

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

RSA-2567-2018

Date of Decision: November 27, 2019

Sat Parkash

...Appellant

Versus

Ramesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present: Ms. Neetu Prashar, Advocate, and
Mr. Sushil Kamboj, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 12.01.2015, and as even the appeal preferred against the said decree failed, and was dismissed on 24.05.2017, he is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

A suit for recovery of Rs.2,00,000/- on account of damages for cost of litigation, counsel fee expenditure, travelling expenses and for loss of reputation, image and defaming plaintiff by filing false and frivolous litigation, was filed by the plaintiff.

In brief, the case set out by him was that plaintiff was the absolute owner of a shop, situated at Village Abheypur, Tehsil and District Panchkula, which was mortgaged with defendant No. 2, for consideration of Rs.80,000/-. Defendant No. 2 was the mortgagee, who rented out the shop to defendant No. 1, who was a stranger to the plaintiff. Plaintiff

repeatedly approached defendant No. 2 to redeem the mortgage on receipt of the mortgage amount, but to no avail. Eventually he filed a suit for possession by way of redemption of the mortgaged property, which was decreed by the Trial Court on 08.06.2007. However, the defendants unsuccessfully dragged the case right till the High Court. The false and frivolous suit filed by defendants against the plaintiff was also dismissed in default on 01.03.2008. Plaintiff suffered a continuous loss for more than six years, i.e. during the pendency of the false and frivolous litigation starting in the year 2003 till he regained the possession of the shop in February 2009. Thus, the suit.

In the written statement filed by defendant No. 1, he claimed that plaintiff was his landlord and he was in possession of the shop in question as tenant under him. In January, 1995, plaintiff mortgaged his shop with defendant No. 2 and he started paying rent to defendant No. 2 as instructed by plaintiff. For, he had no knowledge as regards conditions of mortgage deed, he could not be accused of having caused any harassment to the plaintiff. Therefore, the suit was liable to be dismissed.

In the separate written statement filed by defendant No. 2, the factum of mortgage and the previous litigation between the parties was admitted. It was denied that plaintiff tried to redeem the mortgage. Defendant No. 2 never caused any harassment to the plaintiff.

Upon consideration of the matter in issue and the evidence on record, both the Courts in reference to the decisions rendered in the cases of **West Bengal State Electricity v. Dilip Kumar Ray (Civil Appeal No.**

5188 of 2006, decided on 24.11.2006), C.B. Aggarwal v. Krishna Kapoor, AIR 1995 Delhi 154, and Mohamed Amin v. Jogendra Kumar Bannerjee and others, AIR (34) 1947 P.C. 108, concluded: civil actions, which are normally covered under “abuse of process”, relate to attachment or property, damage of a person, malicious bankruptcy, winding up proceedings and such other processes of the Courts which are abused by a party. Therefore, only those cases could be considered by the Courts that satisfy the test that defendant instituted and continued the proceedings. He acted without reasonable and probable cause. Further, he acted maliciously. Whereas in the present case, plaintiff sought damages on account of litigation since 2003. Undoubtedly, the suit filed by plaintiff for possession, titled “Sat Parkash v. Krishan Lal (Civil Suit No. 381 of 2003)”, against defendant Nos. 1 and 2, was decreed by the Trial Court on 08.06.2007, and even the appeals preferred against the said decree were dismissed by the first appellate Court and the High Court. Eventually the vacant possession of the shop was obtained by the plaintiff in February, 2009. A suit titled “Bobby Hair Dresser v. Krishan Lal (Civil Suit No. 725 of 2003)”, was filed by defendant No. 1, and except that defendants never filed any case against the plaintiff. Not just that, even the suit filed by defendant No. 1 was dismissed for non-prosecution on 01.03.2008.

Ex facie, the plaintiff sought damages primarily owing to the expenses he incurred and the alleged harassment he was subjected to while pursuing Civil Suit No. 381 of 2003 (Sat Parkash v. Krishan Lal). However, it was the plaintiff who had filed the said suit against the

defendants. Therefore, apparently the defendants never involved the plaintiff in any malicious, unwarranted and unnecessary litigation. As regards injunction suit filed by defendant No. 1, it could not be termed as malicious use of process, as he claimed to be a tenant under the plaintiff. No cogent evidence was led by the plaintiff to prove if any harassment, as alleged by him, was caused by the defendants. Suit filed by the plaintiff for possession by way of redemption was decreed in his favour and an analysis of the said judgment and decree revealed that no finding as regards malicious use of legal process between the parties was recorded. That being so, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions concurrently arrived at 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.

The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 27, 2019

Pkapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO