

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.303 of 2016 (O&M)
Date of decision: 02.12.2017**

Bharat Sanchar Nigam Limited and others

.....Appellants

Versus

Vikas Chhabra

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.R. Sharma, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.14276-C of 2017

The application is for staying the operation of the impugned judgment and decree.

At this stage, on the request of learned counsel for applicant-appellants, the main appeal i.e. RSA No.303 of 2016 is preponed and taken up today itself for disposal.

RSA No.303 of 2016

This appeal has been directed against the judgment of reversal dated 19.09.2015 passed by the District Judge, Sirsa, whereby appeal filed by plaintiff (respondent herein) against the judgment & decree dated 19.05.2014 passed by the Civil Judge (Junior Division), Sirsa, has been accepted and suit filed by the plaintiff for mandatory injunction has been decreed.

Plaintiff (respondent herein) filed the aforesaid suit for mandatory injunction to the effect that he had offered his premises to the defendants-

appellants for installing the tower of their company. After selecting the

property of plaintiff for that purpose, a rent approval letter dated 12.02.2009 was issued by the SDO, GMTD, Hisar. Thereafter, the defendants entered into a lease agreement on 05.05.2009, whereby it was agreed that the rent of the premises would be Rs.1900/- per month and watch and ward expenses to be paid by the defendants to the plaintiff was fixed as Rs.3200/- per month w.e.f. 01.03.2009. As per plaintiff, although the defendants were paying rent of Rs.1900/- per month to him regularly, but they were not paying watch and ward expenses at the rate of Rs.3200/- per month since 01.03.2009. He had requested the defendants to pay the abovesaid amount and had sent a legal notice in this regard, but the defendants had failed to make the payment. Hence, the suit.

Upon notice, defendants-appellants filed written statement taking preliminary objections with regard to maintainability, locus standi, cause of action and suppression of true & material facts from the Court. As per defendants, it was mutually agreed between the parties that watch and ward expenses would be paid only on the installation and commencement of the BTS power plant, battery and DG set etc. It was further stated that defendants (appellants) had not made any kind of development and modifications over the property of the plaintiff and only tower had been installed. Since, the defendants had not installed any other machinery, except the tower, they were not liable to pay any watch and ward expenses to the plaintiff. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to the decree of mandatory injunction, as prayed for? OPP

2. Whether suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the plaintiff has concealed the true and material facts from the court? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit on the ground that watch and ward expenses were to be paid from the date of start of the responsibility when the BTS related equipment was installed in the premises of the plaintiff. Since these instruments had not been installed, plaintiff was estopped from claiming the amount of Rs.3200/- per month w.e.f. 01.03.2009. However, on appeal, the first appellate Court reversed the findings of the trial Court and decreed the suit. While passing the impugned judgment, lower appellate Court has referred to the statement made by Dharam Chand (DW-1), whereby he had agreed that the rent and charges of watch and ward would be paid by the department. The release deed Ex.P1 was prepared on 05.05.2009, which was signed by the plaintiff and on behalf of the defendants (appellants) in the presence of the witnesses. As per clause 8 of the agreement, watch and ward expenses of Rs.3200/- per month were also included w.e.f. 01.03.2009 and thus, expenses were applicable after execution of the lease.

The only plea taken by the defendants (appellants) was that vide subsequent letter dated 20.06.2009, the plaintiff was informed that watch and ward expenses would be paid to him after the installation of the system. This letter had been issued by the SDO without any notice/consent of the plaintiff (respondent). This letter was not sufficient to modify the terms and conditions of the agreement, which had already been agreed, signed by both

the parties.

It is not the case of appellants (defendants) that the department is not making payment of watch and ward charges to other landlords, where towers have been installed. Hence, without giving notice to the plaintiff (respondent), conditions of the agreement dated 05.05.2009 Ex.P2 could not be modified. Keeping in view the fact that the premises is being used for the purpose it was taken on rent, suit of the plaintiff has been rightly decreed by the first appellate Court. Hence, after going through the impugned judgment passed by the lower appellate Court, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

02.12.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No