

In the High Court of Punjab and Haryana at Chandigarh

RSA-1558 of 2018(O&M)

Date of Decision:4.4.2018

Samanvay Bhutani

---Appellant

vs.

Azad Singh Kataria

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Suman Jain, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by the respondent/plaintiff for recovery was decreed by the trial court for recovery of Rs. 5,56,900/- alongwith interest @ 18% per annum from the date, the amount became due till actual realization, with costs. The appeal preferred by unsuccessful defendant/appellant was partly allowed, judgment and decree passed by the trial court was modified to the extent that interest @ 6% per annum would be payable from the date the amount became due till its realization.

Still feeling dissatisfied, the present appeal has been preferred by the unsuccessful defendant.

Counsel for the appellant would argue that the trial court closed evidence of the appellant-defendant vide order dated 8.5.2015 wherein it has been recorded that neither the cost has been paid nor any evidence has been produced. It is argued with vehemence that observation of the trial court that previous costs of Rs. 500/- have not been deposited with the District Legal Services Authority in

terms of order dated 30.4.2015 is factually incorrect as the appellant had deposited costs of Rs. 500/- on 8.5.2015 and a copy of receipt is produced on record. It is further argued that as the trial court did not provide due opportunity to defend the case, judgments passed by the courts are liable to be set aside and the matter may be remitted to the trial court for decision afresh by providing at least one effective opportunity to produce evidence.

Another submission made by counsel is that there is serious dispute between the parties with regard to area of the shop in question. As per plea of the respondent, area is 1800 square feet but appellant has consistently alleged the area to be 1275 square feet. The appellant filed an application for appointment of local commission but the same was wrongly dismissed by the trial court despite observations made by this Court while disposing of CR No. 6830 of 2014, a relevant extract wherefrom has been reproduced in para 10 of the grounds of appeal. It is further argued that a local commission is required to be appointed in order to know exact area of the shop in question which would be a clinching evidence with regard to liability of the appellant to pay rent @ Rs. 23,000/- per month or at a lesser rate. The last submission made by counsel is that appellant has been wrongly fastened with liability to pay an amount of Rs. 3,83,000/- on the basis of provisional assessment of rent made by the Rent Controller in the eviction proceedings as the courts failed to appreciate that the Rent Controller made calculation of outstanding liability by applying interest @ 18% per annum, contrary to the rate prescribed under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short "the Act").

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned and various annexures available on record.

So far as plea of the appellant that he was not allowed sufficient time to adduce evidence by the trial court or his evidence was wrongly closed vide order dated 8.5.2015, indisputably, the appellant filed an application for leading

additional evidence on the premise that his evidence was closed by court order. The said application was disposed of by the trial court vide order dated 15.10.2015 (Annexure A-4). In para 5 of the order, the court has noticed that appellant availed six opportunities to lead evidence. Vide order dated 30.4.2015, appellant was accorded last opportunity to lead evidence subject to payment of cost of Rs. 500/- in District Legal Services Authority. There is nothing on record suggestive of the fact that when the case was taken up by the trial court on 8.5.2015, counsel for the appellant before the trial court produced any such receipt with regard to deposit of Rs. 500/- in compliance with the previous order whereby appellant was afforded last opportunity to adduce evidence subject to payment of cost. There is no material on record to substantiate plea of the appellant that he deposited Rs. 500/- towards costs prior to order dated 8.5.2015 was passed by the trial court. The very fact that in the order dated 8.5.2015, there is no reference with regard to any such contention of the appellant before the trial court qua deposit of cost, possibility cannot be ruled out that deposit of Rs. 500/- was made subsequent to order dated 8.5.2015 was recorded by the trial court. In this view of the matter, it is difficult to accept contention of the appellant that observations made by the trial court with regard to non-payment of costs are erroneous or a ground to find fault in the order closing evidence. Counsel for the appellant has failed to make out a justifiable ground for re-opening of the case by permitting him another opportunity to produce evidence despite his having failed to lead any evidence by availing opportunities provided for the purpose.

This apart, perusal of the records of trial court would reveal that Azad Singh -respondent tendered his affidavit along with documents by way of examination in chief on 15.12.2014 but his cross examination was deferred on the request of counsel for the appellant. On the adjourned date, again on request made by counsel for the appellant, cross examination of Azad Singh was deferred subject to deposit of costs of Rs. 300/- with the District Legal Services Authority

and another Rs. 300/- to be paid to the witness. Again on 29.1.2015, cross examination of the witness was not completed nor the cost in terms of order dated 12.1.2015 was deposited with District Legal Services Authority but still the court deferred the case for remaining cross examination of Azad Singh to 20.2.2015. The appellant completed cross examination of Azad Singh PW1, the only witness examined by the respondent after availing four adjournments meaning thereby that the appellant was interested to delay the proceedings on one pretext or the other. After evidence of the respondent was closed vide court order dated 20.2.2015, the appellant did not adduce any evidence despite number of opportunities granted for the purpose. As the appellant was allowed five effective opportunities but failed to lead any evidence, he cannot be heard to say that he was not allowed sufficient time to adduce evidence or the court has denied him his valuable right to counter case of the respondent and rebut evidence adduced by him.

The appellant raised an issue with regard to area of the shop in question. The Rent Controller assessed provisional rent that became subject matter of appeal but the appellant failed in his challenge against provisional assessment and ultimately application culminated in order of eviction. After closing of evidence by the trial court, the appellant filed an application for appointment of local commission to ascertain area of the shop in question. The application was dismissed by the trial court vide order dated 6.8.2015 primarily on the ground that as the appellant did not adduce any evidence to substantiate his plea disputing area of the shop in question, he cannot be allowed to collect evidence through process of the court. The trial court did not permit the appellant to nullify the affect of order closing his evidence and rightly rejected application for appointment of local commission, filed with the sole object to collect evidence through process of the court. The matter would have been different had the appellant adduced evidence to substantiate his plea in this regard and in that

eventuality, the court might have appointed a local commissioner to elucidate the matter in controversy. In this view of the matter, contention raised by counsel for the appellant to assail rejection of his plea for appointment of local commissioner is not meritorious and accordingly rejected.

This brings the court to plea of allowing interest @ 18% per annum while making assessment of rent provisionally by the Rent Controller in the eviction petition and calculating outstanding liability at Rs. 3,83,000/-. No doubt, the order passed by the Rent Controller assessing provisional rent was affirmed by the appellate authority and has attained finality. Even otherwise, on due consideration of the order of provisional assessment, interest has been calculated @ 8% permissible under the provisions of the Act but rate has been wrongly mentioned as 18%. In this view of the matter, contention raised by counsel for the appellant, in this regard, is highly misconceived and untenable.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

4.4.2018
paramjit

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