

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.680 of 2016 (O&M)

Date of Decision:22.05.2018

Surinder Singh

..... Appellant

Versus

Maninder Singh Gill

..... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Siao, Advocate
for the appellant.

Mr. M.S. Gill, respondent in person.

ANIL KSHETARPAL, J.(Oral)

Landlord-appellant is in the regular second appeal against judgments passed by the Courts below. In fact, both the Courts have dismissed the claim filed by the owner for claiming mesne profit and arrears of rent on the ground that the plaintiff has not appeared for cross-examination.

Learned counsel for the appellant has drawn attention of the Court to zimni orders passed on 10.10.2013, 07.11.2013, 15.11.2013, 04.12.2013, 20.12.2013 and 12.4.2014. Learned counsel has submitted that somehow by mistake the evidence was closed on the statement of the learned counsel for the appellant without realizing the statement of the plaintiff is not complete as the plaintiff has not been cross-examined. The zimni orders passed by trial Court reads as under:-

“Order dated 10.10.2013

present: Mr. S.S. Siao, Adv. for plaintiff.

Mr. M.S. Gill defendant in person.

PW1 Surinder is present and examined in

chief by way of affidavit along with documents. His cross-examination has been deferred as copy of affidavit supplied today for cross of PW1 as well as for remaining evidence of the plaintiff to come up on 07.11.2013 subject to last chance.

Sd/- KK Jain

CJ (SD) 10.10.2013

Order dated 07.11.2013

present: Mr. S.S. Siao, Adv. for plaintiff.

Mr. J.T. Singh Adv. for the defendant.

Memo of appearance on behalf of defendant filed. On PW is present for cross-examination but adjournment prayed counsel for defendant. To come up on 15.11.2013 for cross of PW1 as well as remaining evidence of the plaintiff subject to another last chance. POA on behalf of defendant be also filed on the date fixed.

Sd/- KK Jain

CJ (SD) 7.11.2013

Order dated 15.11.2013

present: Mr. S.S. Siao, Adv. for plaintiff.

Mr. J.T. Singh Adv. for the defendant.

Examination in chief of PW2 Kamal Kishore has been recorded. His cross-examination has been deferred, on request of counsel for the defendant. For cross PW2 and PW1 as well as entire evidence of the plaintiff subject to another last chance, to come up on 4.12.2013. POA on behalf of defendant be also filed on the date fixed.

Sd/- KK Jain

CJ (SD) 15.11.2013

Order dated 4.12.2013

present: Mr. S.S. Siao, Adv. for plaintiff.

Mr. J.T. Singh Adv. for the defendant.

PW2 Kamal Kishore is present and cross examined completely. Adjournment prayed for remaining plaintiff evidence. Heard. To come up on 20.12.2013 for cross examination of PW1 as well as for remaining entire evidence of the plaintiff. POA on behalf of defendant be also filed on the date fixed.

Sd/- KK Jain

CJ (SD) 4.12.2013

Order dated 20.12.2013

present: Mr. S.S. Siao, Adv. for plaintiff.

Mr. J.T. Singh Adv. for the defendant.

PW1 is present for cross examination but counsel for the defendant requested for adjournment. On request and in the interest of justice, case is adjourned for 4.1.14 for cross examination of present witness. Remaining evidence of the plaintiff, if any, be also produced on said date. POA on behalf of defendant be also filed on the date fixed.

Sd/- KK Jain

CJ (SD) 20.12.2013”.

Order dated 12.4.2014

present: Counsel for the parties.

Cross examination for PW3 concluded. Ld. Counsel for the plaintiff has closed the plaintiff evidence by making separate statement. Adjournment prayed. Heard. On request case stands adjourned to 9.5.14 for defendant evidence.

Sd/- Ashish Thathai

CJ (SD) 12.4.14”

Possession of the premises was handed over on 16.08.2007 i.e. during the pendency of the suit. The only claim which needs adjudication is as to whether plaintiff-appellant is entitled to any rent/mesne profit for use and occupation of the premises or not. A reading

of the zimni orders proved that the plaintiff was not at fault and adjournments were granted either on the request of learned counsel for the defendant or otherwise.

In fact, the plaintiff had already examined two witnesses namely PW-2 Kamal Kishore and PW-3 T.P. Singh who had been cross-examined by the defendant. None of the Courts has recorded any finding that the evidence available on the file is not sufficient to prove the case of the plaintiff. The adverse inference against a party, for non-appearance, can only be drawn if the Court records finding that the evidence available on the file is not sufficient. This precise issue has been examined by this Court in *Navneet Kaur Vs. St.Soldier Properties and Industrial Ltd., RSA No.2306/2008* decided on **24.04.2018**.

In view of the aforesaid judgment and decree passed by the Courts below are set aside and the case is remitted back to the learned trial Court to re-decide the matter after granting opportunity to the plaintiff to appear for cross-examination. It shall be responsibility of the defendant to cross-examine the plaintiff. Only two opportunities would be granted, failing which, the Courts would be entitled to proceed to decide the case.

Parties are directed to appear before the Courts below through their counsel on 11.07.2018.

(ANIL KSHETARPAL)
JUDGE

22nd May 2018

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Whether speaking/reasoned Yes/No
Whether reportable Yes/No