

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

RSA No.3072 of 2017 (O&M)

Date of decision : 18.08.2017

Parvinder Kumar

...Appellant

Versus

Sushil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Ms. Aashma Gill, Advocate for
Mr. Aman Pal, Advocate for the appellant.

ANIL KSHETARPAL, J.

CM No.7641-C of 2017

This is an application filed under Section 149 CPC for condoning the delay in making the deficiency in the courts fees good.

Deficiency has already been made good. Delay, if any, is condoned. Application is disposed of.

Main Case

The defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for possession against the defendant asserting that the defendant is tenant in the premises. The plaintiffs had also prayed for decree regarding recovery of arrears of rent and mesne profits.

Defendant contested the suit on the ground that the suit is barred under the provisions of Order 23 of Code of Civil Procedure as also the finding is resjudicata. It was pleaded that the landlord had earlier filed a suit for possession with similar allegations. However, the same was withdrawn. It was further asserted that the another suit was filed in the year 2002 for possession which was dismissed. First Appeal as well as Regular Second Appeal were also dismissed.

The learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiffs.

Appeal preferred before the learned First Appellate Court was also decided against the appellant-defendant. The learned First Appellate Court also re-appreciated the evidence and passed a detailed judgment.

Learned counsel for the appellant has submitted that on earlier occasion also, the plaintiffs had filed a suit for possession being Civil Suit No.423/1994. However, since it was withdrawn vide order dated 19.02.1998, therefore, the suit is barred under Order 23 CPC. Learned counsel for the appellant has further submitted that thereafter another suit was filed by the plaintiffs being Civil Suit No.18 of 2002 which was dismissed by the Court on 09.10.2007. First Appeal and Second Appeal were also dismissed. Hence, the suit is barred by res-judicata.

Learned counsel for the appellant has further submitted that as per the rent agreement, the tenancy of the plaintiffs is perpetual and the notice terminating the tenancy is illegal.

I have considered the submissions of learned counsel for the appellant and with her able assistance gone through the judgments passed

by the Courts below as well as photocopy of records produced by her.

The plaintiffs had filed the first suit for possession being Civil Suit No.423/1994. It was the case of the plaintiffs that the defendant-appellant is a tenant and tenancy has been terminated by notice. It will be significant to note here that the property is situated in village and Rent Control Legislation is not applicable.

The aforesaid suit was withdrawn by the plaintiffs because in the meantime Government of Haryana had issued a Notification making Rent Control Legislation applicable to the aforesaid area. It was in these circumstances that suit was withdrawn. Thereafter, the plaintiffs filed an eviction proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973. However, during the pendency of the eviction petition, the Notification issued by the Haryana State itself was withdrawn. In these circumstances, Act of 1973 became inapplicable. Hence, the eviction petition had to be withdrawn.

In view of these facts, the argument of learned counsel that the present suit was barred under Order 23 CPC has no force. Earlier suit was withdrawn only on account of developments which were beyond the control of the plaintiffs.

Still further, the present suit is based upon termination of tenancy on the basis of the notice dated 05.03.2010. The cause of action to file the present suit arose in favour of the plaintiff after service of notice, therefore, the present suit is not barred under the provision of Order 23 of the Code of Civil Procedure.

Learned counsel has further asserted that the suit is barred by

the principles of resjudicata.

I have carefully considered the submission of learned counsel and with her able assistance gone through the judgments passed by the Civil Court in the previous suit. The previous suit was dismissed as the plaintiffs were not able to prove the termination of tenancy before filing the previous suit, although, the plaintiffs had asserted that notice had been sent but service of notice on the tenant was not proved. Therefore, the present suit would not be barred on account of finding of resjudicata. A look at the issues in the previous suit would show that the appellant-defendant did not dispute the tenancy. In these circumstances, the earlier judgments passed by the Courts in the earlier suit would not come to rescue of the defendant-appellant.

Learned counsel for the appellant has further submitted that the tenancy is perpetual. She relies upon the findings of the Court in Civil Suit No.18/2002. I have carefully gone through the judgment passed by the Court in the earlier suit. The Court has simply held that as per the rent note, the tenancy continues till the time tenant keeps paying rent. However, judgment passed by the trial Court in the previous suit merged in the judgment of the First Appellate Court. The First Appellate Court did not record any such findings. The judgment passed by the First Appellate Court was affirmed by the High Court.

Still further, in this case, the Courts below have recorded a findings of fact that defendant-appellant failed to pay the rent. In these circumstances, even as per the Clause of the rent note, the tenancy stood terminated on account of non-payment of the rent. Still further, the tenancy

was terminated by service of notice dated 05.03.2010 which was duly received by the defendant and even a reply to the notice was sent by the tenant-appellant.

In view of the discussion made above, there is no scope for interference in the present Regular Second Appeal. The appeal is dismissed.

All pending miscellaneous applications are disposed of in view of the abovesaid judgment.

18.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No