

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

RSA-2799-1997(O&M)

Date of decision:-27.9.2019

Randhir Singh Punia

...Appellant

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Shrenik Jain, Advocate
for the appellant.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Randhir Singh Punia, a resident of Hisar had brought a suit against defendants Union of India, Secretary Ministry of Finance, Commissioner, Income Tax Department and Director of Estate, Government of India, on the averments that he had purchased the suit property from his brother on which he raised construction after getting site plan sanctioned from Municipal Committee, Hisar on 15.7.1986; he had raised loan from some House Building Society in July, 1987 and

started raising construction; the construction was completed in June, 1988, thereafter he let out the building to the defendants on monthly rent of Rs.4,000/- for a period of five years from 3.10.1988 to 2.10.1993 vide a written agreement; the plaintiff had written various letters to the defendants in the year 1993 reminding them that their tenancy was to expire in October, 1993 and later on served a notice upon them under Section 106 of the Transfer of Property Act (hereinafter referred to as the Act) informing that he did not want to keep the defendants as tenants any more; the notice was duly received by the defendants but they failed to vacate the suit property; thereafter, the plaintiff issued notice under Section 80 CPC but to no avail; he again issued notice under Section 106 of the Act on 4.10.1994 but still the defendants neither vacated the suit property nor paid the rent. Feeling aggrieved, the plaintiff had filed the suit claiming possession of the suit property along with arrears of rent and mesne profits with interest.

On getting notice, only defendant No.3 put in appearance to offer a contest, whereas remaining defendants did not appear despite service and were proceeded against ex-parte..

In the written statement filed by defendant No.3, he had taken up various legal objections challenging the jurisdiction of Civil Court to entertain and try the suit contending that the suit property was taken on rent for five years, however an option was there, which

could be exercised by the defendants to renew the tenancy for one year and then from year to year; the defendants had exercised the option by writing a letter to the plaintiff and thus the lease period stood extended up to 2.10.1995. As regards the notice served by plaintiff upon the defendants, its receipt was admitted though it was contended that notice was not legal and valid one and due reply thereto was sent. The answering defendant denied that as a result of service of notice by the plaintiff upon defendants, the tenancy stood terminated. With regard to arrears of rent, it was contended that the same stood paid during pendency of the suit with interest. Such defendant contested the right of the plaintiff to claim mesne profits contending that since tenancy was subsisting at the time of filing of the suit, the plaintiff could not ask for payment of mesne profits. In the end, such defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff has terminated the tenancy of the defendants? OPP.
2. If issue No.1 is proved whether plaintiff is entitled to possession? OPP.

3. Whether the plaintiff is entitled to arrears of rent for the period from 3.10.93 to 2.10.94 @ Rs.4,600/- per month? OPP.
4. Whether the plaintiff is entitled to Rs.27,600/- as mesne profit for illegal use and occupation from 4.10.94 to 3.1.95 @ Rs.9,200/- per month? OPP.
5. Whether the plaintiff is entitled to interest, if so at what rate? OPP.
6. Whether the Civil Court has no jurisdiction to entertain and try the present suit? OPD.
7. Relief.

Both the parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants, issue No.2 in favour of the plaintiff and against the defendants, issue No.3 was decided as having become redundant on account of defendants having paid the arrears of rent with interest, issue No.4 was decided in favour of the plaintiff and against the defendants to the effect that the defendants would be liable to pay mesne profit @ Rs. 4,600/- per month from October, 1995 till the delivery of possession, issue No.5 was also decided in favour of the plaintiff and against the defendants, issue No.6 was answered in favour of the plaintiff and against the defendants. As a cumulative

effect of findings on all the issues, the suit of the plaintiff was decreed with cost and it was observed that defendant shall hand over the vacant possession of the suit property to the plaintiff on or before 31.3.1997 and shall also be liable to pay charges @ Rs.4,600/- per month on account of use and occupation from the date of institution of the suit or till the date such payment was made, whichever is later till handing over of the possession with interest @ 18% per annum. This was so done vide judgment and decree dated 4.2.1997.

The defendants were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Hisar, which was assigned to Additional District Judge, Hisar, who vide judgment and decree dated 11.8.1997 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit. The cross-objections filed by the plaintiff/respondent were also dismissed.

Being dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiff has filed the present regular second appeal before this Court, notice of which was issued to the respondents-defendants. However, there is no representation on their behalf.

I have heard learned counsel for the appellant and I find that there is no merit in the appeal.

