

For the reasons stated in the application, duly supported by an affidavit, delay of 121 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.4871 of 2016 (O&M)

Appellant-defendant is aggrieved of the concurrent findings of facts and law, whereby, the suit instituted by invoking the provisions of Section 39 of Specific Relief Act, 1963 has been decreed by the trial Court and appeal filed against thereto, has been dismissed.

Mr. Satyaveer Singh, learned counsel appearing on behalf of the appellant-defendant submits that late Sh. Rulda Ram was working as Foreman in the office of respondent - Trust and he was allotted a house No.3160-A, Sector 29-D, Tribune Colony Chandigarh. On his demise, the

respondent sought the vacation of the premises by branding the appellant as licensee. The suit aforementioned was not maintainable *inter alia* on the following terms:-

- i) All the trustees of the trust had not been impleaded.
- ii) Resolution was not in favour of the person who had appeared.

In this regard, issue no.3 qua maintainability of the suit was framed. The person who appeared on behalf of trust had only a Power of Attorney but the resolution had not seen the light of day.

In support of his aforementioned contentions, he relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **State Bank of Travancore vs. M/s Kingston Computers (I) Pvt. Ltd. 2011(2) RCR (Civil) 869** to contend that where a suit has been filed by company and director of the company failed to prove the resolution, the suit was held not maintainable. The facts of the instant case are identical to the one. All the legal representatives of the deceased have not been impleaded, therefore, the suit was incompetent. All these factors have not been noticed by the Courts below and thus, there is illegality and perversity in the findings under challenge, much less, substantial question of law arises for adjudication of the present appeal as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the judgments and decrees of the Courts below and of the view that when any

employee of the company or trust allotted a accommodation, his/her status is of licensee but not of tenant and on termination of the licence, his possession becomes un-authorized. The remedy is to seek eviction of licensee as per the provisions of Section 39 of Specific Relief Act, 1963 as it entails giving a cause of action to the opposite side when there is a breach of obligation.

Thus, in my view, the objection qua maintainability of the suit is totally misconceived. All the legal heirs are not required to be made as party as the widow had already been made party. The aforementioned view of mine is supported by a judgment of this Court rendered in **Sardara Singh and another vs. Harbhajan Singh and others 1974 AIR (Punjab) 345.**

As regards, the incompetency of the officer who had put in appearance on behalf of the respondent-trust, I am of the view that the aforementioned defect is curable, though prima facie defect has not been established as the same person has filed the suit who appeared through Power of Attorney. He was subjected to extensive cross-examination but nothing contrary surfaced.

In my view, all these objections have been taken to delay the execution of the judgment and decree despite the fact that use and occupation charges @ ₹4,000/- per month has been awarded subject to payment of Court fees.

I am of the view that appellant is unnecessarily prolonging the agony on account of death of her husband. The ratio decidendi culled out in

State Bank of Travancore's case (supra) does not apply to the facts and circumstances of the present case.

No ground is made out for interference in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

September 21, 2016

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Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No