

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

RSA No.1192 of 1996(O&M)

Date of decision: 09.09.2019

Krishan Lal

.....Appellant

VERSUS

Bahadur Chand

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. C.B. Goel, Advocate for the appellant.

Mr. Puneet Jain, Advocate for
Mr. Rakesh Gupta, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgment and decree dated 19.04.1996 passed by the Additional District Judge, Kaithal whereby appeal against judgment and decree dated 05.08.1993 passed by the trial Court was accepted, impugned judgment and decree was set aside and suit filed by the respondent/plaintiff for possession and mesne profits was decreed.

The facts of the case, in brief, are that respondent/plaintiff claimed himself to be owner and landlord of the shop in dispute which was constructed in the end of year 1986. The site plan for new construction was submitted to Municipal Committee, Kaithal on 05.09.1986 which was sanctioned on 31.10.1986. It is averred that the provisions as contained in Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short 'Rent Act') are not applicable in the case as suit was filed prior to expiry of 10

years of completion of construction. Krishan Lal had taken the demised shop on rent vide rent note dated 21.05.1988 on monthly rent of Rs.375/- for two months i.e. from 22.05.1988 to 21.07.1988. Despite expiry of tenancy on 21.07.1988, defendant did not vacate the shop nor paid rent thereafter. The tenancy was terminated vide registered notice dated 22.09.1989 served through Sh. K.K. Adlakha, Advocate, Kaithal, received by the defendant on 29.09.1989. Since the defendant did not hand over possession thereafter, the plaintiff filed the suit for possession as well as mesne profits.

The case of the appellant/defendant is that shop in dispute is part of residential building constructed much before completion of 10 years of filing of the suit. In the year 1986, plaintiff converted the front portion of his residential building into a number of shops including the present one by affecting minor repairs only. Sanction of site plan by Municipal Committee, Kaithal is nothing but an overt act on the part of plaintiff, thus, the provisions contained in the Rent Act are applicable to the instant case. It is pleaded that on 12.08.1989, defendant paid Rs.4500/- to the plaintiff as advance rent for one year from 22.07.1989 to 21.07.1990 against a duly executed receipt. Electricity bill is also stated to have been paid. The contractual tenancy of the defendant cannot be terminated through a registered notice because the defendant had paid rent in advance upto 21.07.1990.

The trial Court framed the following issues for determination:--

1. Whether the tenancy of the defendant qua the premises in question stands validly terminated by the service of notice dated 22.09.1989 upon the defendant? OPP
2. Whether the shop in question was constructed in the end of year 1986 exempting it from operation of provision of Haryana Act No.11 of 1973? OPP
3. Whether the plaintiff is entitled to recover an amount of Rs.1125/- on account of mesne profit from the defendant? OPP
4. Whether the plaintiff is entitled to recover mesne profit at the rate of Rs.375/- per month from the defendant? OPP
5. Whether the plaintiff is entitled to recovery of Rs.729/- on account of electricity bill? OPP
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
7. Whether the suit of the plaintiff is not maintainable in the present form? OPD
8. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court decided only issue No.2 and in view of its findings on issue No.2 in favour of the appellant/defendant upholding his plea that the premises in question is not exempted from applicability of the provisions of the Rent Act, the suit was dismissed with no order as to costs.

The first Appellate Court set aside findings of the trial Court on issue No.2 and determined other issues as well.

Counsel for the appellant argued that as the Court in appeal did not agree with findings of the trial Court on issue No.2 or to say that findings on issue No.2 are set aside, the first Appellate Court should have remitted the case to the trial Court for determination of other issues in place of deciding other issues at its own level. It is further argued that as the appellant did not get an opportunity to be heard on merits of other issues by the trial Court, therefore, he has been deprived of his right to file the first appeal in case other issues had been determined against him by the trial Court. Counsel would pray that on this score alone, judgment and decree passed by the first Appellate Court may be set aside and the matter be remitted to the trial Court for determination of other issues, may be, in a time-bound manner.

