

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

**RSA 1569/2017(O&M)
Date of decision:30.10.2017**

M/s Sai Developers and Another

.....Appellants

VS

M/s O.S.S.Clothing Company

.....Respondent

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Aman Bahri,Advocate with
Ms.Megha Chauhan,Advocate for the appellant.

Jaswant Singh,J

Defendants/appellants have laid challenge to the concurrent findings recorded by the Courts below, whereby suit of the respondent/plaintiff for recovery of Rs.13.60 lacs was decreed by the Additional Civil Judge(Senior Division)Jalandhar vide judgment and decree dated 4.4.2015 and findings affirmed by learned Additional District Judge, Jalandhar while dismissing the appeal filed by defendants vide judgment and decree dated 22.11.2016.

Respondent/plaintiff filed suit for recovery of Rs.13.60 lacs (Rs.10 lacs as principal amount) paid by it to defendants towards advance rent plus interest amount of Rs.3.60 lacs in terms of Letter of Intent dated 27.2.2008 on account of alleged non-completion and non-handing over of vacant possession of an area measuring 12000 square feet on the ground and first floor of a Mall being developed by

defendants. The possession of the premises was to be delivered by defendants to plaintiff immediately on execution of lease deed. A Letter of Intent dated 27.2.2008 was also executed in this regard. Further a sum of Rs.10 lacs was paid by plaintiff as advance rent by way of cheque at the time of execution of said letter of intent and the remaining rent of Rs.1.25 lacs was to be paid at the time of execution and registration of rent/lease deed. The demised premises included floor area, passage, parking space, staircase, lift etc. Since defendants neither handed over possession of the demised premises, complete in all respect, to plaintiff nor refunded the advance rent of Rs.10 lacs received at the time of execution of letter of intent, plaintiffs filed a suit.

Upon notice, defendants filed written statement taking various preliminary objections. On merits it was alleged that proposed premises was ready for occupation on 1.3.2008 but the plaintiffs failed and did not come forward for execution of the lease agreement.

On the pleadings of the parties, issues were framed. Both sides led evidence in support of their respective please.

Both the Courts below after perusing the oral as well as documentary evidence available on record, decreed the suit of the plaintiff in toto. Hence the present appeal.

It is submitted by the learned counsel for the appellants that both the Courts below have erred in not appreciating the evidence led by the defendants that the demised premises was ready and fit for

occupation and hence the findings recorded by the Courts below against defendants/appellants are liable to be set aside. It is denied that there was delay and laches on the part of the defendants/appellants to handover the possession of the demised premises in terms of letter of intent dated 27.2.2008.

After hearing the learned counsel for the appellants, I find no illegality or irregularity in the findings of fact recorded by the Courts below.

It has been noticed that DW1 Satpal Kundra, proprietor of defendant firm in his cross examination stated that he could not tell on what date the building was completed. He further stated that he had obtained completion certificate dated 4.8.2008 from the Municipal Corporation Ex.DW1/J (annexed with the instant Appeal as A-3); NOC for obtaining electricity connection dated 4.8.2008. He further also stated that structure of the building on third and fourth floor is complete but finishing has to be done. Thus, it was found that admittedly lease deed was not executed with the plaintiff which meant that possession was not delivered to plaintiff and in this way the tenancy actually never started. It has further been found that defendants failed to discharge the onus cast upon them to prove that the construction was completed within 30 days from 27.2.2008 as they failed to prove any document on record. In view of these facts on record, it has rightly been held that letter of intent being dated 27.2.2008 and NOC relating to electricity connection issued by

Municipal Corporation, Jalandhar on 4.8.2008 (Ex.DW1/J), no tenancy was started and therefore, the amount of advance rent paid by the plaintiff was required to be refunded alongwith interest.

In view of the above, I find that no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

30.10.2017
joshi

(Jaswant Singh)
Judge