

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

R.S.A. No. 2675 of 2014 (O&M)

Date of Decision: 29.9.2017.

Bhagwan Dass

.....Appellant

Versus

Improvement Trust, Sonipat and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. S.K. Verma, Advocate
for the appellant.**

AVNEESH JHINGAN, J.

The plaintiff is in Regular Second Appeal against the judgment and decree dated 27.7.2013 whereby the learned First Appellate Court dismissed the appeal and upheld the judgment/decreed dated 30.1.2009 passed by the trial Court dismissing the suit for declaration/permanent injunction and mandatory injunction.

The facts necessary for disposal of the present appeal as noticed by learned First Appellate Court in Para-2 of its impugned judgment are that:

2. The facts in brief of the case are that the plaintiff/appellant had instituted a suit for declaration, permanent injunction and mandatory injunction against the defendants/respondents alleging that the shop no.1 was owned by the defendant no.1 under the tenancy of the plaintiff and one Shri Hari Parkash since a long time and the second adjoining shop No.2 was previously under the tenancy of Shri Harish Mehta son of Shri H.K. Mehta, resident of Sujan Singh Park, Sonapat both shops are in possession of the plaintiff/appellant. Since 1984-85

both shops are in possession of the plaintiff till date and doing business of selling the seeds, insecticides, pesticides and fertilizers etc. under the name of M/s Punjab Agriculture and Seeds Store. The plaintiff is sole proprietor of the firm. He has been paying Rs.375/- per month for the shop No.1 and Rs.520/- per month for the shop No.2. The defendant No.1 used to issue the receipts of payment of rent for shop No.1 in the name of the plaintiff and Hari Parkash and for shop No.2 in the name of Harish Mehta. In spite of this fact the plaintiff used to pay the rent of both shops since 1984-85 and the rent was paid through cheques. The defendant No. 1 by putting pressure upon the plaintiff on the grounds of subletting the shop used to threaten him to dispossess forcibly and even threat of arrest of the plaintiff was also given. INLD government came into power and their close man was appointed as Chairman of the defendant No.1 due to this reason also it has threatened to dispossess the plaintiff from the shops in dispute in one way or the other and even to entangle the plaintiff in some false criminal case. Defendant No.1 under the influence of some muscles men got signatures of the plaintiff on some papers alleging the same to be agreements of lease, in which rent was mentioned as Rs.3,000/- per month w.e.f. 1.12.2001 and the names of defendants No. 2 and 3 were introduced as co-tenants in respect of shops at the rate of rent Rs.3,000/- per month and illegal amount of Rs.25,000/- each for the two shops were forcibly taken from him, so, he was pressurized to pay Rs.6,000/- per month instead of Rs.895/- per month, which was paid by him in respect of both shops up to November, 2001. The agreements of lease are illegal, null and void and not binding upon the rights of plaintiff as the Haryana State Government issued letter dated 2.5.1991, 16.9.2002, 7.7.1993/20.1.1994 mentioning therein that the transfer

fees for such regularization of the shops in favour of its tenants was Rs.10,000/- as Sonapat City is under the category of 'B' class Municipality and the rent can only be increased by 25% on the old rate of rent. Revision of the said rent was @ 20% after five years from the previous payable rent. The defendant No.1 in an arbitrary and illegal manner charged Rs.25,000/- for the shop No.2, instead of Rs.10,000/- and the rent was increased from Rs.520/- per month to Rs.3,000/- per month. It is further alleged that two shops were auctioned on 3.10.2002 for a sale consideration of Rs.4,47,000/- by the order of Civil Judge (Senior Division), Sonapat and were purchased by Sh.J.S. Malik, resident of House No.1272, Sector-14, Sonapat. Defendant No.1 did not pay the amount of acquisition of land and the said auction purchaser had deposited the entire sale consideration as per the sale and had issued a notice to him to the effect that from the date of sale on 3.10.2002 the auction purchaser is entitled to receive the rent and had threatened that in case any rent is paid to defendant No.1, the same will be at the risk and responsibility of him, the issue regarding confirmation of sale proceedings is still pending and matter is sub-judice. He had requested to defendant No.1 to withdraw and cancel the illegal and void agreement dated 18.12.2001 and not to threaten him for the payment of such amount in the shape of rent and get the sale deed dated 3.10.2002 set aside but all in vain. Hence, the suit.