To assail findings of the Appellate Court on issue No.2 with regard to exemption of the suit property from the provisions of Rent Act, it is argued that disputed shop was carved out of the building which was in existence for the last many years and used as a residential building. It is further argued that the mere fact that disputed shop along with other shops were made by affecting minor repairs in the earlier building, the respondent/landlord cannot seek aid of the relevant provisions of the Rent Act that since the disputed shop was constructed in the year 1986, the same is exempted from Rent Act for a period of 10 years. It is further argued that the respondent/plaintiff has not produced any evidence that construction was completed in the year 1986 as no completion certificate has been produced on record. With regard to recital in the rent note that

the shop was constructed in the year 1986, it is argued that the same has been added later in order to escape from rigours of Rent Act under which eviction of a tenant can be sought only on grounds envisaged under the said Act.

Another submission made by counsel is that the appellant had already paid arrears of rent w.e.f. 22.07.1989 to 21.07.1990 amounting to Rs.4500/- against a receipt, therefore, the appellant was not in arrears of rent and as such the respondent was not competent to terminate his tenancy on the ground of non-payment of rent. It is further argued that findings recorded by the first Appellate Court to reject the receipt with regard to payment of rent of one year in advance are not based upon correct appreciation of materials on record and it wrongly relied upon the report of so-called handwriting expert examined by the respondent. In addition, it is argued that even the notice with regard to termination of tenancy is not in complete consonance with the provisions of Section 106 of the Transfer of Property Act, 1882.

Counsel representing the respondent/landlord, on the contrary, has supported the impugned judgment and decree with the submission that the first Appellate Court, on a detailed consideration of the matter, has rightly reversed findings of the trial Court on issue No.2 and answered other issues in favour of the respondent/plaintiff. It is further argued that the trial Court decided issue No.2 on the basis of assumptions and presumptions but the first Appellate Court determined the said issue on the basis of documentary evidence coupled with oral evidence adduced by the respondent/plaintiff. It is further argued that there can be no better evidence than admission by the contesting party and in view of admission

made by the appellant in the rent note, there is no escape from conclusion that disputed shop was constructed in the year 1986, therefore, it was exempted from the provisions of the Rent Act for a period of 10 years and the instant suit for possession filed in the year 1989 is maintainable. It is further argued that there is no mandate in law that if the trial Court has decided the suit on the basis of a preliminary issue and findings on the said preliminary issue are set aside by the Court in appeal, the Appellate Court is obligated to remand the case to the trial Court for determination of other issues or to say that other issues cannot be determined by the Appellate Court itself on the basis of materials on record. To bring home his contention, he has argued that the legislature in its wisdom has used the word 'may' in place of 'shall' in Rule 23 of Order 41 of the Code of Civil Procedure, 1908. To refute contention of the appellant in respect of his losing a right of appeal in case judgment and decree impugned is not set aside, he has relied upon judgment of this Court **Sucha Singh Vs. Bhalwan, 1999 (2) RCR (Civil) 25.**

With regard to findings of the first Appellate Court in respect of the receipt qua payment of rent in advance for a period of one year, it is argued that counsel for the appellant has failed to advance any meaningful arguments to assail factual findings recorded by the first Appellate Court. It is further argued that as findings of the first Appellate Court in respect of payment of advance rent are neither the result of misreading of evidence nor are unfounded, no intervention in such factual findings is warranted. The last submission made by counsel is that since the disputed building was exempted from provisions of the Rent Act and tenancy of the appellant was terminated by way of notice duly served upon the appellant even

though the provisions of Section 106 of the Transfer of Property Act, 1882 are not applicable to State of Haryana, the appellant is still successful to retain possession of the disputed shop for the past more than 30 years because of procedural delays.

I have heard counsel for the parties, perused the paper-book and records.

Indisputably, the trial Court determined issue No.2 alone and the same was answered in favour of the appellant and the suit was dismissed. The first Appellate Court set aside findings of the trial Court on issue No.2 and decided other issues. Eventually, the appeal preferred by respondent/landlord was accepted. Order 41 Rule 23 CPC, germane to the present controversy reads as follows:-

"23. Remand of case by Appellate Court— Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand."

