

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.647 of 2016 (O&M)

Date of decision: 23.5.2016

Naresh Chadha

...Appellant

versus

V.P. Mehta

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Ranjan Lakhanpal, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
- ...

AMOL RATTAN SINGH, J. (ORAL)

1. This is the second appeal filed by the defendant in a civil suit, in which the plaintiff sought recovery of Rs.5,97,952/-. The suit was decreed in favour of the plaintiff (respondent herein) by the learned Civil Judge (Junior Division), Chandigarh, to the extent of recovery of Rs.4,55,000/-, and the first appeal filed by the present appellant was dismissed by the learned Additional District Judge, Chandigarh.

2. The recovery sought was on account of outstanding arrears of rent, to the tune of Rs.4,55,000/-, Rs.33,168/- towards outstanding water charges and Rs.18,560/- towards electricity charges and Rs.91,224/- towards past interest @ 18% per annum, till the date of filing of the suit. Additionally, the plaintiff also sought future interest @ 18% per annum, till the realisation of the decretal amount by the appellant (hereinafter referred to as the defendant).

3. Briefly, the facts, as taken from the judgment of the learned Civil Judge, are that the defendant had taken the ground and first floors of House No.340, Sector 37-A, Chandigarh, on rent from the plaintiff @ Rs.13,000/- per month, excluding water and electricity charges, with effect from 1.10.2003. However, thereafter, he defaulted in paying the full rent even from November 2003, onwards, leading to the plaintiff filing a petition under Section 13 of the Punjab East Urban Rent Restriction Act, 1949, on 30.1.2007, before the learned Rent Controller, Chandigarh, seeking eviction of the defendant on various grounds, including non-payment of rent. The learned Rent Controller, vide his judgment dated 18.1.2008, allowed the petition, also assessing the provisional rent from November 2003 till 18.1.2008, after allowing a deduction of Rs.58,000/- rent paid at various stages, further granting time to the defendant to pay the assessed amount uptill 18.3.2008, which was thereafter extended till 31.3.2008. However, compliance not having been made by the defendant, the learned Rent Controller ordered his eviction, which order was challenged but the appeal was dismissed.

Hence, the plaintiff filed the suit out of which this second appeal arises, seeking recovery of the arrears of rent from November, 2003, till the date of eviction, along with interest thereupon and for payment of other charges, as described earlier herein above.

4. In the written statement filed by the defendant, upon notice being issued to him, he took an objection that that plot on which the house was constructed, was allotted to the wife of the plaintiff, as a lessee, in an open auction by the Chandigarh Administration and as such, the property

not having been converted into free hold property, Smt. Santosh Mehta, wife of the plaintiff, remained a lessee and not its owner and therefore, was not entitled to any recovery of rent.

5. Upon the pleadings of the parties, the following issues were framed by the learned Civil Judge:-

- “1. Whether the plaintiff is entitled to recovery of suit amount, if yes, to what amount? OPP
2. Whether plaintiff has not locus standi and cause of action to file the present suit? OPD
3. Whether plaintiff has concealed material facts from the Court? OPD
4. Whether suit is not maintainable? OPD
5. Relief.”

6. By way of evidence, the plaintiff examined himself in support of his plaint and tendered documentary evidence by way of a certified copy of the order of the learned Rent Controller, a site plan, receipts regarding payment of water and electricity charges, as also a certificate.

The defendant also examined himself in support of his stand and relied upon various documents such as an inventory of items, electricity charges, certain receipts and a detail of property.

7. Upon appraisal of the evidence, mainly the judgment of the learned Rent Controller, the learned Civil Judge held the plaintiff entitled to recovery of arrears of rent, but only to the tune of Rs.4,55,000/-, along with interest @ 12% per annum from the date of filing of the suit till the date of decree; and future interest @ 6% per annum, running from the date of the

decree till the date of realisation of the amount.

In the absence of any official examined from the departments of water and electricity, the said charges were held to be not payable by the defendant.

The suit of the plaintiff was, accordingly, decreed to the above extent.

8. In the first appeal filed by the defendant, the learned lower appellate Court held that the tenancy being admitted and arrears of rent only having been granted by the learned Civil Judge from the period 1.5.2006 to 31.3.2009, i.e. the period which was within limitation uptill which recovery could be made, and the judgment of the learned Rent Controller, in any case, having become final, there was no reason to interfere with the judgment and decree of the learned lower Court. The interest awarded was also found to be reasonable and, consequently, that appeal was also dismissed, with costs of Rs.3,000/-.

9. Before this Court, Mr. Ranjan Lakhanpal, learned counsel for the appellant, made an attempt to reargue the entire case of the defendant, but upon query put to him, as to how the judgments of the learned Courts below require any interference with, in view of the fact that, undoubtedly, the appellant-defendant had been ordered to be evicted for non-payment of rent by the learned Rent Controller and the recovery of rent has also been ordered only to the extent that such a claim was admissible within the period of limitation, he could not really press upon the matter.

As regards the questions of law raised in the grounds of appeal, which are essentially the same question repeated thrice in a different

manner, i.e. that the respondent-plaintiff had not proved himself to be owner of the suit property, I find no merit in the same, in view of the fact that recovery of rent was dependent upon the judgment of the learned Rent Controller, holding the appellant-defendant to be a tenant of the respondent-plaintiff and as such the ownership of the property was not in issue at all. The only question was whether the plaintiff was entitled to receive the rent from the defendant, which issue had already been adjudicated upon in the petition filed before the learned Rent Controller, which, admittedly, has been allowed in favour of the respondent-plaintiff, with those proceedings having become final. The quantum of rent had also been fixed by the Rent Controller, in terms of which the recovery was sought by the respondent-plaintiff, in the suit decreed in his favour, to the extent discussed above.

10. Hence, finding no merit in the appeal and no error in the judgments of the learned Courts below, the present appeal is dismissed, in limine, with no order as to costs.

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11. In view of the fact that the appeal has been dismissed in limine as above, the question of condonation of the delay of 43 days in filing the appeal is rendered academic and is not gone into.

23.5.2016
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(AMOL RATTAN SINGH)
JUDGE