3. Upon notice, defendant No.1 appeared and filed his written statement and raised preliminary objections regarding maintainability, cause of action, locus-standi, concealment of material facts and non-compliance of order 7 Rule 10 of C.P.C.

4. On merit, it is submitted that the defendant is still owner of the shops in question. Previously, the shop

No.1 was let out to one Hari Parkash son of Hari Parkash son of Hari Chand Sagar and shop No.2 was let out to one Harish Mehta son of H.K. Mehta, but both the tenants wrongly and illegally sublet the said shops to plaintiff and when this fact came to the previous tenants and plaintiff for eviction of shops due to violation of the terms and conditions of agreement between the defendant and tenants and then the plaintiff moved the application before the defendant for transfer of tenancy in his own name and in the name of his son. The application was considered and vide resolution No.2 dated 11.11.2001, it was resolved that tenancy of the shops in question may be transferred in the name of plaintiff and a letter No. 564 dated 27.11.2001 was issued to the plaintiff in which the plaintiff was asked to deposit Rs.25,000/- as non-refundable security and intimation regarding rent of shops @ Rs.3,000/- per month w.e.f. 1.12.2001 was given to other plaintiff. He was also asked to execute a fresh agreements of rent with the defendant within 7 days or to face proceedings of ejectment. Accordingly, the plaintiff executed an agreement of rent dated 18.12.2001 and deposited Rs.25,000/- as non-refundable security, Rs.3,000/- as monthly rent alongwith affidavits of the previous tenant (No Objection Certificate), and the shops were transferred in the name of the plaintiff for a period of three years w.e.f. 1.12.2001 to 30.11.2004. It is denied that the transfer fee was fixed as Rs.10,000/- and the defendant charged Rs.25,000/- as security and Rs.3,000/- p.m. as rent arbitrarily and illegally. It is further submitted that the properties of defendant were attached by the Civil Court in execution proceedings, but the answering defendant deposited the decretal amount ie. Rs. 23,57,250/- vide cheque No. 6018717 dated 30.11.2002 before the Executing Court, so, answering defendant is entitled to get the rent of the said shops. The

plaintiff knowingly and with malafide intention adopted this excuse only to avoid payment of rent to the defendant. The plaintiff did not tender the rent of three months and thus the defendant issued notice to him to deposit the rent. The receipt of rent as alleged is not binding on the rights of the defendant. The agreement in question has already been expired on 30.11.2004. At the end dismissal of suit was prayed for.

5. On 17.12..2004, the counsel for the plaintiff has got recorded his statement to the effect that the plaintiff has not claimed any relief against defendants No.2 &3 and thereafter the defendants No. 2 and 3 were proceeded against ex-parte. Replication was not filed. From the pleadings of the parties following issues were framed on 11.5.2005.

1. Whether the plaintiff is tenant under the defendant No.1 and agreement dated 18.12.2001 is illegal and liable to be set aside and the plaintiff is entitled to the relief of declaration as well as injunction, as claimed?OPP

2. Whether the suit 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 no locus-standi to file the present suit?OPD

5. Whether the plaintiff has not come with clean hands and suppressed the material facts from the Court? If so, its effect?OPD

6. Whether the suit of the plaintiff is bad for non-compliance of proviso laid down under Order 7 Rule 11 CPC? OPD

7. Relief.

6. In order to prove his case the plaintiff has examined himself as PW-1, Raj Kumar as PW-2, Dharam

Pal as PW-3 and placed and proved on record photo copy of letter No.8/56/91 dated 16.9.2002, 20.1.1994 and 7.7.1993/20.1.2004, photo copies of agreement dated 18.12.2001 as Mark-A and Mark-B, receipts of rent as Ex.P-6 and Ex.P-7, receipt issued by AEW as Ex.P-9, bill issued by General Manager Telecom as Ex.P-10, Form S.T.II Challan as Ex.P-11, newspaper bill as Ex.P-12, receipt as Ex.P-13, notice as Ex.P-14, copy of petition Ex.P-15, memo of appearance in that petition as Ex.P-16, statement of petition in that petition as Ex.P-17, order dated 16.7.2005 in that petition as Ex.P-18, reply of notice as Ex.P-19 and closed the evidence.

