

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103

C.M. Nos. 15548-49-C of 2015 &
RSA No. 6187 of 2015 (O&M)

Date of Decision: 26.05.2016

M/s Tejinder Singh Devinder Singh and others

.....APPELLANTS

VERSUS

M/s Gopal Singh and sons and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**PRESENT: Mr. K.S.Rekhi, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J

C.M. No. 15548-C of 2015

C.M. is allowed subject to just exceptions. Filing of typed copies of grounds of appeal and judgment and decree passed by the Additional District Judge, Amritsar and judgment and decree passed by the Civil Judge, Amritsar and Annexures A-1 to A-5 are dispensed with.

RSA No. 6187 of 2015

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Amritsar dated 13.05.2013, whereby the suit for possession of the property consisting of two sheds on the land measuring 300 sq. yards approximately, inside the premises of M/s Gopal Singh and Sons Cold Store, situated at Village Manawala, G.T. Road, Amritsar shown as red in the site plan attached with the suit and recovery of ₹ 2,15,000/- as compensation for use and occupation of the premises till the

date of filing of the suit along with interest @ 12% per annum from the date

of filing of the suit till actual realization of the entire amount and suit for permanent injunction, has been allowed with a direction to the appellants-defendants to hand over the vacant possession of the premises to the respondents-plaintiffs within a period of two months from the date of order and for recovery of ₹ 4,000/- per month from December, 2006 till its final payment along with interest @ 6% per annum as mesne profits from the appellants-defendants, appeal against which preferred by the appellants-defendants has been dismissed while that of respondent-plaintiff allowed by holding the respondent-landlord entitled to recover arrears of mesne profit by increase of rent @ 5% after every 11 months as held in para 29 of the judgment with 6% interest with adjustment of amount already paid by the Additional District Judge, Amritsar on 03.11.2015.

2. It is the contention of the learned counsel for the appellants that the judgments and decree, as passed by the Courts below, cannot sustain in the light of the fact that the respondents-plaintiffs have themselves asserted that the appellants-defendants were inducted as tenants in the demised premises vide Rent Note dated 04.11.2004 with effect from the same date. Once the said fact has been admitted, there being a relationship of landlord and tenant between the parties, the suit for possession would not be maintainable rather a petition for ejectment should have been preferred under the provisions of the The East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'Rent Act') In any case, he contends that even if a suit for possession is held to be maintainable, notice of six months' was required to be issued to the appellants-defendants under Section 106 of the Transfer of Property Act as admittedly, the demises premises was rented out to the appellants for manufacturing purposes whereas the notice is only

for a period of 15 days' and thus, the notice terminating the tenancy is illegal. It has further been submitted by the learned counsel for the appellants that the suit of the respondents-plaintiffs is not maintainable for the reason that respondent No. 1 is a Firm and no registration certificate has been placed on record. He, thus, contends that the suit itself deserves dismissal. He, accordingly, prays that the impugned judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgments.

4. It is not in dispute that the Rent Note dated 04.11.2004 was executed by the appellants-defendants in favour of the respondents-plaintiffs and a relationship of landlord and tenant between the parties exists. As per the Rent Note, it was agreed that the rent would be ₹ 4,000/- per month with a clause for increase of rent @ 5% every year after the expiry of 11 months. The rent @ ₹ 4,000/- per month up to November, 2006 has been paid but thereafter, the appellants-defendants have failed to produce any evidence which would show that the payment of rent at the increased rate, as agreed to between the parties, has been paid to the respondents-plaintiffs. They have also failed to make the payment of electricity charges. It is in pursuance thereto, because of the violation of the terms and conditions of the Rent Note, notice under Section 106 of the Transfer of Property Act was served upon the appellants-defendants dated 04.06.2008 calling upon the appellants-defendants to vacate and deliver possession of the premises to the respondents-plaintiffs. Initially, the receipt of the notice was disputed by the appellants-defendants in the

written statement, however, in the cross-examination, Tejinder Singh DW-1 had admitted receipt of notice sent by the respondents-plaintiffs for vacating the property. He went to the extent of saying that reply was filed to the said notice but no reply has been brought on record. This shows that notice dated 04.06.2008 under Section 106 of the Transfer of Property Act stands duly served upon the appellants-defendants.

5. The question now, which requires to be answered, is whether notice was to be given for a period of six months for vacating the premises or for a period of 15 days, as has been done by the respondents-plaintiffs through this notice dated 04.06.2008. Reference, at this stage, to Section 106 of the Transfer of Property Act is required, which reads as follows:-

“106. Duration of certain leases in absence of written contract or local usage-(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.”

6. A perusal of the above Section would show that in case of a lease of an immovable property for agricultural and manufacturing purposes, six months' notice is required for termination of the same whereas

for property for any other purpose, it would be terminable on notice by either of the parties of 15 days. This, however, is subject to there being no written contract.

7. In the present case, there is indeed a contract entered into between the parties i.e. The Rent Note dated 04.11.2004. Admittedly, the appellants-defendants have not paid the enhanced rate as per the Rent Agreement, which mandated increase of rent @ 5% every year after the expiry of 11 months. The electricity charges have also not been paid, therefore, the terms and conditions of the contract have been violated. In such circumstances, notice of 15 days' would be the requirement as per the Statute. The findings, thus, recorded by the Courts below, on this aspect, cannot be faulted with.

8. The other contention, which has been raised by the counsel for the appellants, is that the civil suit would not be maintainable and a petition for eviction under the Rent Act should have been filed as the property in dispute falls within the jurisdiction of Amritsar Municipal Corporation. The said plea cannot be accepted in the light of the fact that there is overwhelming evidence produced by the respondents-plaintiffs to prove that the property in dispute is situated in Village Manawala. The said evidence is in the form of a certificate Ex. P-10 issued by the Block Development and Panchayat Officer, which shows that this Village falls within Block Jandiala Guru and there is a Gram Panchayat which does not fall within the jurisdiction of the Municipal Corporation. That apart, the voter list has also been placed on record as Ex. P-11 of the Gram Panchayat, which again shows that it is a village outside the jurisdiction of Municipal Corporation.

No evidence has been brought on record by the respondents to show that the

Village Manawala falls within the limits of Amritsar Municipal Corporation. If that be so, the The Punjab Rent Act, 1995 has no application and therefore, the Civil Court had jurisdiction to entertain the present suit. The findings, thus, of the Courts below cannot be faulted with.

9. The next contention raised by the counsel for the appellants is with regard to the maintainability of the suit in the present form. A perusal of the impugned judgment would show that a specific issue was framed i.e. (iv), which reads as follows:-

“(iv) Whether the suit of the plaintiffs is not maintainable”
OPD”

The onus to prove this issue was on the appellants-defendants but neither evidence has been adduced by them nor this issue was pressed by them during the course of arguments either before the trial Court or the Appellate Court. This contention, thus, of the counsel for the appellants cannot be sustained.

10. The findings, as recorded by the Courts below being on due and proper consideration of the pleadings and the evidence brought on record cannot be faulted with or can not be said to be, in any manner, illegal which would call for interference by this Court.

11. No other point has been raised or argued by the counsel for the appellants.

12. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

13. There is no substantial question of law in the present appeal,

which requires consideration of this Court.

14. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 15549-C of 2014

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

May 26, 2016

pj