

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

RSA No.2063 of 2016

Sukhpreet Singh

...Appellant

Versus

Dev Parkash

....Respondent

Date of Order: 08.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Gurna, Advocate for the appellant.
Mr. Robit Dutt, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Appellant-defendant is aggrieved of the concurrent findings of facts recorded by both the courts below whereby the suit of the plaintiff for ejectment of the appellant-defendant from the demised premises i.e a shop in dispute has been decreed vide judgment and decree dated 05.9.2014 passed by Civil Judge (Jr. Division), Fatehgarh Sahib and preliminary decree qua the mesne profits w.e.f 01.5.2008 has been passed with the direction that the exact amount shall be ascertained only on the application for final decree. Appeal filed against the same has been dismissed by lower Appellate Court by affirming the findings of the trial Court.

Learned counsel for the appellant-defendant submitted that both the courts below have overlooked the material aspects of the case while passing the impugned judgments, for, the respondent-plaintiff issued notice on 27.6.2007 whereas the suit for ejectment was filed in the year 2009, therefore, notice dated 27.6.2007 had become ineffective. The lower

Appellate Court did not adhere to hear the appeal on merits but dismissed the same for non-compliance of order dated 18.12.2015 whereby the appellant-defendant was called upon to pay the entire payment of rent @ Rs.2000/- per month w.e.f 01.4.2008, thus the judgment of lower Appellate Court suffers from illegality and perversity and is not sustainable in the eyes of law.

Per contra, learned counsel for the respondent-plaintiff fully supported the concurrent findings of both the courts below stating that no error could be found with the same. He submitted that the filing of the suit itself is a notice for termination of the tenancy and the law with regard to dispossession of tenant is no longer *res integra*. Moreover, even the entire arrears has not been paid, thus urged for dismissal of the appeal.

Interim Order dated 28.4.2016 is stated to have been complied with.

After hearing learned counsel for the parties and appraising the paper book, I find no error in the judgment and decrees of both the courts below, for, there was no need of sending notice again at the instance of the respondent-plaintiff once notice dated 27.6.2007 had already been issued. Filing of the suit is itself a notice for termination of the tenancy, thus the arguments raised on behalf of the appellant-defendant are of no avail. The tenant being in illegal possession was required to pay mesne profits, which were determined by this Court vide order dated 18.12.2015 in C.R.No.8610 of 2015 whereby he was directed to make the payment of arrears qua mesne profits @ Rs.2000/- per month w.e.f 01.4.2008.

Although learned counsel for the appellant has drawn the attention of this Court to zimni order dated 24.12.2015 passed by Civil

Judge (Jr. Division), Fatehgarh Sahib vide which the arrears have been paid, however, it is not clear in the said order as to why the Draft of Rs.1,86,000/- was prepared, therefore, clearance of mesne profits still remains mystery.

In view of aforesaid discussion, I find no reason to discard the well reasoned findings recorded by both the courts below.

Dismissed.

May 08, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No