

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

**RSA No.4806 of 2016 (O&M)
Date of Decision.29.01.2019**

Charan Singh

...Appellant

Vs

Gurdwara Karamsar Rara Sahib Trust

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rahul Rampal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.12404-C of 2016

For the reasons stated in the application, delay of 105
days in re-filing of the appeal is condoned.

Application is allowed.

RSA No.4806 of 2016

The present appeal is directed against the concurrent
finding of fact whereby suit of the respondent-plaintiff for possession
of shop and mandatory injunction to hand over vacant possession has
been decreed by the trial Court and affirmed in appeal by the lower
Appellate Court.

The respondent-plaintiff let out the shop situated in
Gurdwara Karamsar Rara Sahib on monthly rent of ₹1000/- per
month but the same was alleged to have not been paid w.e.f.
1.1.2001. The suit was filed on 3.1.2002 preceded by a notice dated
09.12.2001.

The appellant-defendant opposed the suit by denying authority of the person instituted the suit but did not denying himself to be tenant and accepted the rate of rent to be ₹225/- per month.

Plaintiff in support of pleadings examined PW1 Harbans Singh trustee and brought on record Ex.P1 to P5 whereas defendant examined himself and brought on record rent receipts Ex.D1 to D7. It was also alleged that the plaintiff accepted the rent during the pendency of the suit.

Mr. Rahul Rampal, learned counsel appearing on behalf of the appellant submitted that as per the provisions of Section 113 of the Transfer of Property Act, in case the plaintiff had accepted the rent vide receipts aforementioned, it would tantamount to continuation of tenancy and therefore, ejectment could not have been ordered. This fact has totally been ignored and therefore, resulted into perversity.

I am afraid aforementioned argument is not sustainable, for, it was not a case of tenant's holding over as per the provisions of Section 116 of the Transfer of Property Act. In such situation, provisions of Order 15 Rule 5 CPC protects the landlord and binds the tenant to pay the rent. Had aforementioned rent been not accepted, the plaintiff would have been left in lurch and for claiming arrears of rent undergone another round of litigation. Acceptance of rent during the tenancy would not frustrate interest of the plaintiff and accord benefit to defendant, being a tenant for infinite period.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of rendered by the

Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 29, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No