

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

SAO No. 2 of 2015 (O&M)
Date of Decision : 20.11.2018

M/s Kishore Foam Agencies & ors.

....Appellants

Versus

R.L. Malhotra and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjay Verma, Advocate
for the appellant.

Mr. D.K. Singla, Advocate
for respondents no. 1 to 4.

Surinder Gupta, J.

The short question, which arises for consideration is, as to whether civil suit filed by respondents seeking ejectment of appellants from half portion of the ground floor alongwith half portion of basement adjoining to SCO No. 66 of SCO No. 67, Sector 11, Panchkula was maintainable as per provisions of Section 1 (3) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (later referred to as 'the Rent Act')?

2. As per case of plaintiffs, the suit property was leased out to appellants vide lease deed dated 09.04.1992. The dispute was raised regarding non-payment of settled rent and the tenancy of plaintiffs was terminated vide notices dated 15.12.2008 and 12.03.2009.

3. Learned trial Court framed issues as follows:-

(1) Whether the plaintiffs are entitled for possession of

suit property on the grounds as alleged? OPP.

- (2) Whether the plaintiffs are entitled for recovery of ₹2,11,800/- being the arrears of rent w.e.f. 01.11.2008 to 27.04.2009? OPP.
- (3) Whether plaintiffs are entitled for recovery of mesne profits @ ₹1,50,000/- per month w.e.f. 28.04.2009 till delivery of the said premises? OPP.
- (4) Whether plaintiffs are entitled for interest, if yes, at what rate? OPP.
- (5) Whether plaintiffs are entitled for relief of permanent injunction on the grounds as alleged? OPP.
- (6) Whether the suit is not maintainable in its present form? OPD.
- (7) Whether the plaintiffs have not come in the court with clean hands? OPD.
- (8) Whether the plaintiffs have no cause of action to file the present suit? OPD.
- (9) Relief.

4. Findings were returned by learned trial Court on issue no. 6 that the building was completed more than 10 years before filing of the suit, as such, the suit was not maintainable and the remedy available to plaintiffs-respondents was to seek eviction of defendants-appellants under the provisions of the Rent Act. The relevant observations of learned trial Court as contained in para 16 to 18 are reproduced as follows:-

- “16. Ex. D1 is the copy of application dated 27.06.1997 written by original plaintiff Shri R.L. Malhotra to the Estate Officer, HUDA, Panchkula mentioning therein that since construction of disputed property was completed, a request was made for issuance of completion certificate. Ex. D2 is the copy of completion certificate issued by Architect. Rakesh Malhotra i.e. one of the Legal Representatives of deceased plaintiff R.L. Malhotra, stepped in the witness box as PW2 and admitted signatures of his father on application Ex. D1. The witness also admitted that construction of disputed property was completed on dated 25.06.1997. Also, PW1 Mohan Lal, Assistant, Estate Officer, Panchkula has disclosed in opening lines of his cross-examination that plaintiffs had applied for occupation certificate on dated 27.06.1997, copy of which is available on file as Ex. D1. Meaning thereby that it stood duly proved on the file that construction of disputed property was completed on or before 27.06.1997.*
- 17. Section 1 (3) of the Rent Act is being reproduced hereunder:-*

“Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period

of ten years from the date of its completion.”

18. *A bare perusal of this provision makes it clear that the Rent Act only refers to completion of construction. It is quite clear that exemption of ten years is to be counted from the date of its completion. As observed earlier, it stood admitted on the part of plaintiffs that application seeking completion certificate was filed on 27.06.1997, which was supported by certificate dated 25.06.1997 from an Architect.”*

5. Learned trial Court considered the date of application for issuance of completion certificate i.e. 27.06.1997 as date of completion of the building and the suit filed on 30.04.2011 was found to be beyond the period of ten years of completion of building, as such, not maintainable as per provisions of Section 1 (3) of the Rent Act.

6. On appeal, learned Ist Appellate Court with the observations that it is the date of issuance of occupation certificate which is relevant to arrive at the conclusion that as to when the building was complete and not the date on which the application was moved. The relevant observations of learned Ist Appellate Court in para 19 and 20 are reproduced as follows:-

“19. Admittedly, the word used in Section 1(3) is the date of its completion and not the date of completion of construction and completion means a complete building as per the requirement of HUDA Act and its Regulations and it cannot be occupied without a

occupation certificate issued by it. Not even this as per further regulations, the water and sewerage connection of such buildings can be issued only after getting a occupation certificate and on completion of further formalities. Thus, taking from any angle, the date when a owner applied for the completion of building cannot be considered as the date if its actual completion as required under the law, on the contrary, it will be the date when the competent authority declared it so by giving a occupation certificate. Resultantly, the findings recorded by the learned lower court that the date of completion will be the date when the landlord apply for completion certificate, is totally misconceived and erroneous and thus liable to be set aside.

