

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

**RSA No.898 of 2016
Date of decision: 25.02.2016**

M/s Mohan Bakery and others

... Appellants

Versus

Deepti Goel

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Gaurav Chopra, Advocate,
for the appellants.

Mr.Avnish Mittal, Advocate,
for the respondent.

AMOL RATTAN SINGH, J.(Oral)

1. The appellants are the defendants against whom a civil suit for possession by ejectment was filed by the respondent-plaintiff, further seeking recovery of Rs.1,49,120/- as arrears of usage and occupation.

The facts giving rise to the litigation are that the respondent-plaintiff is the owner and landlady of SCF No.7, Vikas Vihar, Ambala City, the ground floor of which was taken on rent by appellants No.1 and 2, through appellant No.3, at a monthly rent of Rs.8000/-, for a period of three years commencing on 15.02.2005. The agreement in that regard is dated 05.02.2005.

Since the appellants did not prove to be good tenants, as per the respondent, they were asked to vacate the premises on the expiry of the three

year period, i.e. on 14.02.2008. Not having done so, a legal notice was served upon them, which also they did not comply with and consequently, the suit was filed, alleging in the plaint that they were in legal possession of the shop and were liable to pay mesne profits at a monthly rent of Rs.35,000/- after 01.04.2008 to July, 2008, amounting to Rs.1,40,000/-, other than Rs.9120/- towards rent/occupation charges, for March, 2008.

As per the respondent in her plaint, Rs.35,000/- per month was the prevailing rent in the locality where the suit property is situate.

2. In the written statement filed in reply to the plaint, the usual preliminary objections with regard to maintainability, locus-standi, cause of action, jurisdiction, concealment of facts etc. were taken.

On merits, it was admitted that the appellants-defendants had taken the shop on rent but claimed that the tenancy was perpetual. The tenancy agreement was not admitted and it was claimed that they were statutory tenants, further alleging that the agreement was a void document, not registered, and that the respondent had got signatures of the appellants on blank papers. It was also denied that they had committed any act which impaired the value and utility of the building and in terms of the provisions of the Haryana Rent Act, there was no ground for them to be ejected. They also denied the service of notice upon them, as also the fact that the market rate of rent was Rs.35,000/- per month.

A specific plea was also taken by them that the shop was not newly constructed, ever after getting the sanctioned plan dated 07.07.1998 from the Municipality and, as a matter of fact, it was alleged that the construction of the property was in existence since 1996 and by concealing this fact, the respondent had purchased the building by showing it to be

simply land.

It was further alleged that prior to the appellants coming into the tenancy of the building, it was tenanted out to various other people, even in the year 1996-97. There was a water place (“Pyao”) in the building which was run by the husband of the respondent-plaintiff since 1996-97.

The sanctioned plan itself was alleged to be a sham transaction, with the building being in existence prior to 07.07.1998.

A replication was filed by the respondent, reiterating her stand in the plaint and thereafter, the following issues were framed by the learned Civil Judge (Senior Division), Ambala:-

- “1. Whether plaintiff is entitled to decree for possession of the suit property detailed in the head note of the plaint, as alleged? OPP
2. Whether plaintiff is entitled to mesne profits/damages for illegal use and occupation of the suit property? OPP
3. Whether suit of the plaintiff is not maintainable in the present form? OPD
4. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether this court has no jurisdiction to entertain and try the present suit, if so its effect? OPD
6. Whether plaintiff is estopped by her own act and conduct to file the present suit? OPD
7. Whether the plaintiff has concealed the true and material facts from this court, if so its effect? OPD
8. Relief.”

3. The respondent-plaintiff examined one Jagdish Singh, Assistant Lineman as PW1, Hari Singh, Upper Division Clerk as PW2 and examined herself as PW3. Darshan Lal, Building Inspector appeared as PW4 and Rajinder Singh, Draftsman as PW5.

