

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

RSA No.5568 of 2015 (O&M)

Date of Decision.06.03.2018

Karam Chand (since deceased) through LRsAppellant

Vs

Christian Medical College, Ludhiana and anotherRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Hemender Goswami, Advocate
for the appellant.

Mr. Bhrigu Dutt, Advocate
for the respondent No.1.

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AMIT RAWAL J.(ORAL)

C.M. No.13467-C of 2015

The application for impleading the legal representatives of appellant-Karam Chand (since deceased) is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.5568 of 2015 (O&M)

The appellants-defendants i.e. legal representatives of Karam Chand are in regular second appeal against the judgment and decree passed by the lower Appellate Court whereby the judgment and decree passed by the trial Court dismissing the suit of the plaintiff seeking mandatory injunction and handing over the possession of House No.14, Habib Road, CMC Campus and recovery of ₹24,174/- on account of damages for use and occupation has been reversed, in essence, the suit of the plaintiff has been decreed.

The respondent-plaintiff, Christian Medical College, Ludhiana (hereinafter called as “CMC, Ludhiana) instituted the suit aforementioned suit on the premise that the defendant had committed certain acts of misconduct

for which he was charge-sheeted. After holding a regular enquiry, his services were terminated on 23.07.2002 which was conveyed to him on the same date. An appeal preferred by the defendant was also rejected. While being in service, the defendant was allotted the accommodation aforementioned i.e. House No.14, Habib Road CMC Campus, CMC and Hospital, Ludhiana. As per the service regulation, employee was required to stop the user of the institutional accommodation within a period of 15 days from the date of his retirement/termination of the services and in case of failure to do so, charges at the rate of Rs.150/- per day besides electric charges as per actual consumption were liable to be paid by him. The status of the defendant was of a licensee and on termination of the services, the licence was automatically revoked, therefore, the suit claiming aforementioned relief was filed.

The aforementioned suit was contested by the defendant by taking customary pleas of non-maintainability of the suit. On merit, it was stated that the suit was premature as the termination order had been challenged by the defendant in the Court of law. The locus standi of authorized person was also challenged. It was averred that the defendant was employee of the CMC, Ludhiana and was allotted the aforementioned house but denied the provisions of Regulations entitling the employer to charge a sum of Rs.150/- per day.

On the basis of the pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP*
- 2. Whether the suit of the plaintiff is liable to be dismissed being not maintainable? OPD*

3. *Whether the suit is premature as termination order has been challenged in the court of law? OPD*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiff has no locus standi to file the present suit? OPD*
6. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
7. *Relief.”*

In support of its case, the respondent-plaintiff examined Ranjit Theodore as PW1 and tendered into evidence Ex.P1 to P25 and closed the evidence. The defendant did not examine any witness and evidence of the defendant was closed vide order dated 19.11.2011.

The trial Court on the basis of the oral and documentary evidence dismissed the suit but the lower Appellate Court reversed the finding, meaning thereby, allowed the suit filed by the plaintiff.

Mr. Hemender Goswami, learned counsel appearing on behalf of the appellants i.e. successor-in-interest of Karam Chand submitted that along with the appeal, there is application seeking condonation of delay of 868 days in filing the appeal. In explanation of the same, learned counsel for the appellants submitted that the legal representatives of the applicant-appellant/defendant did not know about the litigation and came to know about the judgment and decree after the death of Karam Chand only in the month of October, 2013 when the execution application was filed. Thereafter, the appellants contacted a lawyer for challenging the judgment and decree of the lower Appellate Court but he did not file any appeal. They came to know about the said fact when the Executing Court passed the order dated 2.9.2015

for getting the house attached. Thereafter, the applicant-appellants engaged another counsel and in this process, delay of 868 days in filing the appeal is condoned.

On merit, he submitted that the lower Appellate Court has committed illegality and perversity in not appreciating the fact that the termination of the defendant had not been proved on record for want of evidence of the Enquiry Officer. All the documents exhibits have not been proved and therefore, could not be looked into. The lower Appellate Court erroneously reversed the judgment and decree passed by the trial Court on the premise that the licence came to an end with the termination of services without minding the fact that the plaintiff failed to prove the termination to seek any declaration, thus, miserably failed to prove the averments in the plaint, much less, revocation of the licence, urges this Court for setting aside the judgment and decree of the lower Appellate Court.