20. *Needless to say, in this case, it is admitted fact that on completion of construction, the appellant-landlords submitted application, copy of which is Ex.D-1 on 27.06.1997 and prayed for completion certification after fulfilling formalities required under the HUDA Act and after inspection of the building, the Estate Officer, HUDA, has issued occupation certificate, copy of which is Ex.P-1 on 13.08.1999 as proved on record by PW-1 an official of HUDA. Thus, the period of ten years will start from 13.08.1999 and*

accordingly, it expired on 13.08.2009, whereas the present suit has been filed in April, 2009, which means well before the expiry of ten years and thus, it was a case where the provisions of Haryana Rent Act are not applicable and the suit filed before the lower court was duly maintainable but the learned Lower court misinterpreted the facts and legal issue and non-suited the appellant-landlords only on this ground on the basis of wrong conclusions. As such, the findings recorded by the learned lower court are set aside and issue no.6 which is qua maintainability of the suit before the lower court is decided against the defendants and it is held that the the Civil court has jurisdiction to try and entertain the present suit.”

7. The question, which requires answer in this appeal is, as to whether completion of the building in question is to be taken on the date occupation certificate was applied or on the date, occupation certificate is issued, enabling the owner to occupy the building?

8. Admittedly, the plot in question was allotted to the plaintiffs-respondents by HUDA and Regulation 11N (2) of the Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979, provides as follows:-

“11N. Occupation Certificate :-

(1) xx xx xx xx xx

(2) No person shall occupy or allow any other person to

occupy any new building or a part thereof for any purpose whatsoever until such building or part thereof has been certified by the Estate Officer as having been completed and an occupation certificate has been issued in his favour in form BRS-VI.”

9. A person applies for issuance of occupation certificate after he has completed the structure of the building. It is only after issuance of the occupation certificate he gets permission to occupy the same and to do other formalities like getting electric, water and sewerage connections etc. Before issuance of occupation certificate neither respondents could occupy or allow any person to occupy the new building or part of it, meaning thereby the completion of building is not complete till the competent authority certifies the same and issues the occupation certificate. It is quite possible that after the occupation certificate has been applied the competent authority, which has to issue the certificate, on inspection finds some fault with the building or may suggest some steps to be taken by the owner to rectify those faults. It is only after carrying out the directions of competent authority that the building is considered as complete and required certificate certifying completion of building and authorizing its occupation is issued.

10. Learned counsel for appellants has referred to observations of a Bench of this Court in case ***RSA No. 58 of 2000 (Kartar Chand vs. Shanti Devi)***, decided on 11.01.2000, wherein it was held that non-issuance of completion certificate by the municipal committee is no ground to exclude the new building from exemption as provided under

Section 1 (3) of the Rent Act.

11. Learned counsel for the respondents has drawn my attention to observations in cases ***RSA No. 4924 of 2011 (Smt. Promila Kumar vs. Pawan Kumar and others)*** decided on 06.01.2012 and ***RSA No. 2839 of 2012 (Mohan Singh vs. Rajinder Kumar Pahwa and others)*** decided on 01.10.2012 and ***CR No. 3379 of 2017 (Surinder Kumar Sharma vs. Arun Sareen)*** decided on 11.05.2017, wherein the date of issuance of occupation certificate was taken as the date of completion of building. Observation in case of ***Kartar Chand (supra)***, are not applicable to facts of this case as in that case old shop was admittedly in existence under tenancy of revision petitioner. That shop was reconstructed and fresh tenancy was created on new terms, while in this case it was a newly constructed building, which was let out to the petitioner.

12. Agreeing to observations recorded in above referred cases referred by learned counsel for respondents, I am of the opinion that the date of completion of building is the date on which the occupation certificate is issued and owner is given permission to use the building. Mere applying for the completion/occupation certificate cannot be termed as completion of the building as the owner under the provisions of Regulation 11 of the Haryana Urban Development (Erection of Buildings) Regulations, 1979 is not authorized to enter the building or use it in any manner till occupation certificate has been issued.

13. Keeping in view above facts, I find no legal or factual infirmity in the judgment passed by learned Ist Appellate Court reversing the findings of trial Court on issue no. 6 and remanding the case back to

trial Court to record findings on issues no. 1 to 5 and decide the case on merit.

14. This appeal has no merit and the same is dismissed.

November 20, 2018
jk

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>