

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

**RSA No.245 of 2018 (O&M)
Date of Decision : 15.10.2019**

Nivedita Lily Nanda (since deceased) through LRs

.....Appellant

Versus

Sudesh Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Vivek K. Thakur, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the respondents-plaintiffs was partly decreed by the trial Court vide judgment and decree dated 04.02.2011, for, even the appeal preferred against the said decree failed and was dismissed on 03.09.2015, the defendant-appellant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Suit for recovery of Rs.57,960/- was filed by the plaintiffs on account of arrears of rent along with interest as also for mandatory injunction requiring the defendant to get electricity and water connections restored which had since been dis-connected for want of payment of the consumption charges.

In brief, the case set out by them was that they were owners in possession of the suit property and it was rented out to the defendant at the

initial rent of Rs.8,000/- per month. The parties agreed to increase the rent @ 20% after every two years. The defendant vacated the premises on 31.05.2004 and sent the keys of the demised premises through registered post. However, she failed to pay the arrears of rent from 01.01.2004 to 30.05.2004, thus the suit.

In the written statement filed by the defendant she disputed the claim of the plaintiffs and maintained that in fact a penalty was imposed by the Electricity Department upon the plaintiffs owing to a faulty meter amounting to Rs.7,391/- before she was put in possession. Further, Rs.8,239/- were to be paid as charges for conversion of the connection from domestic to non-residential, for, the building was let out for a school. The plaintiffs had borne those expenses and she was assured by the defendant that the said amount shall be adjusted in rent. Further, she had also spent Rs.25,000/- on paint and white wash of the premises. The defendant had vacated the accommodation in December 2003 and up to 31.12.2003, the entire rent including water and electricity charges were duly paid.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that relationship of landlord and tenant between the parties was not in dispute. As per the affidavit Ex.DA, submitted by the defendant as her examination-in-chief, at the time she vacated the premises she was paying rent @ Rs,9600/-. The case set out by the plaintiff was that defendant vacated the premises and delivered possession on 31.05.2004, when she send the keys through registered post. Whereas defendant alleged to have surrendered the possession in December 2003. However, the defendant conceded in her cross-examination that after

vacating the premises she had sent the keys to the plaintiffs through registered post and, therefore, the presumption that would permeate the records was that she had vacated the accommodation soon before the keys were sent. Rather, in the given situation, the onus was upon the defendant to prove as to on which date she had vacated the premises. Upon being pointedly asked the defendant failed to disclose any such date and rather maintained that it was her husband who vacated the accommodation. But, the defendant failed to examine her husband. Thus, the only presumption could be drawn was that she had actually vacated the suit property on 31.05.2004, after sending the keys through registered post. Further had she vacated the premises in the month of December 2003 as claimed by her, there was no occasion for her to wait till 31.05.2004, when she sent the keys through registered post. Thus, she continued to occupy the premises till 31.05.2004, she was liable to pay rent for the said period. Concededly, she had paid rent only till December 2003, and thus, was obliged to pay rent @ Rs.9600/- per month from January 2004 till May 2004. Accordingly, a decree for recovery of sum of Rs.48,000/- was decreed along with simple interest @ 6% per annum.

Though, relief as regards mandatory injunction requiring the defendant to have the electricity and water connections restored and pay the arrears of electricity and water bills was declined.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent

findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

15.10.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No