

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

RSA No.4703 of 2017

Wasawa Singh

....Appellant

Versus

Surinder Kumar Sharma

....Respondent

Date of Order: 02.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Jindal, Advocate for the appellant.

Mr. Mohinder Pal, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Appellant-defendant is aggrieved of the concurrent findings of both the courts below whereby the suit of the plaintiff-respondent seeking possession of the demised premises i.e Flat No.G-009, Ground Floor, Rail Vihar, Phase-II, MDC Sector 4, Panchkula (hereinafter to be referred as “demised premises”) has been allowed while ordering ejectment of the appellant-defendant.

Respondent-plaintiff instituted the suit for possession of the demised premises by way of ejectment of the defendant and got served a legal notice dated 06.1.2014 under Section 106 of the Transfer of Property Act on the premise that the appellant was inducted as tenant w.e.f 01.12.2005 at the rate of Rs.3000/- per month but thereafter the rent was increased to Rs.3500/- per month. It was also increased from time to time and presently the present rent was fixed at Rs.6500/- per month whereas as per the prevailing market rate, the rent was Rs.12000/- per month plus electricity charges. The defendant-appellant did not vacate the premises

despite the fact that the plaintiff-respondent had suffered paralytic attack. It was pleaded that the children of the plaintiff were major and the demised premises was required for bonafide purposes.

Defendant contested the suit with regard to maintainability, want of jurisdiction and suppression of material facts. On merits, it was pleaded that the rent of the demised premises was Rs.6500/- per month. Besides this defendant was also paying amount of Rs. 200/- per month as security charges to the society.

The trial Court on the basis of pleadings of parties framed the following issues:

- “1. Whether the plaintiff is entitled for a decree for possession by way of ejectment of defendant from the suit property?OPP*
- 2. Whether the plaintiff is entitled for recovery of future mesne profit at the rate of Rs.12,000/- per month w.e.f 27.1.2014, till date of possession of the suit property?OPP*
- 3. Whether the suit of plaintiff is not maintainable in the present form?OPD*
- 4. Whether the plaintiff has concealed true and material facts from the court?OPD*
- 5. Relief.”*

Plaintiff in support of his case tendered Copy of Possession Certificate for getting service connection as Ex.P1, Copy of allotment letter dated 19.02.2004 as Ex. P2, Copy of lease deed dated 01.12.2005 as Ex.P3 and Copy of legal notice dated 06.01.2004 as Ex.P4.

On the other hand, defendant examined Wasaba Singh as DW1 and closed the evidence.

The trial Court on the basis of preponderance of evidence

decreed the suit and the findings were affirmed by the lower appellate court.

Learned counsel for the appellant submitted that the suit was filed on 20.02.2014. The suit was not maintainable as period of 10 years had lapsed in view of sub-section (3) of Section 1 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short “the Act”) as it had been filed after 10 years and one day whereas it could have been filed within 10 years therefore, the claim of the plaintiff was not permissible. Learned counsel has drawn attention of this Court to the order dated 10.10.2017 passed by this Court as also to Ex.P1 i.e. Copy of Possession Certificate for getting service connection to show that the Managing Director of the Indian Railway Welfare Organization Society had written letter to the General Manager, Rail Vihar, Phase-II, MDC Panchkula in respect of handing over the demised premises. He submitted that the date of completion of the construction cannot be construed as per the letter as the said premises had been constructed and became ready prior to 19.2.2004 well preceding of the aforesaid letter. All the aforesaid facts have not been considered in correct perspective, thus the both the judgments and decrees suffer from gross illegality and perversity.

Per contra, learned counsel for the respondent submitted that this Court was not apprised of the correct particulars of Ex.P.1 particularly Ex.P.2, which is inter communication dated 19.2.2004 though the letter was despatched only on 21.2.2004 to the respondent-plaintiff. The suit was filed within period of 10 years while rightly following the provisions of the Act and therefore, no error could be found with the well reasoned judgments of both the courts below.

After hearing learned counsel for the parties and perusing the

paper book with their able assistance, I find no merit in the present appeal. It would be in the fitness of things to reproduce Sub Section (3) of Section 1 of the Act, which reads as under:

“(3) 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.”

On plain and simple reading of the aforesaid provisions, it is clear that any building, which has been constructed on or after the commencement of the Act for a period of ten years from the date of its completion would be exempted from the applicability of the Act. Now the question, which is posed before this Court is whether the letter (Ex.P.2) would be construed to be dated 19.2.2004 and the suit having been filed on 20.2.2014 would be beyond the period of ten years or not.

On close examination of letter (Ex.P.2), issued by the Managing Director to the General Manager, it is apparent that the same is dated 19.2.2004 however it was despatched to the respondent-plaintiff vide Endorsement dated 21.2.2004, whereas concededly the suit had been filed on 20.2.2004 i.e less than 10 years. Therefore the findings of both the courts below cannot be said to be suffering from any illegality or infirmity and the suit would be treated to be maintainable as per the provisions of the Act. It has also come on record that the service connection (Ex.P.1) is dated 10.3.2004 and the respondent-plaintiff would not have come to know whether flat was constructed or not. Knowledge about construction of the Flat could only be derived on receipt of the letter dated 21.2.2004 which must have been received within a gap of 2 to 4 days. All these factors weighed in the mind of the courts below, thus the argument of learned

counsel for the appellant regarding jurisdiction of the Civil Court to entertain the suit is not sustainable and devoid of merit, hence rejected.

No ground for interference is made out much less no substantial question of law has arisen.

Dismissed.

May 02, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No