

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

**RSA No.5979 of 2016 (O&M)
Date of Decision.20.11.2018**

Om Parkash and others

...Appellants

Vs

Devi Dayal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.S. Baidwan, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.15742-C of 2016

The appellants-plaintiffs after the decision rendered by the lower Appellate Court on 09.07.2013 preferred a review on 06.08.2013, which was dismissed on 01.08.2016. The appeal was filed on 16.08.2016 and this process, delay of 1027 days occurred.

For the reasons aforementioned, delay is justified and can be said to be falling within the expression “reasonable cause”. Delay of 1027 days in filing the appeal is condoned.

Application is allowed.

RSA No.5979 of 2016

The appellants-plaintiffs have not been able to claim injunction and defend the counter-claim of defendant No.3 for possession of the suit property.

Succinctly, facts which emanated from the pleadings of the parties are that respondent No.3, Flying Society, vide registered sale deed dated 02.09.1962 purchased the land from Gram Panchayat, Indri and thereafter, leased out to defendants No.1 and 2 for 25 years

w.e.f. 01.05.1980 at the rate of Rs.1800/- per annum. Defendant No.2 raised construction of shops on the land and let out to the appellants-plaintiffs. Cause of action arose for seeking indulgence when threats of forcible interference and dispossession surfaced without taking recourse to law.

Respondent No.3 set up the counter-claim and sought possession of the suit property on various grounds.

On preponderance of evidence, the trial Court dismissed the suit and decreed the counter-claim. The appellants-plaintiffs have not successful before the lower Appellate Court.

Mr. H.S. Baidwan, learned counsel appearing on behalf of the appellants-plaintiffs submitted that there was no relationship of landlord and tenant between the plaintiffs and the counter-claimant defendant No.3. The landlord may not be owner of the land. Even if the provisions of the rent laws were not applicable, possession could have been sought only by defendant No.1 and 2. Defendant No.1 and 2 chose not to contest the suit, therefore, there is gross illegality and perversity in decreeing the counter-claim.

I am afraid aforementioned argument of Mr. Baidwan is not sustainable as the period of lease had already expired by efflux of time in the year 2005. Non contest of defendants No.1 and 2 would not be fatal as no relationship of landlord and tenant survived after the expiry of lease period. There was an implied attornment and therefore, the possession of the shops had to be restored back to the counter-claimant. It is in such circumstances, the counter-claim was set up, which in my view, has rightly been decreed.

In my view such finding of fact and law arrived at by the Courts below cannot be faulted with, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 20, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No