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108 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3568-2016 (O&M)
Date of decision : 06.03.2019

Vinod Kumar (deceased) through LRs

... Appellant

Versus

Ankur Goel

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harminderjeet Singh, Advocate
for the appellant.

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AMIT RAWAL, J. (ORAL)

CM-9336-C-2016

For the reasons stated in the application, which is supported by an affidavit, delay of 7 days in filing the appeal is condoned.

CM stands disposed of.

CM-9337-C-2016

For the reasons stated in the application, which is supported by an affidavit, delay of 29 days in refiling the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellant-defendant have not been successful in defending the suit of the respondent-plaintiff seeking possession of the shop, which has been decreed by the trial Court and affirmed in appeal.

It was alleged that the appellant-defendant was inducted as tenant @₹1400/-pm. Tenancy was from month to month and was terminable at the option of the plaintiff by 15 days' notice ending with last day of the month. Since the tenant did not turn out with a good tenant, a legal notice

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dated 19.04.2008 was served, but the defendant did not vacate the shop and in such manner, the possession was sought.

The defendant opposed the suit, though admitted his possession over the suit property as tenant of Jagdish Kumar, but denied the plaintiff to be landlord, much less, rate of rent of ₹1400/-. Receipt of the notice was also not disputed, but the objection was taken in the written statement that the parties were governed by the provisions of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the 1949 Act').

The plaintiff in support of the aforementioned pleadings, examined four witnesses and brought on record Ex.P1 to Ex.P11, whereas the defendants examined three witnesses and tendered in evidence many documents.

Mr. Harminderjeet Singh, learned counsel appearing on behalf of the appellant-defendant submitted that the shop, in question, was situated in urban area i.e. A notified area committee, and therefore, the suit, as per the provisions of Sections 106 and 107 of the Transfer of Property Act, was not maintainable. It has so been held by this Court in ***CR No.2998 of 2012*** titled as ***"Gurdev Singh and another V/s Labh Singh Gill"*** decided on 21.10.2013 and therefore, rent notification was applied. The remedy, if any, lied under the provisions of 1949 Act. The notification of 1975 established that the area of Village Akalgarh was declared as urban. The trial Court did not have the jurisdiction to entertain and try the suit. The lower Appellate Court being the last court of fact and law also failed to appreciate this fact, thus, there is abdication.

I have heard learned counsel for the appellant-defendant, appraised the paper book and of the view that there is no force and merit in

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the submissions of Mr. Harminderjeet Singh, for, Section 3 of the 1949 Act, empowers the State Government to exempt the building or rented land from the applicability of the Rent Act, even if, the area has been declared as urban, which as per the definition of 1949 Act, would mean a municipal committee, a cantonment board, a town committee or a notified area committee or any area declared by the State Government. The onus lay upon the defendant to establish whether the construction was new or old, for, in case the area is urban, the suit for ejectment is maintainable as they were exempted from applicability of the Rent Act for some years, in the States of Punjab and Haryana i.e. from the date of sewerage connection or from the date of the possession. Placing on record the notification *ibid* was not sufficient, for, Mohd. Yunis-DW1, admitted that he along with inhabitants used to poll their votes for electing Sarpanch/Panch/Members. It remained a mystery as to whether the shop, in question, was exempted from the applicability of the Rent Act or otherwise.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Harminderjeet Singh, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the present second appeal is dismissed.

06.03.2019 **(AMIT RAWAL)**
Yogesh Sharma **JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**