The legislature, in its wisdom, has used the word 'may' in the sentence 'the Appellate Court may', meaning thereby that it is not

mandatory for the Appellate Court to remand the case to the trial Court for trying the remaining issues or any issue or issues. Counsel for the appellant has failed to cite any judgment to support his contention that the word 'may' used in the aforesaid line shall be construed as 'shall', creating an obligation for the Appellate Court to remand case to the trial Court and try other issues. Counsel for the appellant has failed to advance any argument much less meaningful as to what prejudice has been caused to the appellant on account of failure of the Appellate Court to remand the case for determination of other issues. The contention that the appellant has been deprived of an opportunity to seek determination of other issues from the trial Court, therefore, his right to file first appeal against findings of the trial Court on other issues is prejudiced, is not sufficient to accept his contention that judgment and decree impugned is liable to be set aside and the matter needs remittance to the trial Court for determination of issues other than issue No.2 on the basis of evidence on record. In this regard reference can be made to judgment of this Court in **Sucha Singh's case** (supra) wherein it has been held, quoted thus:-

“In all the litigations, curtain should finally be drawn and remanding of cases should, unless it is necessary, be avoided. The Supreme Court in the case of Bachan Pandey and Ors. v. Dulhin Janki Devi and Ors., A.I.R. 1976 Supreme Court, 866, held that remanding of the case should be avoided and it is appropriate that decisions are arrived at. Same view was expressed in the case of Sant Narain Mathur and Ors. v. Rama Krishna Mission and Ors., A.I.R. 1974 Supreme Court 2241 and also in the case of Bhairab Chandra Nandan v. Ranadhir

Chandra Dutta, 1988(1) RCR (Rent) 48. A reference can also be made to the decision of this Court in the case of Darshan Lal etc. Comrade Daya Singh etc., (1990-1) 97 P.L.R. 56...”

The tenancy in the present case was created in the year 1988. The suit for possession was filed in 1989. The trial Court decided the suit on 05.08.1993 by determining only issue No.2. The appeal was decided by the first Appellate Court on 19.04.1996. The regular second appeal was filed in May 1996 in which notice of motion was issued and eventually the same was admitted on 04.10.1996. Vide order dated 14.12.2000, appeal was directed to be set down for final disposal within six months. Unfortunately, the appeal has been taken up for hearing more than 2 decades since it was filed before this Court. In the given circumstances, it would be travesty of justice in case the judgment and decree passed by the first Appellate Court is set aside and matter is remitted to the trial Court for decision of other issues at this stage of the proceedings. In this view of the matter, contention raised by counsel for the appellant is not meritorious and accordingly rejected.

Much stress has been laid by counsel for the appellant to assail findings of the first Appellate Court on issue No.2, if the property in question is exempted from operation of the Rent Act. The Appellate Court, on detailed consideration of materials on record, set aside findings of the trial Court on issue No.2. The respondent/plaintiff got sanctioned site plan Ex.P2 from Municipal Committee, Kaithal before making alteration/construction. The said site plan was also sanctioned prior to creating tenancy in favour of the appellant, therefore, it is not open for the

appellant to argue that site plan Ex.P2 was got sanctioned with an intent to create evidence that property is exempted from the provisions of Rent Act. Indisputably, the tenancy was created on the basis of rent note executed by the appellant marked as Ex.PW4/A. In the rent note, there is a recital that the shop has been constructed in the year 1986. As per settled position in law, admission is the best evidence unless retracted or explained away. In the case at hand, no such plea has been raised by the appellant that admission in the rent note with regard to shop being newly constructed in 1986 gets vitiated on any ground whatever. Taking into consideration site plan Ex.P2 and clear admission of the appellant in the rent deed Ex.PW4/A along with certain other facts taken into consideration by the first Appellate Court, I find myself unable to be persuaded with the submissions made by the appellant that findings of the first Appellate Court on issue No.2 suffer from an error much less perversity that would call for intervention. In this view of the matter, it can safely be held that suit property was exempted from the provisions of the Rent Act at the time of institution of suit for possession in the year 1989.

Counsel has raised submissions in respect of payment of rent in advance, therefore, tenancy being not liable to be terminated on the ground of arrears of rent. Before adverting to the submissions with regard to payment of rent in advance, it is appropriate to note that counsel for the appellant, in response to a query, is not in a position to contend that any grounds have been specified for terminating tenancy of a tenant to whom the provisions of Rent Act are not applicable. If it is so, there is no requirement in law that a ground(s) must subsist for terminating tenancy of such a tenant. That being so,, the respondent/appellant was competent to

terminate tenancy of the appellant even if his plea is accepted that he was not in arrears of rent of the relevant period or the rent in advance was paid by him vide receipt relied upon.

