IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1820 of 2013
Date of decision : 26.09.2017

Gurvinder Singh Dhillon and others

...Appellants

Versus

The Managing Director, Food Corporation of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the appellants.

Mr. Atul Gaur, Advocate for the respondents.

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ANIL KSHETARPAL, J.

The plaintiffs are in Regular Second Appeal against the concurrent judgments passed by the Courts below.

The plaintiffs had filed a suit for mandatory injunction with the following prayer:-

> *"Suit for mandatory injunction with the direction to the defendants to settle the Accounts of arrears of rent from 04.10.2000 to 18.06.2006 which has been fixed at the rate of Rs.50093/- per month regarding the plinth area to the tune of 20000 metric tunes of the plinth situated outside municipal limits of Faridkot which has been rented out under the name and style M/s Gurvinder Singh Dhillon and others to the defendants OR IN THE ALTERNATIVES suit for rendition of accounts regarding arrears of rent from 4.10.2000 to 10.8.2006 fixed by the parties at the rate of*

Rs.50093/- per month of the plinth to the tune of 20000 metric tones rented out to the defendants under the name and style of M/s Gurvinder Singh Dhillon and others."

It is the case of the plaintiffs that pursuant to the advertisement issued by the Food Corporation of India, the plaintiffs had constructed the platforms (plinth area) for giving it on rent to the defendant-Corporation. As per the advertisement, defendant-Corporation had offered rent at the rate of 45 paise per square feet per month if the plinth is in rural area and 50 paise per square feet for urban area.

It is further the case of the plaintiffs that on approval of the area, the plaintiffs, after raising a loan had constructed plinth area/platform to store 20,000 metric tone foodgrains and handed over the possession to the defendants on 01.10.2000. The grievance of the plaintiffs is that the defendants have not been crediting the amount of rent at the rate of 45 paise per square feet in the account of the plaintiffs.

On the other hand, defendant-Corporation has submitted that the plinth area/platform area was not constructed as per the specification and, therefore, as per the guidelines, the plaintiffs were entitled to the rent at the rate of 25 paise per square feet per month.

It is further claimed that w.e.f. 17.02.2002 to 03.10.2003, the plaintiffs were entitled to rent at the rate of ₹50,093/- per month and the plaintiffs have accepted the total rent which was due upto 03.10.2003.

Learned trial Court after appreciating the evidence available on the file held that the plaintiff's pleading and evidence are vague, uncertain and unclear. However, the trial Court passed a preliminary decree for rendition of the accounts.

Two appeals were preferred. One by the defendant-Corporation and second by the plaintiffs. Learned First Appellate Court after appreciating the evidence available on the file dismissed the appeal filed by the plaintiffs-appellants whereas appeal filed by the Food Corporation of India was accepted and even a preliminary decree for rendition of the accounts was also set aside.

Learned First Appellate Court has given the following reasons while accepting the appeal filed by the Corporation:-

1. The Food Corporation of India is a body corporate. However, it has not been impleaded as party defendant. The suit has been filed only against the officials.
2. The suit for mandatory injunction and rendition of the accounts is not maintainable. The plaintiffs should have filed a suit for recovery.
3. The plaintiffs have failed to establish their claim on the basis of the evidence available on the file.

I have heard learned counsel for the parties at length and with their able assistance gone through the record of the case.

Learned counsel for the appellants has argued that as per the advertisement Ex.P15, the rate of rent offered was 45 paise per square feet per month, which was payable.

Learned counsel has further pointed out by referring to page No.363 of the record that the rent has not been regularly credited, as per the details of payment submitted by the Food Corporation of India. He has further submitted that the defendants did not inform the plaintiffs as and when the premises was vacated.

He has further submitted that the plaintiffs are ready to pay the Court fees if any payable.

On the other hand, learned counsel for the respondents has supported the judgment passed by the First Appellate Court.

In the present case, there is no dispute that the respondent-Corporation has not been impleaded as defendant. However, a look at the written statement filed to the suit would show that the written statement was filed on behalf of the Food Corporation of India. Of course, proper parties have not been impleaded but once the Food Corporation of India has contested the suit, the First Appellate Court was in error in dismissing the suit on this score.

It is also not in dispute that the plinth/platform space as constructed by the plaintiffs was taken on lease by the defendant-Corporation. It is the case of the plaintiffs that the possession was taken on 01.10.2000 whereas it is the case of the defendants that the possession was taken on 04.10.2000. There is a lease agreement dated 23.09.2002 between the parties which is Ex.DC on the record, with respect to the period 04.10.2000 to 03.10.2002. In the Schedule attached to the aforesaid lease agreement, it is specifically mentioned that for the period 04.10.2000 to 16.02.2002, the rent shall be at the rate of 25 paise per square feet per month whereas it will be 45 paise per square feet per month w.e.f. 17.02.2002. The aforesaid lease agreement was not disclosed by the plaintiffs. However, such lease agreement is duly signed by the plaintiff No.1. The lease is a contract between the parties, therefore, the plaintiffs cannot claim rent/lease amount beyond what is provided in the lease agreement.

As per Ex.DR, the plaintiffs have been paid rent w.e.f. 04.10.2000 upto February 2002, then there are some irregular payment thereafter.

Next submission of the learned counsel is that the defendants did not informed before vacating the premises.

I have gone through the plaint, no such assertion was made by the plaintiffs and no such relief was asked for. Therefore, this argument of the learned counsel cannot be accepted.

In view of the discussion made above, this appeal is partly accepted.

Respondents are directed to provide the statement of account showing the payment of rent. The preliminary decree passed by the trial Court for rendition of the account is restored subject to the modification that the plaintiffs would be entitled to the rent at the rate of 25 paise per square feet per month with respect to the period 04.10.2000 to 16.10.2002 and from 17.02.2002, the rent at the rate of 45 paise per square feet per month, till the Corporation vacated the premises.

26.09.2017 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No