

RSA No. 1470 of 2017 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1470 of 2017 (O&M)

Date of decision : October 30, 2017

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Krishan Kant

.....Appellant

Versus

Laxmi Kant

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Kartar Singh, Advocate for the appellant.

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RITU BAHRI, J.

C.M No. 13046 -C of 2017

C.M is allowed. Document (Annexure P-2) is taken on record.

RSA No. 1470 of 2017

Present appeal has been filed against the judgment dated 11.11.2016 passed by the District Judge, Palwal vide which the appeal against the judgment and decree dated 21.5.2015 passed by the Additional Civil Judge (S. Div.), Palwal, was allowed and the respondent-plaintiff,

Laxmi Kant was held entitled to recover an amount of Rs.64,000/- as arrears of rent for the period from 1.2.2011 till 30.9.2013 from the appellant-defendant, Krishan Kant. Vide the judgment of the trial Court, suit for recovery of Rs.64,000 filed by the respondent-plaintiff against the appellant-defendant was dismissed.

Briefly stated, the facts of the case are that the respondent-plaintiff Laxmi Kant had inducted the appellant-defendant Krishan Kant as a tenant in his shop on payment of rent at the rate of Rs.2000/- per month. Laxmi Kant had filed an ejectment petition no.4 of 2011 before the Rent Controller, Palwal against Krishan Kant. The same was allowed on 25.8.2012, wherein the appellant-defendant Krishan Kant was directed to hand over vacant physical possession of the above mentioned shop to the respondent-plaintiff Laxmi Kant within a period of two months from the date of passing of the order. A rent appeal no.10 of 24.9.2012 was preferred by the appellant-defendant Krishan Kant which too was dismissed vide judgment dated 12.2.2013. Thereafter the respondent-plaintiff filed an execution petition on 25.4.2013 and the physical possession of the disputed shop was handed over to him by the appellant-defendant on 30.9.2013. It was pleaded that the appellant-defendant had not paid the arrears of rent for a period of 32 months i.e. from 1.2.2011 to 30.9.2013 amounting to Rs.64,000/- in respect of the said shop. In this background, respondent-plaintiff filed a civil suit for recovery of Rs.64,000/-.

Trial Court dismissed the suit of the respondent-plaintiff by holding that respondent-plaintiff could not seek a relief of recovery of arrears of rent from the appellant-defendant as during pendency of rent appeal or during execution petition, no plea of realization of arrears of rent

was taken by the respondent-plaintiff and it was observed that such act and conduct of plaintiff amounted to admission on his part of having received arrears of rent for the entire period.

Feeling aggrieved with the dismissal of the suit, respondent-plaintiff filed an appeal before the lower appellate Court.

After going through the evidence on record and hearing counsel for the parties, lower appellate Court gave finding that apart from a sworn affidavit of the appellant-defendant Ex.DW1/A, wherein he simply submitted that he had paid rent from the period from 1.2.2011 to 30.9.2013 to the respondent-plaintiff without mentioning as to on which particular date, the same had been paid, there was no evidence led by the appellant-defendant that he paid the arrears of rent to the respondent-plaintiff. During cross-examination, appellant-defendant admitted that he had not paid the amount of Rs.64,000/- to the respondent-plaintiff in the Court. It was observed that the parties were in litigation from quite some time and the appellant-defendant obviously would not have paid the amount of Rs.64,000/- without procuring any receipt in lieu of the payment thereof. Hence, the plea of the appellant-defendant that he had paid an amount of Rs.64,000/- to the respondent-plaintiff has not been proved by him by leading any cogent and convincing evidence. Thus, the judgment and decree dated 21.5.2015 passed by the trial Court was set aside by the lower appellate Court and the respondent-plaintiff was held entitled to recover an amount of Rs.64,000 as arrears of rent for the period from 1.2.2011 till 30.9.2013 from the appellant-defendant with interest at the rate of 6% per annum from the date of filing the suit till realization.

After hearing counsel for the parties and going through the case

I find there is no infirmity or illegality in the judgment passed by the lower appellate Court that requires interference of this Court. In view of all that has been discussed above, present regular second appeal is dismissed.

October 30, 2017

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No