

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

RSA No.6482 of 2016 (O&M)

Date of decision:10.12.2018

Indus Towers Ltd.

... Appellant

Vs.

Amar Ahuja

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vishal Gupta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful in defending the suit for recovery as arrears of rent filed by the respondent-plaintiff.

The respondent-plaintiff sought the recovery of Rs.4,70,880/- (Rs.4,32,000/- as principal amount as rent + interest Rs.38,880/-, w.e.f 01.09.2008 to 31.08.2011 on the premise that area of 600-700 square feet was rented out to the defendants, vide lease deed dated 01.09.2008.

The ejectment petition was filed on 28.05.2010 wherein the appellant-defendant appeared but did not file the written statement and defence was struck off. The aforementioned petition was resulted into the order of provisional assessment dated 20.07.2011. Since the appellant-defendant did not pay the arrears, the respondent-plaintiff filed the suit on 02.09.2011.

Mr. Vishal Gupta, learned counsel appearing on behalf of the appellant submitted that original lease deed dated 01.09.2008 has not been brought on record. The respondent-plaintiff in cross-examination admitted that tower was never installed. Once the plaintiff failed to prove the intention of the party as allegedly reflected in his lease deed (objected to), the suit was liable to be dismissed.

In support of the aforementioned submissions, relied upon the judgment rendered by this Court in **Basant Lal and another vs. Sant Ram and another 2003(2) RCR (Rent) 458** and **Subhash Dahiya vs. Raghvir Singh 2009(3) RCR (Civil) 193**.

I am afraid the aforementioned arguments are not sustainable, for, it is not a case where in ejectment petition, the appellant-defendant was ex parte. Nothing prevented the appellant to bring on record the sufficient material to establish the non-implementation of the lease deed in the absence of the original or through the assistant of the Local Commissioner. The provisional assessment order has attained finality. In such circumstances, the tenant, who has left the landlord in lurch cannot be permitted to oppose the arrears of rent on the aforementioned grounds. One line here and there in cross-examination cannot be a ground to non-suit the plaintiff as entire pith and substance of the examination and cross-examination have to be seen.

There is no dispute to the judgments referred to above but facts of each and every case have to be examined as noticed above.

No ground is made out for interference in the impugned judgments and decrees which are based upon the appreciation of oral and documentary evidence.

The regular second appeal is dismissed.

December 10, 2018

savita

(AMIT RAWAL)

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No