PW1 proved an application (moved by appellant No.3) filed on 05.04.2002, to get the electricity connection in the name of M/s Mohan Bakery (appellant No.1), accompanied by a 'No Objection' Certificate from the plaintiff, alongwith which he (respondent No.3) produced a copy of a ration card and rent agreement.

PW2 also produced record of the electricity connection of M/s Mohan Bakery in the suit premises and also deposed that an attested copy of the rent agreement, attested by the Notary Public, was attached in the file dealing with the grant of the electricity connection, which was duly granted.

The respondent-plaintiff testified as per her averments in the plaint and PW4 Darshan Lal, Building Inspector, produced the record of the suit premises in which Form BR-1, was stated to have been sent on 07.07.1998, a copy of which proved as Ex.PW3/1. This form, he testified to be on account of sanction of the building plan.

PW5, Draftsman Rajinder Singh, also produced record pertaining to the suit property, including a letter dated 28.1.21998, Ex.PW4/1, bearing the signatures of the SDO (Civil)-cum-Authority Ambala Improvement Trust, addressed to the respondent-plaintiff. This letter was issued on account of the failure of the respondent to complete the construction, thereby violating condition No.5 of the allotment letter (of the plot), dated 27.03.1996 (after which a sale deed was executed). He also proved receipt No.92, Ex.PW4/2, by which the respondent had deposited a fee on 19.05.1998, seeking sanction of the building plan.

4. The 3rd appellant appeared as DW1 and in cross-examination, he stated that there was no reference to a “Pyao” (water place) in the written statement. He admitted the carbon copy of the rent agreement placed on

record as Mark-A and stated that initially the rate of rent was Rs.8000/- per month but there was an escalation clause for an annual increase of 7%, and at the time of filing of the suit the rate of rent was Rs.9120/- per month.

5. Upon appreciating the evidence, the learned Civil Judge disbelieved the stand of the 3rd appellant, that the signatures were taken on a blank paper which was latter converted into a rent deed, on the ground that he had actually used the said agreement to obtain an electricity connection from the Electricity Company.

Further, the registered sale deed dated 04.06.1998 was also held to be a public document as per Section 68 of the Indian Evidence Act, in which the attesting witnesses of the sale deed were not to be examined, it being a registered sale deed kept in the pubic record of the Registration Department.

It was further held that the site plan had been proved to be sanctioned on 07.07.1998 and on account of non-construction by the respondent, the letter dated 28.12.1998 was issued to her. Thus, the learned Civil Judge came to the conclusion that the property was actually constructed after 1998 and merely because no completion certificate was issued or produced, did not mean that the building was not constructed after that year. Hence, it was held that the building was exempt from the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973, in terms of what is stipulated in Section 1 thereof, as follows:-

“1. Short title and extent.-(1) This Act may be called the Haryana Urban (Control of Rent and Eviction) Act, 1973.

2) It shall extend to all urban areas in Haryana but nothing herein contained shall apply to any cantonment area.

3) Nothing in this Act shall apply to any building the construction of which is completed on or after the

commencement of this Act for a period of ten years from the date of its completion.”

Thus, the building being less than 10 years old, the protection available to a tenant in the said Act, was held to be not applicable, as on the date that the legal notice was sent for termination of the tenancy, i.e. on 24.03.2008, the building was held to be less than 10 years old.

The said notice (Ex.PW3/1) was issued under Section 106 of the Transfer of Property Act, 1882. The postal receipt to prove the sending of such notice, by UPC as also by registered AD post, were exhibited in the suit, which were accepted to be proof of service, though the appellants had denied such service.

6. The suit was consequently decreed to the extent that the appellants were directed to hand over vacant possession of the suit property within two months, with the respondent held entitled to mesne profits for illegal use and occupation, at the rate of Rs.15,000/- per month, with effect from the date of institution of the suit (16.07.2008), till the delivery of possession.

