

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

RSA No. 1316 of 2018(O&M)

Date of decision: 6.3.2019

Ram Chander

.....Appellant

VERSUS

Rajwant Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vijay Lath, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against decrees passed by the Courts whereby the appellant has been fastened with liability to pay rent at the rate of Rs.6000/- per month from March 2008 to 31.12.2010 i.e. for a period of 34 months with interest. Admittedly, the appellant was a tenant and tenancy was created by mother of respondent. On death of mother of the respondent, respondent became landlord qua the appellant. There was a compromise arrived at between the parties during pendency of suit for permanent injunction filed by the appellant and as per compromise, the appellant agreed to vacate the tenanted premises on 31.12.2010.

The plea of respondent is that the shop was vacated in the month of February 2011. However, arrears of rent were claimed w.e.f. 01.09.2007 to 31.12.2010. The trial Court decreed the suit for recovery of arrears of rent from 01.09.2007 to 31.12.2010 with interest at the rate of 9% per annum from 01.09.2007 to 31.12.2010 and future interest at the rate of 6% per annum from 01.01.2011 till realization. The judgment and

decree passed by the trial Court were modified in appeal and the respondent was held entitled to arrears of rent from March 2008 to 31.12.2010 along with interest.

Counsel for the appellant has assailed his liability to pay arrears of rent aforesaid primarily on two counts. It is argued that the appellant filed suit for permanent injunction restraining the respondent from creating any kind of hindrance in using the shop, bathroom, latrine, hand-pump etc. in May 2010 and copy of the plaint is Ex.PX. In para 5 of the plaint, a specific plea was raised that the appellant cleared the rent upto 31.05.2010. It was also averred that Ranjit Kaur died about 1¼ / 1½ years and after her death, the respondent is receiving rent and never issued any receipt. The said dispute between the parties was settled by way of compromise dated 24.05.2010 whereby the appellant agreed to vacate the premises upto 31.12.2010 and the suit was dismissed as withdrawn on 29.05.2010. It is vehemently argued that while entering into compromise on 24.05.2010, the respondent never raised an issue that the appellant is in arrears of rent much less w.e.f. 01.09.2007 but the Courts have failed to appreciate the documents in respect of earlier litigation, in right perspective, thus, committed illegality.

Another submission made by counsel is that the respondent has admitted that so long as his mother was alive, she had been receiving rent, therefore, plea of the respondent for recovery of arrears of rent pertaining to period prior to death of his mother is not sustainable. In addition, it is argued that the Appellate Court has not adverted to oral and documentary evidence on record while disposing of the appeal, therefore,

the Court has not discharged its obligation to decide the matter on detailed consideration being the final Court of fact.

I have heard counsel for the appellant, perused the paper-book and copies of various documents supplied during the course of hearing stated to be part of records of the trial Court.

Indisputably, suit for permanent injunction was filed on 22.05.2010 and two days thereafter, a compromise was effected between the parties and accordingly, the appellant agreed to vacate the tenancy premises on 31.12.2010 and eventually the suit was dismissed as withdrawn on 29.05.2010 in view of statement made by the appellant before the Lok Adalat. There is nothing on record suggestive of the fact that by the time matter was compromised on 24.05.2010 or the suit was withdrawn on 29.05.2010, the respondent ever received summons from the Court or was made aware of the contents of the plaint wherein the appellant has raised the plea of clearing the arrears of rent upto 31.05.2010. Perusal of the compromise would reveal that the same makes reference to some application given by the appellant against Rajwant Singh – respondent and compromise was effected in respect of that application filed by Ram Chander. It appears that copy of such application filed by Ram Chander was not produced before the trial Court. In case there was no issue with regard to payment of rent raised either in the application or at the time of compromise dated 24.05.2010, the appellant can neither derive any advantage to his contention from the recital in the plaint with regard to clearing of arrears of rent up to 31.05.2010 nor of failure of the respondent to raise an issue qua arrears of rent at the time of compromise.

There is no dispute that tenancy was created by Smt. Ranjit Kaur and she had been receiving rent during her lifetime. As has been rightly held by the Courts that it is the obligation of the tenant to prove payment of rent whereas rate of rent is to be proved by the landlord. The mere fact that mother of the respondent had been receiving rent during her lifetime *ipso facto* does not amount to admission by the respondent that she had already received rent for the period till she was alive. Counsel for the appellant has failed to point out that the Courts have failed to take into consideration the materials on record proving payment of rent since March 2008 onward. In this view of the matter, second contention raised by counsel for the appellant is patently misconceived and accordingly rejected. Counsel for the appellant has failed to point out as to what prejudice has been caused to the appellant for failure of the Appellate Court to refer to the evidence though there cannot be dispute about settled position in law that first Appellate Court is the final Court of fact.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, appeal fails and is accordingly dismissed in limine. No order as to costs.

MARCH 6, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no