

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

RSA No.443 of 2015 (O&M)

Date of Decision: 12.09.2017

Paul Air Conditioner and Anr.

.....Appellants

Vs.

Raj Kumar and Ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:-

Dr.Naresh, Advocate, for
Mr.Vikas Sagar, Advocate, for the appellant.

Mr.Harminder Singh, Advocate, for
the respondent.

RITU BAHRI, J. (ORAL)

The appellant has come in regular second appeal against the judgment dated 07.05.2012 and 18.11.2014, whereby, learned Appellate Court had decreed the suit of the plaintiff and set aside the judgment and decree dated 07.05.2012 passed by Additional Civil Judge (Jr.Divn.), Panchkula.

The plaintiff/respondents had filed a suit for a decree for possession and for recovery of Rs.5100/- on account of arrears of rent from 01.12.2010 to 31.12.2010 and for recovery of mesne profit @ Rs.15,000/- per month from 01.01.2011 till the actual delivery of the possession of the premises in question to the plaintiffs/respondents and a decree for permanent injunction restraining the defendants from subletting the premises i.e. SCF No.96, Sector 11, Panchkula and purchased the same vide registered sale deed dated 29.11.2001.

The estate officer, HUDA had issued the reallocation letter in favour of plaintiffs/respondents vide memo No.17205 dated 10.12.2001 Ex.PW2/1 qua the SCF. The SCF was constructed after getting the plan sanctioned from the office of the Estate Officer, HUDA, Panchkula. The building was sanctioned by the Estate Officer, HUDA, Panchkula, vide letter dated 13.05.1999 Ex.PW3/1. The Estate officer, HUDA, Panchkula, issued the DPC certificate to the appellants on 03.11.2000 Ex.PW3/2 and after construction of the SCF, the Estate Officer, HUDA, Panchkula, had issued the occupation letter on 22.05.2001 Ex.PW3/B, the SCF was not governed by the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short the 'Act').

The plaintiff/respondents herein pleaded, the respondents are occupying the basement of the SCF at the monthly rent of Rs.5100/- per month excluding water and electricity charges. Out of this , total Rs.5100/-, they were paying rent Rs.2550/- to the plaintiffs/respondents Ashwani Kumar and Smt.Suman Gupta and remaining Rs.2550/- to Ashwani Kumar Dewan and Veena Diwan. The plaintiffs gave notice of termination of tenancy of 15 days vide registered sale deed notice dated 05.10.2010 under Section 106 of the Transfer of Property Act Ex.P5/6 in respect of basement of SCF. This notice was sent through UPC Ex.P5/7 and the postal receipt of the same was Ex.P5/8. The legal notice was duly received by the respondents, but they failed to hand over the vacant possession of the basement of SCF and also failed to make payment of up to date rent and had not made the payment of rent particularly w.e.f. 01.12.2010 to 31.12.2010 at the rate of Rs.5100/- per month. After expiry of period of 15 days mentioned

tenant over the basement of the SCF and the plaintiffs are entitled for Rs.15,000/- per month as mesne profits on account of use and occupation of the basement of SCF w.e.f. 01.01.2011, till its vacation.

On notice, respondents/defendants appeared and filed written statement. On the pleadings of the parties, the learned trial Court framed following issues:-

1. Whether plaintiffs are entitled for a decree for possession by way of ejectment of defendants in respect of basement of SCF No.96, Sector 11 Panchkula? OPP.
2. Whether plaintiffs are entitled for recovery of Rs.5100/- on account of arrears of rent for the period from 01.12.2010 to 31.12.2010 and for recovery of mesne profits at the rate of Rs.15,000/- per months from 01.01.2011 till the actual delivery of possession of the premises in question to the plaintiffs? OPP.
3. Whether plaintiffs are entitled for injunction, as prayed for? OPP.
4. Whether suit of the plaintiffs is not maintainable in the present form? OPD.
5. Whether plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

The Trial Court had dismissed the suit by giving finding on issue No. 1 to 3 against the plaintiff.