It may be mentioned here that the trial Court by wrong

analysis of the factual as well as legal position came to the conclusion that the tenancy between the parties stood terminated by service of notice under Section 106 of the Act by the plaintiff upon the defendants rejecting the plea taken by the defendants that on account of defendants exercising option to seek renewal of lease within time in terms of the agreement between the parties, the tenancy could not be terminated in that manner and the plaintiff is not entitled to get the vacant possession of the premises from the defendants. However, the wrong was set right by the learned Additional District Judge, Hisar. He has dealt with all the aspects in a proper and appropriate manner noticing that from the evidence adduced by the plaintiff more particularly PW1 Sh.Azad Singh, Mason, who had raised the construction of the building, PW2 Sh.Atam Parkash, Retired Patwari, PW3 Sh.Davender Kumar, UDC of HSEB Department, who had deposed regarding release of electricity connection, PW4 Sh.Mahabir Parshad, Building Clerk, PW6 Mewa Singh, President of Hisar Co-operative House Building Society, it stood proved that the plaintiff had got sanctioned the site plan of the plot purchased by him on 15.7.1986 and construction thereon was completed in June-July, 1988, in absence of any rebuttal evidence adduced by the defendants, it stood proved that the premises in question were exempt from Haryana Urban (Control of Rent and Eviction) Act , 1973 for a period of 10 years and finding in

that regard recorded by the trial Court was affirmed.

Learned Additional District Judge, Hisar has further observed that as per admitted case of the parties vide lease agreement dated 3.10.1988 Ex.P34, originally the building in question was let out to the defendants on monthly rent of Rs.4,600/- for a period of 5 years i.e. from 3.10.1988 to 2.10.1993 and tenancy could be terminated by service of notice under Section 106 of the Transfer of Property Act. Discussing the aspect of plaintiff serving him notice dated 4.10.1993 Ex.P26 for the purpose of termination of tenancy, learned Additional District Judge, Hisar had observed that it was despatched on 5.10.1993 as is evident from postal receipts Ex.P27 to Ex.P29 and the date of notice is mentioned as 4.10.1993. The lease agreement talks of creation of tenancy from 3.10.1988 to 2.10.1993, in that way, the notice was to be served thereafter and not prior to expiry of last day of tenancy. It has been observed that the notice period should have lapsed with the last date of tenancy or at least it should have been served in September, 1993 so as to give the defendants clear notice of 15 days. Nevertheless a perusal of letter Ex.D1 dated 7.9.1993 shows that defendants exercised their option for renewal of lease for a period of one year and plaintiff had sent reply to it on 21.9.1993, which being Ex.P46. The plaintiff had requested for renewal of the lease deed from 3.10.1994 to 2.10.1995 vide letter dated 31.8.1994 Ex.D2. The plaintiff had further

despatched letter dated 5.9.94 Ex.P53. It has been observed that though in Ex.P46 and Ex.P53, the plaintiff had not agreed for renewal of lease or tenancy and it comes out that he had asked the defendants to vacate the suit property but as per clause 2 of the lease agreement Ex.P34, lease was to continue for a period of 5 years with option to the defendants to extend it for a further term, in light of clause 14. The defendants were required to convey their desire for extension of lease by noticing in writing not less than one month before expiration of the terms of lease and vide letters Ex.D1 and Ex.D2 written on behalf of department of Government of India, Tax Recovery Officer had intimated the intention of Government of India for extension of lease. Therefore, Ex.D2 having been issued a month prior to the expiry of lease period conveys the intention for extension of lease period.

Learned Additional District Judge, Hisar has further noticed that the lacunae if any in the notice stood filled up by the implied admission of the plaintiff in the plaint inasmuch as he has claimed arrears of rent from 3.10.1993 to 2.10.1994 meaning thereby that he had agreed to renewal of tenancy. In that way the tenancy stood renewed up to 2.10.95 and it could not be terminated before that date, resultantly notice Ex.P26 did not result in termination of tenancy of defendants and the defendants cannot be taken to be in unauthorized possession of the suit property and are not liable to

surrender the same. Even otherwise, the conduct of the plaintiff does not show his intention of treating the tenancy to be cancelled by service of notice.

The possession of the defendants being not unauthorized, though plaintiff is entitled to claim rent from them but not mesne profits. The First Appellate Court has rightly set aside the judgment and decree passed by the trial Court decreeing the suit of the plaintiff for possession of the suit property.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Hisar.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

27.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No