7. An appeal was filed by the appellants before the learned Additional District Judge against the aforesaid judgment and decree, and cross-objections with regard to mesne profits being awarded less than what were due, were also filed by the respondent herein.

Before that Court, the 3rd appellant, first, again denied the rent agreement, but thereafter pointed to two clauses (5 and 12) thereof, to state that the annual rent could only be increased by 7% for three years, after which it would become basic rent for a further period of 3 years and so on.

Rejecting the contention that the rent agreement was not a valid agreement, it was held by the first Appellate Court, that clause 12 of the Rent

Agreement specifically stipulated that the tenancy commenced from 15.02.2005 for a period of 3 years, upto 14.02.2008, and that there was no clause for extension of the same. It was further held that there was also no recital in the rent agreement that tenancy could be terminated only on contravention of the terms and conditions of the agreement.

The contention that the rent act was applicable to the suit property, was also rejected on the same ground, that with the sanction for constructing upon the plot within one year w.e.f. 12.05.1998, and a notice having been issued with regard to non-construction on 28.12.1998, it was obvious that no construction was completed in that year. Hence, the exemption granted to a new building by Section 1 of the Rent Act of 1973, was held to be applicable, by the first Appellate Court also.

8. As regards the cross-objections filed by the respondent, they were also rejected, holding that simply by placing reliance on an agreement of rent in a nearby place, where rent to be shown Rs.42,000/- per month, the existing rate of rent of the suit property was not sufficiently proved and, in fact, with the rent having been decided at Rs.8000/- per month with a 7% increase only (even for 3 years), the amount of Rs.15,000/- per month granted as mesne profits by the learned Civil Judge, was sufficient.

The first appeal was also, therefore, dismissed.

9. Before this Court, Mr. Gaurav Chopra, learned counsel appearing for the appellant, vehemently contended that the Courts below have wholly erred in holding the provisions of the Rent Act of 1973 to be not applicable to the suit property, in view of the fact that though the respondent had admitted that a completion certificate was issued in respect of the property, no such completion certificate was produced in Court. In fact, his

entire argument was based on this issue alone, to the effect that with the non-production of a completion certificate, it could not be said that the property was not more than 10 years old as on the date of issuance of the legal notice for eviction, on 24.03.2008. He reiterated that, in fact, previously also, tenants had been on the property and as such, it had to be inferred, in the absence of a completion certificate, that the premises was more than 10 years old and therefore, very much within the purview of the stringent conditions for seeking eviction, in the Haryana Urban (Control of Rent and Eviction) Act, 1973.

10. Upon specific query by the Court, learned counsel, however, had to admit that no evidence was led with regard to any tenancy prior to 1999 or even prior to 2000.

However, he further submitted that the letter dated 28.12.1998, regarding non-construction on the suit property, was a letter manipulated in connivance with the official authorities and as such, no reliance can be placed thereupon. Again, when confronted with the fact that even the building plan was sanctioned only on 07.07.2008, he submitted that the building plan could be in respect of any floor higher than the ground floor. Yet, he could not deny that nothing beyond the ground floor has been constructed on the suit property and further, he also could not deny that it was not proved before the courts below that the said sanctioned plan was only in respect of a floor above the ground floor. Further, he also could not refute the sale deed dated 05.04.1998, by which the suit property had been conveyed by the Ambala Improvement Trust to the respondent.

11. Thus, neither the conveyance of the suit property for the first time to the respondent on 04.06.1998 (with an earlier transfer letter on

27.03.1996) was disproved by the appellant-defendants, nor was the sanctioned plan for the building or the fee for grant of sanctioning of the site plan for construction, having been deposited on 19.05.1998, disproved. Further, a letter for non-construction on the plot had also been issued by the Improvement Trust on 28.12.1998, (for violating the conditions of allotment). Thus, even in the opinion of this Court, there was obviously no construction upon the suit property, prior to 1998.