Per contra, Mr. Bhriugu Dutt, learned counsel appearing on behalf of the respondent-plaintiff submitted that the explanation given in the application does not suffice the requirement of law as each and every day's delay has not been explained. The explanation given in para 5 and 6 of the application is just a coined story, which had no foundation or genesis. The appeal is liable to be dismissed on the ground of delay.

On merit, he submitted that grant of licence is personal between the licensor and licensee and it is not heritable. In support of his contention, he relied upon the judgment of **Madras High Court in Chinnan and others Vs. Ranjithammal 1931 AIR (Madras) 216** . The attitude of the appellants has been callous and casual. The appellants had been enjoying the possession of the residential house without any right or payment of use and occupation

charges. Therefore, cannot be permitted to take the benefit which is illegal and unauthorized. Defendant-Karam Chand was represented by the counsel before the lower Appellate Court, who brought the factum of his death to the notice of the Additional District Judge. In view of the provisions of Order 22 Rule 3(2), the contract between the lawyer and the litigant continues even after death of the litigant. The legal representatives did not come forward for impleadment. The ignorance of law is not a bliss, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goswami. The appeal is not only liable to be dismissed on the ground but on merit also. The amendment of Punjab and Haryana High Court made in Order 22 Rule 3 (2) reads as follows:-

“Rule 3(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.”

It is unbelievable that the counsel has not informed about the filing of the appeal despite the fact that the execution application had been filed and it is only when service was effected, they approached this Court by filing regular second appeal, therefore, delay of 868 days cannot be said to be bona fide and unintentional.

As regards the merits of the appeal is concerned, as per ratio

decidendi culled out by Madras High Court cited supra, relationship of licensor and licensee is personal which is non-transferable. When the suit was filed Karam Chand was alive. He contested the suit. Though the trial Court dismissed the suit but the fact of the matter is that the trial Court did not give any reason as to how the suit was not maintainable, for, the appellant-defendant had admitted retention of the accommodation after termination of the services. The trial Court also remained oblivious of the fact that there was a categorical admission that the order of termination has been challenged but there was no interim stay. In such scenario, the Regulations as applicable to the employees vis-a-vis the retention of the house provided that they had to vacate the premises within 15 days, failing which the market rent or the rent prescribed therein per day would be applicable. It is in that background, even claim for damages to the tune of Rs.24,174/- was also allowed. For the sake of brevity, relevant extract of finding in paragraph 3 of the judgment cited supra reads as under:-

3. These provisions do not in terms lay down that a license is revoked by a conveyance of the property. On the other hand, the English Law, which undoubtedly forms the basis of the Indian Statute, seems clear that the license terminates. "if a man gives a license and then parts with the property over which the privilege is to be exercised," says Pollock, C.B., in Coleman v. Foster (1856) 1 H. & N. 36 : 156 E.R. 1108, "the license is gone. A license is a thing so evanescent that it cannot be transferred." The same view is to be found expressed in Wallis v. Harrison (1838) 4 M. & W. 539 : 150 E.R. 1543. There can be no doubt that the transferee is not bound by the license. But does the licensee, from the moment the transfer takes place, become a mere trespasser, or should he be considered until the contrary appears, to hold under an implied license? We do not think that it will become necessary in this case to decide that point, because, if the information given to us is correct (no evidence was taken), Poonjolai died in or about 1904. and there seems no doubt that the license expired with his

death. The learned City Civil Judge seems to be in error in holding that the defendants came in as licensees, if by that he means that, after Poonjolai died, the license was (renewed) in their favour. Nor do we think, that the license granted to Poonjolai became vested in them as his successors. A license is not annexed to the property in respect of which it is enjoyed, nor is it a transferable or heritable right, but is a right purely personal between grantor and licensee.....”

During the pendency of the case before the lower Appellate Court, Karam Chand died and therefore, legal representatives could not retain the premises and the possession thereafter was of a trespasser. All these facts have been taken into consideration by the lower Appellate Court, which in my view, has discharged the onus as envisaged under Section 96 of the Code of Civil Procedure. The status of licensee is only on the wish of the licensor. The moment licensor does not intend the licensee to retain premises, the licensee is in obligation to hand over the possession. The licence was revoked on termination of the services of Karam Chand (since deceased) but he did not hand over possession, compelling the respondent-plaintiff to institute the suit, thus, the argument of Mr. Goswami has not been to cut ice and make out a case to enable this Court to form an opinion other than the one formed by the lower Appellate Court.

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. Resultantly, the second appeal stands dismissed on grounds of merit as well as on limitation.

(AMIT RAWAL)
JUDGE

March 06, 2018
Pankaj*