The learned appellate Court has held that the property in question was situated within the municipal limit, Panchkula and the suit had been filed within 10 years from the date of completion of building in question and provisions of The Haryana Urban (Control of Rent and Eviction) Act, 1973 in which any building, the construction of which is completed on or after the

completion are not applicable. This aspect has been considered by the trial Court in 2006(2)HRR Page 729, in which the provisions of Haryana Rent Act are not applicable to newly constructed building for a period of 10 years from the date of completion of such building. The date of completion of building can be proved by producing oral or documentary evidence where Municipal record was not produced or not available other evidence cannot be ignored to avail the exemption. In 1998 Haryana Rent Report Page-388, Hon'ble Supreme Court has held that demised building was exempted for 10 years under Section 1(3) of the Act-Suit for eviction filed within 10 years which expired during pendency of litigation-Civil Court can continue the proceedings and decree of execution can be executed even after expiry of exemption period. In 2001(1) Rent Control Reporter Page-366, it was held that the building was constructed in the year 1983, the rent Act will not apply for 10 years. The suit for eviction of tenant filed in August 1992, after serving notice to quit-Eviction of tenant upheld. In 1996 (2) Rent Control Reporter Page-15, Division Bench of Delhi High Court has held that no substantive evidence led by landlord in respect of increase in rent. The mesne profits fixed at Rs.10,000/- per month. Judicial notice could be taken of the fact about the increase in rents.

Learned counsel for the respondent has made a reference of this Court in the case of M/s Bhagwanti Building store, Panchkula and another Vs.Shri Sheel Kumar and another 2016 (2) RCR (Rent) 106, wherein, tenancy terminated by serving notice in Panchkula i.e. SCO No.26, Sector-11, Urban Estate, Panchkula. In this case respondent-plaintiffs were served with a show cause notice dated 10.01.1989 of having occupied the

the Haryana Urban Development Authority (Erection of Building Regulation), 1989, whereas the suit had been filed on 13.01.2006 , sub-Section (3) of the Section 1 of 1973 Act shall apply only to the building, construction of which had been completed or after the commencement of this Act for a period of 10 years from the date of its completion. Thus, the suit for possession seeking ejectment by invoking the provisions of Section 106 of the Transfer of Property Act, is not maintainable. Paragraphs 5 and 6, it has been observed as under:-

(5) "I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the plea of Mr.Pawan Kumar and the appeal deserves to be dismissed, for, summoning the record from the concerned office, normally on the summons it is mentioned that the concerned clerk to bring the file pertaining to the concerned allotment and the entire file is summoned, therefore the summons would not contain the particulars of the orders required to be summoned. It is only from the file, the documents are put to the witness for the purpose of proving the case by either of the parties. The exhibition of the documents was not objected to at the time of cross-examination. It is settled law that in the absence of the objection to the aforementioned documents, the party cannot be prevented to take the objection and this view is also culled out by the Bombay High Court and various other Courts, much less this Court also. The date to be reckoned for the purpose of bringing the suit within the provisions of Transfer of Property Act and out of the ambit of the rigor of 1973 Act is the date of sanctioning of the revised plan, which is 19.3.1996, whereas the suit has been filed on 13.1.2006, i.e., within ten years and, therefore, the appellant-defendants cannot take the

benefit of applicability of the Rent Act.”

9. There is no dispute with regard to the determination of the mesne profits of Rs.18,000/- per month, which has been assessed by the trial Court on the basis of the documentary evidence as well as the terms and conditions of the lease deed, therefore, the application claiming the mesne profits at this stage, in my view, is not maintainable and is hereby rejected.”

The ratio of the abovesaid judgments is directly applicable to the facts of the present case. In the present case, the property i.e. SCF No.96, Sector-11, Panchkula, was purchased vide sale deed dated 29.11.2001 and the SCF was constructed after getting the sanctioned plan from Estate Officer, HUDA, Panchkula vide letter dated 13.05.1999. Thereafter civil suit was instituted on 15.01.2011 after 10 years of completion of the construction of building after giving the arrears of rent. As such, the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973 are not application to the premises in question.

Secondly, the plaintiffs have given a notice under Section 106 of the TP Act, which was duly received by the defendants and the pleadings of the parties show that the rent is regularly paid by the defendants by post dated cheques which have been accepted by the plaintiffs and the defendants are not in arrears of rent. Despite the receipt of notice under Section 106 of the T.P. Act, the defendants have paid the rent in advance and the plaintiffs are not entitled for mesne profit as the defendants cannot be said to be in illegal possession when they have already paid the rent in advance and the same has already been accepted by the plaintiffs.

So in the light of the discussion, the orders of the Courts below do

not reflect any material irregularity or perversity which warrant interference
as there is no substantial question of law has been arrived at.

Dismissed accordingly.

12.09.2017
anil

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>