7. On the contrary, the defendants in their evidence examined Sh.G.D.Chopra, Clerk, Improvement Trust as DW-1, and placed and proved on record notice issued to Sh.Harish Mehta as Ex.D-1, letter written by the plaintiff regarding the transfer of the tenancy in his name of Shop No.2 to the defendants as Ex.D-2, affidavit as Ex.D-3, notice Ex.D-4, Letter regarding transfer of shop as Ex.D-5, letter regarding agreement of shop No. 2 as Ex.D-6, agreement as Ex.D-7, notice as Ex.D-8 and closed their evidence.

8. After hearing the counsel for the parties and perusing the case file, the learned lower Court dismissed the suit of the plaintiff with costs."

Feeling aggrieved, appellant/plaintiff filed the first appeal which was dismissed by the Learned Additional District Judge, Sonipat, vide impugned judgment and decree dated 27.7.2013. Hence, this regular second appeal at the instance of the plaintiff.

Heard learned counsel for the appellant and perused the paper book.

It is not in dispute before this Court that Shop No.1 which was

owned by defendant No.1 was under tenancy of the plaintiff and one Hari Parkash since long time. The adjoining Shop No.2 was under the tenancy of Harish Mehta, but both the shops are said to be in possession of plaintiff/appellant for a long time. The plaintiff was paying the rent of both the shops and defendant No.1 was issuing receipts with regard to Shop No.1 in the name of one Hari Parkash and for shop No.2 in the name of Harish Mehta. It has come on record that the plaintiff had removed the common wall between the two shops and was carrying on business in both the shops.

When this fact came to the notice of defendant No.1, a notice was issued for eviction, as the shop was illegally subletted. On receiving the notice, the plaintiff/appellant moved an application Ex.D2 for transfer of tenancy of shop No.2. An affidavit Ex.D3 was also filed. On considering the application, resolution No.2 dated 11.11.2001 was passed and it was resolved that tenancy of the shops in question may be transferred in the name of the plaintiff/appellant. Non-refundable security of ₹ 25,000/- was fixed and rent of the shop of ₹ 3000/- per month. An agreement was entered. The plaintiff/appellant deposited ₹ 25,000/- as non-refundable security and ₹ 3000/- monthly rent along with an affidavit of previous tenant (no-objection certificate). Thereafter, the agreement was challenged by the plaintiff/appellant on the ground that the said agreement was entered under coercion. During trial proceedings the plaintiff/appellant was not able to produce any substantial evidence to prove his case that agreement was signed under coercion.

Whereas on the other hand, the defendant No.1 produced the Clerk of Improvement Trust as DW1 and placed on record the notice of eviction issued to Harish Mehta, the application by the plaintiff/appellant,

affidavit filed by him, letter regarding transfer of shop and the agreement. The defendants were further able to show that in pursuance to the agreement, the plaintiff had deposited the non-refundable security and the rent for one month. Learned Trial Court decided the said issue against the plaintiff/appellant. Learned Appellate Court upheld the same. The plaintiff/appellant in his cross-examination accepted the ownership of the respondent and admitted that the shop was rented out to one Harish Mehta.

The plaintiff/appellant further posed challenge to the agreement alleging that the said agreement is null and void as it was contrary to the notifications Ex.P1, P2 and P3 issued by the Haryana Government for regularization of the tenants. The said notifications were with regard to the Municipal Council and Committee, whereas in the present case, the shops were of the Improvement Trust. The sequence of facts and the evidence brought on record makes it clear that the plaintiff/appellant, in order to save the rented shops and to cover his acts moved an application for transfer of the tenancy and filed the affidavit. After getting the same regularized in order to wriggle out of the agreement and to reduce the rent and security took a plea of coercion for which except from bald statements no evidence was produced. Whereas exhibits with regard to the notice issued for eviction, application for transferring of tenancy and thereafter the resolution passed by the Improvement Trust, the deposit of security and the rent for one month by the plaintiff/appellant clearly show that agreement was entered at his free Will.

The notifications relied upon to say that the agreement was null and void and the rent could not have been increased beyond 20% and the security deposit should have been ₹ 10,000/-, were with regard to the

Municipal Committee and Municipal Council. The said notifications were not with regard to Improvement Trust. Further the plaintiff/appellant failed to submit any policy under which tenancy could be transferred at a rate lower than agreed between the parties.