The contention of learned counsel that the sanctioned site plan may be only for a first floor or higher floors, also does not get strengthened from any evidence led to that effect, the site plan being an exhibited document (Ex.PW3/22), sanctioned on 07.07.1998, which could not be disproved by the appellants. Thus, with the plan having been sanctioned only on 07.07.1998 and a letter having been issued for non-completion of construction of a plot on 23.12.1998, with the plot itself having been transferred by sale deed on 04.05.1998, in my opinion, it stands proved that the building constructed on the plot, was a building less than 10 years old, and as such, would be included in the exclusionary clause of the Act of 1973, i.e. Section 1(3) of that Act, thus making it not amenable to the provisions of the said Act.

No doubt, the said provision is to the effect that the Act would not apply to any building for a period of 10 years from the date of completion of its construction. In the present case, the date of completion is uncertain. However, I do not see how that would help the appellants, inasmuch as, obviously the date of completion can be only well after the date when construction was started. Thus, with a notice for non-construction having been issued at the end of December 1998, and the suit having been filed on

16.07.2008, and the legal notice for eviction of the premises having been issued on 24.03.2008, the period of 10 years was to commence definitely after December 1998. As such, that period would come to an end only in December 2008, at the earliest. With the notice for eviction having been issued in March 2008 and the suit itself having been filed in July 2008, obviously the exemption clause applied to the suit property at the relevant time.

12. Once that is established, the rent agreement would come within the definition of a lease as provided in Section 125 of the Transfer of Property Act, 1882, which states as follows:-

“105. **Lease defined.**- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

Thus, with the lease having commenced on 15.02.2005 for a specified period upto 14.02.2008, as per the agreement, and the appellants not having vacated the said premises on that date, the appellant was very much within her right to file a suit for possession by ejectment, after the lease period had expired and the agreement had run its life. Consequently, a notice under Section 106 of the Act of 1882 was duly issued on 24.03.2008, upon the failure of the appellants to vacate on 14.02.2008 and they still not having vacated the premises, I see no error in the judgments of Courts below, in

decreeing the suit filed by the respondent, for possession by eviction of the appellants and in awarding mesne profits to the extent of Rs.15,000/- per month, from the date of the institution of the suit till the actual handing over of vacant possession.

Learned counsel for the appellants has also not been able to show that the mesne profits are in any way unreasonable, the last rent payable in the year 2008 being Rs.9120/- per month, after which the amount of Rs.15,000/- per month was awarded by the learned Civil Judge, while decreeing the suit on 16.07.2014, i.e. about six and half years after the period of lease had expired.

13. Mr. Chopra, however, prayed for reasonable time for the appellants to shift their business of a Bakery, from the suit premises. Thereafter, on instructions from the appellants, he submitted that if the appellants are given three months' time to vacate the premises, they would, in the meanwhile, pay the mesne profits as ordered by the Courts below, subject to the amount already having been paid being set off against the balance mesne profits to be paid, at the rate decided by the Courts below.

Mr. Avnish Mittal, Advocate, at this stage appeared for the respondent and submitted that subject to the above payment being made within a period of one month, the respondent-decree-holder would not insist upon the warrants issued being executed against the appellant, for eviction, till 24.06.2016 and an undertaking to that effect shall be filed within one week by the appellant, before the Court seized of the execution proceedings.

As regards the discounting of the amount already paid, from the mesne profits to be paid by the appellants, in terms of the impugned judgments, Mr. Mittal submits that upon proof tendered of such payments

having been made, the amount that has already been paid would naturally be set off from the amount of mesne profits to be paid at the rate of Rs.15,000/- per month, from the date that suit was filed, i.e. 16.7.2008, till the date of handing over of vacant possession of the suit property.

14. Recording the above statements of the respective counsel for the parties, which the parties are held bound to, finding no merit in the appeal, the same is dismissed for the reasons already given, with no order as to costs.

25.02.2016
vcgarg/dinesh

(AMOL RATTAN SINGH)
JUDGE