

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

RSA No.6284 of 2017 (O&M)

Date of decision : 08.01.2018

Satinder Kumar (since deceased) through his LRs

...Appellants

Versus

Ramwati and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Neeraj Sharma, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The defendant was a tenant in the property in dispute. The tenancy was terminated by serving a notice. Since, the tenant did not vacate, hence the plaintiffs filed a suit for possession by way of ejectment alongwith recovery of mesne profits. The defendant contested the suit. The plaintiffs filed an application under Order 15 Rule 5 CPC for striking off the defence of the defendant-appellant-tenant as he has failed to pay the admitted rent. The defence of the defendant-appellant was struck off vide order dated 08.03.2013. The aforesaid order has become final.

The plaintiffs claimed that the suit premises was reconstructed in the year 2005 and hence the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as 'the Act of 1973)

would not be applicable.

Both the Courts below have concurrently found that the plaintiffs have successfully proved their case inasmuch as the suit premises has been reconstructed in the year 2005. Both the Courts below have relied upon the evidence of PW5-Pritam Ram Meson and report of the Electricity Department Ex.PW3/B given in April, 2006.

I have heard the learned counsel for the appellant at length and with his able assistance gone through the judgments passed by both the Courts below.

It is not in dispute that the defence of the appellant was struck off in the year 2013 on account of non-payment of the admitted rent. Thereafter, the appellant-tenant has never made any efforts to pay the rent. As per Sub-Section 3 of Section 1 of the Act of 1973, a new building which has been completed or constructed after the commencement of the Act of 1973 is exempt from the provisions of the Act of 1973 for a period of 10 years from the date construction was completed. In the present case, the plaintiffs have successfully proved this fact as found concurrently by both the Courts below.

Learned counsel for the appellant although vehemently argued that the plaintiffs have failed to produce any evidence on record to prove that before reconstructing the building, building plan was got sanctioned. He has referred to the provisions of Section 201 of the Haryana Municipal Act, 1973 to contend that without the approval of the building plan, construction and reconstruction of any building is prohibited.

I have considered the submission of the learned counsel for the

appellant.

Section 201 of the Municipal Act is entirely operating in a different field. In the present case, the only issue to be decided is whether the building was reconstructed in the year 2005 or not. The Act of 1973 does not provide that if a building has been reconstructed without sanction of the building plan, the Rent Act would be applicable and exemption as available under Sub-Section 3 of Section 1 of the Act of 1973 would not be applicable. The Act of 1973 only provides that on the building which has been reconstructed or newly constructed, the provisions of Rent Act would not apply for a period of 10 years.

In view thereof, there is no scope for interference in the Regular Second Appeal.

Regular Second Appeal is dismissed.

08.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No