

RSA-2986-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2986-2017 (O&M)

Date of Decision: 17th December, 2019

Divisional Manager/Incharge, Northern Railway,
Baroda House, New Delhi

...Petitioner

Versus

Jagde & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Kulwant Kaur Kahlon, Advocate,
for the appellant.

Mr. S.S. Duhan, Advocate
for respondent No.1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-7454-C-2017

Exemption is granted from filing typed copy of judgment and decree dated 07.03.2017 passed by the Additional District Judge, Rohtak and the judgment and decree dated 30.05.2016 passed by the Civil Judge (Junior Division), Rohtak.

Application is allowed, subject to all just exceptions.

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Rohtak, dated 30.05.2016, whereby, suit for declaration with consequential relief of mandatory injunction filed by respondent No.1 – plaintiff to the effect that the act of the appellant – defendant deducting the rent/charged from his salary for the period

15.01.2013 to 22.09.2013 is illegal, null and void, and that he is entitled to the refund of the said deducted amount along with interest, stands decreed to the extent of holding the deduction of the rent/charges from his salary for the above mentioned period to be illegal, null and void with a further mandatory injunction for refund of the amount recovered within a period of three months, failing which, interest at the rate of 6% per annum on expiry of three months till realization, appeal preferred by the appellant – defendant stands dismissed by the Additional District Judge, Rohtak, vide judgment dated 07.03.2017.

2. It is the contention of the learned counsel for the appellant that respondent No.1 – plaintiff was serving as Keyman Gang. He was posted at Rohtak when he was transferred to Jhajjar. As per the instructions dated 30.11.2000, respondent No.1 – plaintiff was entitled to retain the accommodation allotted to him at Rohtak for a period of two months but he continued to occupy the same. It was found that during the period of 15.01.2013 to 22.09.2013, he had not paid the penal rent and therefore, an amount of ₹ 42016/- had to be recovered from him and accordingly, so recovered. The plea which was taken by respondent No.1 – plaintiff was that his wife remained seriously ill, because of which, he was unable to shift at Jhajjar as there was no proper treatment available forcing him to retain the accommodation at Rohtak. It is asserted that respondent No.1 – plaintiff was re-transferred back to Rohtak and the said accommodation was again allotted to him. Counsel, thus, contends that since respondent No.1 – plaintiff had not vacated the premises, the amount which has been recovered

from him as penal rent was as per the instructions and therefore, cannot be said to be illegal. She places reliance upon the instructions dated 30.11.2000 to contend that as per the said instructions, an employee could retain the accommodation for a period of two months only on the grounds of education and sickness and there is no evidence which has been produced by respondent No.2 – plaintiff indicating the sickness of his wife. It is, therefore, asserted that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. On the other hand, learned counsel for respondent No.1 – plaintiff asserts that the Courts below have taken into consideration the fact that firstly, no notice for vacation of accommodation was issued/served upon respondent No.1 – plaintiff nor was any show cause notice issued to him prior to the deduction of the penal rent depriving him a right of hearing being violative of the principle of natural justice. He contends that had the respondent been given an opportunity to explain the position, he would have been in a better position to satisfy the authorities with regard to the illness of his wife. He, thus, contends that the judgments and decree passed by the Courts below being in accordance with law do not call for any interference by this Court.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

5. Facts as have been narrated above are undisputed. The issue which requires to be considered and decided by this Court is 'Whether the

penal rent of ₹ 42016/- charged from respondent No.1 – plaintiff and deducted/recovered from his salary was in accordance with law and the instructions or not?'

6. The answer to this question is found in the testimony of DW-2 – Rajender Prasad, who has admitted that no notice has been issued to respondent No.1 – plaintiff by the appellant – defendant for vacating the accommodation nor has any show cause notice issued to him while charging the penal rent of ₹ 42016/- for non-vacating the accommodation. The principles of natural justice and *audi alteram partem* have been violated, therefore, the judgments passed by the Courts below cannot be faulted with.

7. Another aspect which has to be pointed here is that as per the instructions, an employee was entitled to retain the quarter/ accommodation for two months. The benefit of that period has not been given to respondent No.1 – plaintiff. Above all, another aspect which weighs on the mind of the Court is that he was transferred from Rohtak to Jhajjar and had retained the premises for a short period of time of eight months when he was re-transferred back to Rohtak. The action of the appellant – defendant, therefore, on this score also appears to be too harsh.

8. In the impugned judgments, concurrent findings have been returned by both the Courts below which, being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court, as there is no misreading or non-consideration of the material available on record nor is there any perversity or illegality in the same. Further, there is no substantial question of law involved in the

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present appeal, which would call for any interference in the appeal by this Court. The appeal, therefore, stands dismissed.

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In the light of the dismissal of main appeal, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

17th December, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No