

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2090 of 1991
Date of decision:3.4.2017**

State of Punjab

...Appellant

Versus

Rattan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.B.S.Sra, Addl.A.G., Punjab for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment and decree dated 29.4.1991 passed by the learned first appellate court, whereby first appeal of the plaintiff was allowed, modifying the impugned judgment and decree dated 31.7.1989 of the learned trial Court, granting a decree of declaration to the effect that authorities of the State government were not entitled to recover the amount of Rs.12,815.45 paise from the plaintiff on account of penal rent, State of Punjab has approached this court by way of present regular second appeal.

Succinctly put, relevant facts necessary for disposal of instant appeal, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff/appellant filed a suit for declaration to the effect that the letter No.G-13507 dated 24/1/1986 issued by Executive Engineer, Provincial Division, Sangrur demanding Rs.12,815.45 paise on account of arrears of rent at the rate of Rs.1100/- per month in respect of House No.12-A in Ranbir Club, Sangrur was illegal, void and not binding upon the plaintiff and also for permanent injunction restraining the

defendant and its officers from recovering the said amount as land revenue arrears alleging that he was posted as Executive Engineer, Canal Lining Division, Division No.2, Irrigation Branch at Sangrur on 21/6/1980 and was allotted quarter No.12-A which was occupied by the plaintiff on October, 1980. Vide order dated 23.11.1984 the plaintiff was ordered to hand over the charge to Shri T.L. Singla, Executive Engineer of Lehragana Canal Lining Division, Sangrur and the posting order of the plaintiff would be issued. Since the posting order of the plaintiff was not issued so he remained in the occupation of the quarter allotted to him. Vide Memo No.3213/MA dated 26/2/1985 plaintiff was asked to vacate the quarter. Again vide letter dated 14.3.1985, the plaintiff was asked to vacate the house in question at once as his allotment was cancelled and he was also asked to deposit the rent at the market rate i.e. Rs.1100/- per month w.e.f. 29/1/1985. The Collector passed an ex parte order on 28/3/1985 whereby the plaintiff was ordered to vacate the house. The plaintiff filed an appeal before the Commissioner Patiala Division Patiala who stayed the dispossession of the plaintiff till the disposal of the case. Meanwhile the plaintiff was transferred from Sangrur to Abohar and he vacated the house in question on 18/1/1986. The Executive Engineer, Sangrur wrote a letter dated 24/1/1986 whereby he demanded Rs.12815.45 paise as arrears of rent but the said demand was illegal, void etc.

Having been put to notice, defendant put in appearance and filed the contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication.

On completion of pleadings of the parties, learned trial Court

framed the following issues:-

- 1) Whether the plaintiff served valid notice U/s 80 CPC before filing this suit ? OPP.
- 2) Whether plaintiff has no cause of action and suit is bad for non-joinder of necessary parties? OPD.
- 3) Whether suit is not maintainable in the present form? OPD.
- 4) Whether the order/letter No.G/13507 of 24/1/1986 of XEN is illegal, void and not binding upon the plaintiff? OPP.
- 5) Whether the plaintiff is entitled to declaration & Injunction prayed for? OPP.
- 6) Relief

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has proved his case. However, his suit was partly decreed to the effect that the defendant was entitled to recover arrears of rent only to the extent of Rs.4680/- and not Rs.12,815.45 paise. Suit was accordingly decided vide impugned judgment and decree dated 31.7.1989.

Dissatisfied, plaintiff filed his first appeal, which came to be allowed by the learned Additional District Judge, vide impugned judgment and decree dated 29.04.1991. Hence this regular second appeal, at the hands of unsuccessful defendant.

Heard learned counsel for the appellant.

Notice of motion was issued vide order dated 25.11.1991. However, service was not effected on the respondent. Case was listed for motion hearing. Another opportunity was granted to the appellant-State of Punjab vide order dated 17.1.1992 and thereafter vide order dated 27.5.1996. But the appellant-State of Punjab failed to effect service on the respondent. Learned counsel for the State of Punjab submits that he has already written two letters to the Deputy Commissioner concerned but there is no response.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, would make it crystal clear that each and every relevant aspect of the matter was duly considered and rightly appreciated in the correct perspective before passing the impugned judgments and decrees. The learned first appellate court recorded a categorical finding to the effect that since the plaintiff relinquished the charge of the official work assigned to him as Executive Engineer and the remained posted as Executive Engineer at Sangrur up-to 10.6.1985, he was entitled to retain the government accommodation, allotted to him at Sangrur.

There was no contrary evidence brought on record by the defendant-appellant. Under these circumstances, the order dated 24.1.1986 Ex.P10 was found to be an arbitrary order, which was also contrary to the official record. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge rightly decreed the suit of the plaintiff in toto, modifying the decree of the learned trial Court and the impugned judgment and decree passed by the learned first appellate court deserve to be upheld.

Before arriving at its judicious conclusion, the learned first appellate court re-examined, considered and appreciated the true facts of case as well evidence available on record in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 8 and 9 of its impugned judgment, which deserve to be noticed here, read as under:-

“Meantime, eviction proceedings against the plaintiff/appellant were initiated and rental value of the premises in dispute was assessed at market rate. The eviction order was passed by the Collector, Sub Division, Sangrur vide order dated 28/3/1985, the copy of which is Ex.P9. In pursuance of order of the Collector dated 28/3/1985(Ex.P7), The Executive Engineer, Provincial Division, Sangrur write letter Ex.P10 to the plaintiff/appellant for the recovery of arrears of rent on the basis of market rent i.e.Rs.12815-45P. The plaintiff/appellant went in appeal to the Commissioner, Patiala Division, Patiala and the eviction was stayed accordingly. Ultimately, the learned Commissioner had passed the order dated 26/11/1985, Ex.P13. The stay of eviction order remained in force upto 26/11/1985 when the appeal was dismissed.

The fact remains that plaintiff/appellant remained posted as XEN at Sangrur, although he had handed over the charge to Shri T.L.Singla at the direction of the Secretary, Irrigation Department. The plaintiff/appellant relinquished the charge of the work assigned to him, but never the less he remained as XEN at Sangrur upto 10/6/1985. Obviously, the plaintiff/appellant was entitled to retain government accommodation allotted to him at Sangrur. On the other side, eviction of the plaintiff/appellant from the premises in dispute remained stayed upto 26/11/1985. It is a fact that he was entitled to continue in the occupation of the premises in dispute

upto 26/11/1985. The circumstances of this case show that the plaintiff/appellant was transferred in a Hazardous way. The letter dated 24/1/1986 issued by XEN, the copy of which is Ex.P10 was issued arbitrarily without appreciating admitted facts, as stated above. The plaintiff/appellant was only left stranded on the road side by the Government/arbitrarily. His transfer orders, the copy of which is Ex.P9 were issued on 10/6/1985 and he continued to be posted as XEN till then. I find that the impugned letter Ex.P10 is invalid being arbitrary. Consequently, I decide this issue accordingly.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the above-said cogent findings recorded by the learned first appellate court. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In view of what has been discussed above, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Consequently, the impugned judgment and decree passed by the learned

first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

3.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No