The respondent/plaintiff has proved that before filing of the suit, he issued notice under Section 106 of the Transfer of Property Act, 1882 terminating tenancy of the appellant whereby he was called upon to hand over vacant possession of tenancy premises within a period of 15 days from the date of receipt of notice. Counsel for the appellant has failed to point out as to how the notice issued by the respondent can be said to be faulty more particularly in the circumstances that provisions of Section 106 of the Transfer of Property Act, 1882 are not applicable to the State of Haryana, therefore, notice may be issued under general law to give some breathing time to make alternative arrangements. This apart, no notice even by following general law is required for termination of tenancy and filing of eviction suit itself is a notice to quit. In this context, reference can be made to judgment of Hon'ble the Supreme Court **M/s Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), 2008(1) RCR (Civil) 270**, wherein in para 12, it has been held, quoted thus:-

“In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this court in V. Dhanapal Chettiar Vs. Yesodai Ammal [AIR (1979) SC 1745].”

Analysed from any angle, contention raised by counsel for the appellant to point out defects in the notice is without any merit and accordingly rejected.

As per plea of the appellant, he had paid arrears of rent w.e.f. 22.07.1989 to 21.07.1990 amounting to Rs.4500/- against a receipt. In view of discussion made hereinbefore but at the cost of repetition, payment or non-payment of arrears of rent in advance would be of no consequence for deciding entitlement of the respondent to seek recovery of possession of suit property on the basis of determination of tenancy of the appellant in view of notice issued by the respondent.

The first Appellate Court has also determined liability of the appellant to pay arrears of rent at the rate of Rs.375/- per month from 22.07.1989 till termination of tenancy and recovery of mesne profits at the same rate from the date of termination of tenancy till delivery of possession. The Appellate Court rejected the receipt Ex.D3 with regard to payment of advance rent of Rs.4500/- in view of its observations recorded in paras 15, 16 and 17 of the judgment. In para 16, the Appellate Court has accepted certain observations made by Sh. Yashpal Jain, Document Expert who prepared report Ex.PW9/A and examined as a witness by the respondent/plaintiff. A relevant extract therefrom is quoted hereinbelow:-

“16....Thus he came to the definite conclusion that receipt Exh.D3 is forged one and was prepared by transplating the revenue stamp containing the genuine signatures of Bahadur Chand. To arrive at such a conclusion he has given four reasons in his report. As regard to the upper edge of the stamp having been cut with sharp edged instrument; and also

the factum of additional gum found applied on the stamp, those facts may not be sufficient to affirm the opinion of the Expert. But Expert has further found some additional paper adhered to the lower edge of the stamp, with a black coloured printed line. He has also found upper printed line on the additional paper adhered to the back of the stamp. From these observation he has come to the conclusion that this stamp was removed from another paper and at that time additional paper affixed with it. Similarly, he observed that Nukta of letter 'moon' of word Chand comes on the edge and perforation of the stamp, but does not touch the paper in or above the whole. I have also observed the revenue stamp with a magnifying glass and found substance in the reasoning of the Expert on these two counts. In the given facts and circumstances of the case, it cannot be said that such a thing could happen due to pen-pressure or that additional paper affixed with the lower portion of the revenue stamp was from the paper of receipt, Exh.D3. Moreover, the defendant, at least could examine his own expert so as to prove that the report, Exh.PW9/1, was false."

Counsel for the appellant has not made any submissions to assail correctness of the aforesaid factual findings recorded by the first Appellate Court. I do not find any reason to interfere in the factual findings that receipt Ex.D3 is forged one and the appellant has never paid advance rent for a period of one year and hence notice Ex.P1 cannot be said to be bad on that account. Counsel has also not disputed that appellant

while appearing in the witness box had admitted the factum of receipt of notice Ex.P1 but he did not send any reply to the notice. As such, the appellant did not controvert the allegations contained in the notice with regard to his liability to pay arrears of rent. The Appellate Court has rightly held that non-sending of reply to the notice is also a circumstance to negate plea of the appellant that he had paid advance rent of one year vide receipt Ex.D3. In this view of the matter, findings of the first Appellate Court with regard to liability of the appellant to pay arrears of rent from 22.07.1989 till termination of tenancy and mesne profits at the same rate from termination of tenancy till recovery of possession of the shop in dispute cannot be faulted with.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

SEPTEMBER 09, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no