

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

**R.S.A No. 4835 of 2015 (O&M)
Date of decision :04.02.2016**

Neelam

..... Appellant

Versus

Sanjay Pahwa

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Vikrant Rana, Advocate
for the appellant.

DARSHAN SINGH,J

This Regular Second Appeal has been directed against the judgment and decree dated 16.02.2015 passed by the learned Additional District Judge, Faridabad, vide which the appeal filed against the judgment and decree dated 27.09.2013 passed by the learned Additional Civil Judge (Sr. Division), Faridabad has been dismissed.

2. Respondent-plaintiff filed the suit for possession by way of ejectment of appellant-defendant and for recovery of rent amounting to Rs. 90,000/-. As per the averments in the plaint, respondent-plaintiff Sanjay Pahwa has inducted the husband of the appellant as tenant in the demised premises on monthly rent at the rate of Rs.2500/- per month before his death. The construction of the suit property was completed in the year 2001 and therefore, the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'Rent Act') were not

applicable. It was further pleaded that appellant-defendant is a chronic defaulter in making the payment of the rent. She is in default in making the payment of the arrears of rent from May 2006 to June 2009 to the extent of Rs.92,500/-. She was asked to make the said payment. But, she filed a suit for mandatory injunction and permanent injunction against the plaintiff as a counter blast for demanding the payment of rent. Hence the suit.

3. Appellant-defendant contested the suit on the grounds *inter alia* that the present suit is a counter blast to her petition under Section 6-A of the Rent Act. She was constrained to file the petitioner under Section 6-A of the Rent Act. It was further pleaded that plaintiff has raised a loan for a sum of Rs. 2 lacs from the husband of the defendant and as a consequence thereto it was agreed that plaintiff will only charge Rs.500/- per month till the said loan amount was due and thereafter, rate of rent shall be increased to Rs.1000/- per month. She further pleaded that husband of the defendant died on 28.10.2008. She is facing the hardship to make all ends meet. She denied the liability to pay a sum of Rs. 92,500/- as arrears of rent. However, she admitted her liability to pay rent at the rate of Rs. 500/- per month for 10 months i.e. April 2009 to January 2010. Finally she pleaded that plaintiff has concealed the material facts and the suit filed by him is frivolous.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court on 26.02.2010:-

1. Whether the plaintiff is entitled to recover a sum of Rs. 90,000/- from the defendant, on the grounds as alleged?OPP

2. Whether the respondent is liable to be ejected from the demised premises, on the grounds as alleged?OPP
3. Whether the plaintiff has concealed the material facts from the Court?OPD
4. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD
5. Relief.

5. The learned trial Court on appreciating the entire material available on record decreed the suit filed by the plaintiff-respondent. She was held entitled for vacant possession of the suit property within a period of two months. He was held entitled for arrears of rent to the tune of Rs. 36,000/- along with interest at the rate of 6% per annum from the date of its accrual till its realization.

6. Aggrieved with the aforesaid judgment and decree dated 27.09.2013, the appellant-defendant preferred the appeal, which was also dismissed by the learned Additional District Judge, Faridabad, vide impugned judgment and decree dated 16.02.2015. Hence this Regular Second Appeal.

7. I have heard Mr. Vikrant Rana, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

8. Initiating the arguments, learned counsel for the appellant contended that the plaintiff had obtained the loan of Rs. 2 lacs from the deceased-husband of the appellant and there was an understanding that the plaintiff will charge rent only at the rate of Rs. 500/- per month till the repayment of the said amount of Rs. 2 lacs. After that, it shall be increased to Rs. 1000/- per month. Thus, he contended that the rate of rent has been wrongly claimed by the plaintiff-respondent.

9. He further contended that there is no valid termination of the tenancy of the appellant. The plaintiff-respondent has not issued any notice for termination of the tenancy. Thus, he contended that the impugned judgments and decrees passed by the learned Courts below are unsustainable.

10. I have duly considered the aforesaid contentions.

11. The contentions raised by learned counsel for the appellant with respect to advancement of sum of Rs. 2 lacs by the deceased-husband of the appellant to the plaintiff-respondent is only an oral plea. Appellant-defendant Neelam has stepped into the witness box and tendered in evidence her affidavit Ex.DW1/1. In order to corroborate his oral version, she has not produced any documentary evidence. It is not believable that a person will advance a huge amount of Rs.2 lacs without any document executed in token thereof. The learned trial Court has categorically mentioned that the cross-examination of appellant Neelam reflected that her husband was only a driver by profession. She has not been able to explain the source from where her husband got huge amount of Rs. 2 lacs. So, this oral version of the appellant-defendant that her husband has advanced a sum of Rs. 2 lacs to the plaintiff-respondent cannot be accepted and has rightly been turned down by the learned Courts Below.

12. The plaintiff-respondent has claimed the rate of rent to be Rs.2500/- per month. There is no dispute with the proposition of law that the burden to establish the rate of rent is always on the landlord. So, there is no documentary evidence to corroborate the oral evidence of the

plaintiff with respect to the rate of rent. However, the appellant-defendant has admitted the rate of rent to be Rs. 1000/- per month in her affidavit Ex.DW1/1. Consequently, there is no infirmity in the rate of rent determined by the learned Courts below at the rate of Rs. 1000/- per month.

13. I do not find any substance in the contentions raised by learned counsel for the appellant that there was no valid termination of the tenancy. No doubt, no formal notice was served by the plaintiff-respondent upon the appellant with respect to the termination of her tenancy. It is not disputed that the parties had a previous round of litigation. The appellant has filed a petition under Section 6-A of the Rent Act, which was ultimately dismissed. Learned First Appellate court has observed that in those proceedings also the plaintiff-respondent had sought the possession of the demised premises and has denied the payment. The stand taken by the plaintiff-respondent in those proceedings made his intention clear to eject the appellant-defendant from the demised premises. So, that will amount to a notice for termination of tenancy. Moreover, Hon'ble Apex Court in case **M/s Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF) 2008(1) R.C.R (Civil) 270** has laid down as under:-

“ In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in **V.Dhanapal Chettiar V. Yesodai Ammal, 1979(2) RCR (Rent) 352:**

[AIR 1979 SC 1745].”

14. Thus, keeping in view the aforesaid ratio of law laid down by the Hon'ble Apex Court, no formal notice was necessary under Section 106 of the Transfer of Property Act for filing a suit for eviction under the general law. The filing of the suit is itself a notice. Thus, there is no substance in the plea raised by learned counsel for the appellant that there was no valid termination of tenancy. So, I do not find any perversity or illegality in the findings recorded by the learned Courts below.

15. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

16. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 04, 2016

s.khan

(DARSHAN SINGH)
JUDGE