Keeping in view the totality of the facts and circumstances of the case, learned First Appellate Court reconsidered and re-appreciated the facts and evidence available on record in its right perspective. A cogent and well convincing finding has been recorded by the learned First Appellate Court which deserves to be noticed and reads as under:-

"12.....The appellant challenged the agreement dated 18.12.2001 on the allegations that the signatures were procured by using force by the respondent and his signatures were obtained without his free Will. The perusal of the case file shows that the agreements were executed when the Chairman of Improvement Trust gave notice to Harish Mehta s/o Shri H.K. Mehta regarding subletting and change of user, he was asked to vacate the shop. Then, the appellant moved an application before Chairman Improvement Trust, Sonapat requesting him that he was in fact in possession over the shop for the last 17 years and he requested the change of tenancy in his favour. He was ready to bear all the expenses regarding transfer of the shop in his name, the application dated 3.9.2001 in this regard is proved on the case file as Ex.D-2. Even, he tendered an affidavit Ex.D-3 that he would be ready to bear the adequate rent and transfer fee thereafter the Chairman Improvement Trust vide letter dated 27.11.2001 transferred the shop in favour of the appellant, which is proved as Ex.D-4, subject to transfer fee of Rs.25,000/- and payment of Rent of Rs.3,000/- p.m. w.e.f 1.12.2001. Similarly, in respect of other shop a proposal regarding agreement with appellant was taken

vide letter Ex./D-5 and the agreement was executed, which is proved as Ex.D-7. Notice issued by the Chairman Improvement Trust, Sonapat to Shasi son of Shri Bhagwan Dass, Shri Bhagwan Dass son of Taken Dass and Vinay Kumar son of Bhagwan Dass regarding change of user, Ex.D-8 was granted and accordingly the second agreement was also executed. So, in this way, the plaintiff/appellant remained failed to prove any force etc. allegedly used at the time of execution of the agreement vide which the transfer fees was imposed and rent was increased, rather the appellant while appearing as PW-1 in cross-examination accepted the respondent owner of the shop, he admitted that the shops were rented out to Harish Mehta in 1984. The learned counsel for appellant remained failed to point out the alleged admission of the witness of the respondent that the respondent has violated the instructions issued by the State Government and the appellant was forced to deposit the transfer fee of Rs.25,000/- each for two shops and to sign on the alleged agreement increasing the rent from Rs.375/- p.m. and Rs.520/- p.m. and to Rs.3,000/- per month to each shop.

13. The learned counsel for the appellant has not submitted any policy under which shop can be transferred at a rate of lower than agreed between parties by the Improvement Trust as has been discussed in Para No.11 of the impugned judgment. It has been categorically observed by the learned Lower Court that the notification Ex.P-1, Ex.P-2 and Ex.P-3 are concerned to Municipal Committees and Municipal Councils. The notifications are not with regard to the Improvement Trust affairs."

Now in the Regular Second Appeal, the plaintiff/appellant has raised the issue that the agreement was entered under coercion. As discussed above, he has failed to substantiate by way of evidence. Rather

his conduct and evidence brought on record by defendant No.1 proves otherwise. The appellant further has taken the ground that the Courts below should have taken into account Section 4 of the Haryana Urban (Control of Rent and Eviction Act), 1973 and should have determined fair rent. The said provision would not be applicable in the present case. The illegal acts of the plaintiff were noticed and eviction notice was served. Thereafter he himself applied for transfer of the tenancy, for regularization of his acts of being sub-letter tenant and of removing the common wall between the two shops etc. In pursuance to application an agreement was entered and was further acted upon by the plaintiff/appellant. The security amount and the rent were part of the agreement. In such circumstances, there is no question of fixing a fair rent.

In the Regular Second Appeal five questions have been framed out of which two are with regard to perversity, two questions are with regard to the instructions/notification Ex.P1 and the last question raised is with regard to agreement alleged to have been entered under coercion.

At the time of arguments, the learned counsel for the plaintiff/appellant only pressed the issue: regarding agreement being signed under coercion and that in view of notification/circulars the rent and the security amount cannot be fixed beyond the said circulars, therefore, agreement is null and void.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned First Appellate Court. He could not refer to any question of law much less substantial question of law which is sine-qua known for this Court to exercise its appellate power under Section 100 of

the CPC.

The cogent findings recorded by the learned First Appellate Court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the First Appellate Court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons, afore-mentioned, this Court is of the considered view that the present appeal is bereft of any merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no orders as to costs.

29.09.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No