

RSA No. 4747 of 2015 (O&M)

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

RSA No. 4747 of 2015 (O&M)

Date of Decision: 10.7.2017

Kuldip Kaur

.....Appellant

Vs.

M/s Akal Paper Moulding Private Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Deepak Sharma, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of plaintiff, is directed against the impugned judgment of reversal dated 15.5.2015 passed by the learned first appellate court, whereby first appeal filed by the defendants against the judgment and decree dated 12.9.2013 of the learned trial court, was accepted by the learned Additional District Judge.

Brief facts of the case, as noticed by the learned trial court in para 1 of its judgment, are that the plaintiff and proforma defendant let out their property bearing No. E-139, Phase-VII, Industrial Area, Mohali to M/s Akal Paper Mouldings Pvt. Ltd. through its director. The tenant did not prove to be a good tenant, so the plaintiff and proforma defendant filed a civil suit seeking ejectment of the tenant from the demised premises. Thereafter, during the pendency of the suit, a compromise between the

RSA No. 4747 of 2015 (O&M)

parties was effected, as per which the tenant agreed to vacate and hand over the vacant physical possession to the plaintiff on 27.3.2005. The terms of the compromise were duly reduced into writing and it was stipulated that if defendant No.1 and 2 failed to vacate the property and hand over the vacant possession to the plaintiff by 27.3.2005, they would be liable to pay damages @ ₹20,000/- per month till delivery of vacant possession and the electricity bills for the said period would also be paid by the tenants. Defendants No.1 and 2 failed to honour the compromise and deliver the possession by 27.3.2005. They vacated the demised premises on 25.1.2006 and during this period of illegal occupation, defendants had been paying damages but not at the agreed rate, i.e. ₹20,000/- per month. Defendants No.1 and 2 paid only a sum of ₹93,000/- during their period of overstay in the demised premises. The said amount was to be deducted from the total claim of the plaintiff. Defendants No.1 and 2 did not pay the electricity bill amounting to ₹8090/-. So an amount of ₹1,75,090/- became outstanding against the defendants and they were also liable to pay interest @ 9% per annum on the amount due towards them. On refusal of the defendants to do the needful, the present suit was filed.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication to the written statement. On completion of pleadings of the parties, learned trial court framed the following issues:-

1- Whether plaintiff is entitled for the recovery of Rs. 2,22,364/- as prayed for alongwith interest @ 9% per annum?OPP

1A- Whether plaintiff agreed to re-let the property to the defendants and executed rent agreement on 1.8.2005?

RSA No. 4747 of 2015 (O&M)

OPD

2. Whether the suit of the plaintiff is not maintainable?

OPD

3. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court partly decreed the suit of the plaintiff for recovery of ₹1,05,000/- instead of 1,75, 090/-. Plaintiff-appellant felt satisfied with the judgment and decree dated 12.9.2013 passed by the learned trial court. Feeling aggrieved, defendants filed their first appeal, which came to be accepted by the learned Additional District Judge, vide impugned judgment and decree dated 15.5.2015. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It is a matter of record and has gone undisputed before this Court as well, that during the disputed period from 27.3.2005 to 25.1.2006, defendants kept on paying the rent to appellants-plaintiff @ ₹9,500/- per month and the appellant also kept on receiving the said amount towards monthly rent for the building owned by the plaintiff, which was under the use and occupation of the defendants, without raising any kind of protest, whatsoever. On specifically asking by this Court, learned counsel for the appellant could not show any kind of material which may even remotely suggest that plaintiff-appellant ever raised any kind of protest, while accepting this amount of ₹9,500/- per month as rent and rightly so, it being a matter of record. In fact, despite making his best efforts, learned counsel for the appellant could not improve the case of the appellant, because there was

RSA No. 4747 of 2015 (O&M)

no scope for it, as no supporting material was in favour of the appellant. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

It is also not in dispute that defendants have admittedly vacated the demised premises much before filing of the suit. It is also borne out from the record that plaintiff filed the suit at the fag end of the limitation period of three years and there is no explanation for filing the suit for recovery on the last date of limitation period. This material aspect of the matter, i.e. filing of the suit on the last date of limitation period, apart, neither law nor equity has been found in favour of the appellant, to justify interference at the hands of of this Court.

Further, had the suit of the plaintiff been based on true facts of the case, she would not have felt satisfied with the judgment and decree passed by the learned trial court, because her suit was only partly decreed. However, she felt satisfied and did not challenge the judgment and decree passed by the learned trial court, for the reasons best known to her. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 18 to 20 of its impugned judgment, which deserve to be noticed here, read as under:-

“Let us now advert to the claim of plaintiff. Admittedly, the demised premises have since been vacated by the defendant. As per the plaintiff, demised premises were vacated on 25.1.2006 though contending defendants have mentioned that they vacated the premises on 31.12.2005. Be that as it may, since January 2006, plaintiff Kuldip Kaur is in possession of her premises. She herself has mentioned that during the abovesaid period (from 27.3.2005 to 25.1.2006) defendant kept on paying rent though not at the agreed rate by further making a mention that a total of Rs. 93,000/- was paid by them for the abovesaid period of overstay. Defendants have proved a copy of the bank account Ex.D3 in which they had been depositing the rent @ Rs. 9500/- per month for the period of overstay. The present suit was filed by the plaintiff on 26.3.2008 after almost three years from 27.3.2005 when as per terms of compromise defendants were to vacate the premises. Thus a recovery suit was brought on the last day of limitation. No reason has been explained by the plaintiff as to what made her delay in approaching this court to file this recovery suit. No reason is forthcoming as to why she kept accepting the rent or use and occupation charges @ 9500/- per month instead of Rs. 20,000/- per month. She has also not explained as to why she did not ask the defendants to pay her due charges. Admittedly, till date she has not served any legal notice upon the defendants asking them to pay her requisite use and occupation charges. Throughout those 9/10 months, she kept accepting the rent @ Rs.9500/- per month, without a murmur or raising objection to it and without ever refusing to accept it on the pretext that the abovesaid rent was never agreed by her or that it was short.

Above discussed facts coupled with non-filing of a suit immediately on accrual of cause of action only indicates that plaintiff had been acquiescing with the defendants and has thus lost her claim over the differentials.

As already noted, parties are not strangers to each other. Amritpal Singh husband of the plaintiff is real brother of Ravinder Pal Singh director of the defendant company. Instead of money dispute regarding difference of rent, there appears to be some other dispute between the parties which is sought to be taken care of by suing them by filing a suit for recovery, as otherwise, there can be no reason to knock he door of the court after almost three years of accrual of cause of action that too for a minor sum keeping in view of their inter-se relationship.

As such I find that plaintiff is not entitled to recover any money on the pretext that lesser rent or use and occupation charges that agreed were paid. Consequently, I decided issue No.1 against the plaintiff and in favour of the defendants. Issue No.1-A is decided in favour of the plaintiff and against the defendant.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

RSA No. 4747 of 2015 (O&M)

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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

10.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No