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

**Civil Revision No.1052 of 2017 (O&M)
Date of Decision:26.09.2019**

Rakesh Kumar

.....Petitioner

Vs

Gurmit Singh

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Ms. Bindu Goel, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

CM No.3171-CII of 2017

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 163 days in filing the present revision petition.

Learned counsel for the applicant-petitioner submitted that earlier RSA was filed against the impugned judgments and decrees passed by the Court below vide Diary No.1659449 dated 04.11.2016. As the Courts were closed from 28.10.2016 to 02.11.2016 due to vacations, the case was returned by the Registry on 01.12.2016 after putting certain objections. The

case was re-filed on 08.12.2016. Registry again returned the petition on 06.01.2017 with some new objections. Ultimately while removing the objections, it was found that revision petition was maintainable as the decree was less than Rs.25,000/-. In the aforesaid process the delay of 163 days has occurred.

Keeping in view the grounds mentioned in the application, I deem it appropriate to condone the delay of 163 days in filing the petition. Application stands disposed of.

Civil Revision No.1052 of 2017 (O&M)

[1]. Brief facts are that in a suit for recovery of Rs.12,750/- as principle amount along with interest the plaintiff has lost before both the Courts below concurrently. Plaintiff filed a suit for recovery of the aforesaid amount against the defendant on the ground that plaintiff had given a suit property on rent to the defendant for a period from 29.10.2004 to 28.10.2005 at the rate of Rs.14,400/- per annum. The rent deed was executed between the parties. Factum of tenancy was admitted by the defendant that he had taken the possession of the property in dispute on rent, where water and electricity connections were functional. After expiry of the period of lease, defendant would be entitled to continue the tenancy after increase of 10% of rent and he was required to vacate the shop in dispute in case of not increasing the rent.

[2]. It was asserted by the plaintiff that he had received the advance of two months and whenever defendant would pay the rent, he would obtain the receipt from the plaintiff. Defendant had signed the said deed in the presence of witnesses namely Nazar Singh and Subhash Chand. The deed was scribed by Rakesh Kumar Khippal, Deed Writer, Barnala. On 01.09.2018, defendant paid the rent by deducting Rs.12,750/- out of the rent of 11 months from 01.02.2008 to 31.12.2008 towards repair of shutter in dispute. A receipt in this regard was prepared by the defendant and was signed in Punjabi.

[3]. After due contest before the Courts below, it was found that the plaintiff has claimed rent of Rs.14,400/- per annum for the period 29.10.2004 to 28.10.2005. Later on the tenancy was continued and the defendant had deducted an amount of Rs.12,750/- on 01.09.2008 out of total amount on the pretext that he had repaired the shutter installed in the shop in dispute. The plaintiff was under obligation to prove that defendant had got conducted repair of the shutter and he also deducted Rs.12,750/- in this regard.

[4]. In order to prove his case, the plaintiff relied upon testimonies of PW-1 Veerawanti and PW-2 Krishan Kumar, who have proved receipt Ex.P-1. Both the witnesses have stated that they had signed the receipt Ex.P-1 vide which the defendant

had deducted an amount of Rs.12,750/- in lieu of repair of the shutter. The witnesses have proved their signatures on the receipt.

[5]. It has been observed by the trial Court that the receipt has some modifications and overlapping. Different pen was used while signing the receipt from the pen used in writing of the body of the receipt. The expert i.e. Handwriting and Fingerprint Expert Dr. Inderjit Singh while appearing as DW-1 has pointed out the aforesaid cuttings, overlapping and amendments in receipt Ex.P-1. Even though the Expert was only to opine on the signature, but the opinion given on the subject matter of Ex.P-1 is not such which would hamper the case of the parties in the light of other attending circumstances of the case, wherein the case of the plaintiff could not be proved on legal parameters.

[6]. Perusal of the receipt would further show that the amount as well as the dates mentioned therein have been changed. The month in the dates have been changed from 9 to 10 and 11 to 12. The aforesaid change created doubt on the genuineness of the receipt. Merely because the receipt has been signed by the defendant is not enough to rely upon the same, particularly when PW-1 Veerawanti and PW-2 Krishan Kumar have specifically stated that no deduction of rent took place in their presence. The aforesaid witnesses have admitted

that the defendant did not repair any shutter in the shop in dispute. The shutter was got installed by the plaintiff himself.

[7]. The pleadings made by the plaintiff are conspicuous by not mentioning the aforesaid facts and installation of the shutter by the plaintiff himself. The plaintiff has concealed material information from the Court and has not come to the Court with clean hands. The Hon'ble Apex Court in catena of judgments viz. **S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853; Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416; A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431; Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Sh. Raghunath Sahi, 2003(2) RCR (Rent) 148; Badami (deceased) by her LR vs. Bhali, (2012) 11 SCC 574; and Ramesh Kumar and another vs. Furu Ram and another, (2011) 8 SCC 613** authoritatively held that a party, who has concealed material information from the Court and has not come to the Court with clean hands, does not deserve any equitable relief from the Court and the said party can be ousted from the litigation at any stage. The plaintiff could not prove that there was any deduction made by the defendant at the time of tendering of rent.

[8]. In view of above, I am of the view that both the Courts below have appreciated the material on record and thereafter recorded the findings of fact, which cannot be held to be the result of any misreading of evidence or suffered with any perversity. Consequently, this revision petition is found to be totally devoid of merits and is accordingly dismissed.

September 26, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No