

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

**101**

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**RSA No. 5511 of 2016 (O & M)  
Date of decision : 22.1.2020**

**Puran Chand**

**.....Appellant**

**Vs.**

**Davinder Kumar**

**.....Respondent**

**Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present :     Mr. Salil Sagar, Senior Advocate with  
                  Mr. Sankalp Sagar, Advocate, for the appellant  
  
                  Mr. Rajesh Bhardwaj, Advocate, for the respondent

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**Rajbir Sehrawat, J. (Oral)**

This second appeal is filed by the plaintiff challenging the judgment and decree dated 4.7.2016, passed by the Additional District Judge, Hoshiarpur, whereby; reversing the judgment and decree passed by the trial Court, the suit filed by the plaintiff/appellant, was ordered to be dismissed.

For the convenience, the parties hereinafter are referred to as the plaintiff and the defendant, as they were mentioned in the original suit.

The facts as involved in the case; in brief; are that the suit in this case was filed by the appellant/plaintiff, claiming that the defendant had taken the shop in question on rent @ Rs.800/- per month and a rent agreement to this effect was executed on 14.7.1999. As per the terms of the agreement, Rs.50/-is to be increased qua the rent after every 2 years. Still further, it was agreed that if the plaintiff would required the shop in question, then he shall give 6 months prior notice to the defendant. Since the plaintiff was to retire from the

government service on 31.10.2010, therefore, vide letter dated 23.10.2010, he informed the defendant to vacate the shop. However, the shop was not vacated. That led the plaintiff to file the suit.

Contesting the claim of the plaintiff, it was asserted by the defendant that since the shop in question was taken by him on rent, therefore, notice issued by the plaintiff under Section 106 of the Transfer of Property Act, 1882, was illegal and unlawful and the suit filed by the plaintiff was not maintainable. The plaintiff had received advance money of Rs.50,000/-as security, which was lying with the plaintiff. The plaintiff intends to breach the terms of the agreement. Hence, the suit deserves to be dismissed.

The trial Court framed the issues as per the pleadings of the parties. The parties led their evidence to substantiate their respective assertions.

After hearing the parties and considering the evidence led by them, the trial Court decreed the suit filed by the plaintiff. Challenging the said judgment and decree, the defendant preferred an appeal before the lower Appellate Court. The lower Appellate Court has reversed the judgment and decree passed by the trial Court and has ordered the suit of the plaintiff to be dismissed. Accordingly, the present appeal has been preferred.

Learned counsel for the appellant/plaintiff has submitted that the learned lower Appellate Court has gone wrong in law in reversing the well reasoned judgment by unnecessarily importing the applicability of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Rent Act') into the case. It is not even disputed by either side that the property is situated in rural area; where the Rent Act has no applicability. Therefore, the suit filed by the

plaintiff could not have been ordered to be dismissed simply on the ground that the strict requirement of bona fide necessity, as prescribed under the Rent Act, was not pleaded or proved in the case. It is further contended by learned counsel for the appellant that the case involved a simpliciter agreement between the parties; qua the lease. Due notice was already given to the defendant for vacation of the property. Since the property was not vacated by the defendant, therefore, the suit for recovery of the possession was rightly filed by the plaintiff. Still further, it is submitted by the counsel that although the defendant might have taken advantage of some of the terms of the written agreement, however, since the said agreement was not registered, despite being a lease for a period exceeding 11 months, therefore, the terms of the said lease cannot be read into evidence. Still further, it is submitted that even as per the pleadings of the defendant, he is staking claim qua the return of advance money of Rs.50,000/-, which was paid as a security. The plaintiff does not have even any objection to return of the said security, provided that the arrears of the lease money are adjusted against the payment made by the defendant; either to the plaintiff or deposited with the Court below in the collateral proceedings, which have been separately initiated by the plaintiff.

On the other hand, learned counsel for the defendant/respondent has also not disputed the fact that the Rent Act, as such is not applicable to the property concerned. It is also not disputed that he was given notice by the plaintiff before termination of the lease. However, learned counsel for the defendant has submitted that since an amount of Rs.50,000/-was paid as advance to the plaintiff; and he had not even mentioned qua that amount in the plaint, therefore, the plaintiff had not come to the Court with clean hands. It is

further submitted that, in any case, even if the possession is to be delivered to the plaintiff, the defendant is entitled to recover that amount of Rs.50,000/-, which was paid as advance money to the plaintiff.

Before proceeding further qua the merits of the case, it deserves to be noticed that vide the previous date order this Court had directed the parties to file their respective claims in terms of money; on account of the lease of the property in question. The plaintiff has filed his calculations showing that he is entitled to get Rs.1,28,500/-from the defendant on account of arrears of rent. Whereas, the defendant while filing his calculations has submitted that an amount of Rs.50,000/-was paid as advance to the plaintiff. Besides this, an amount of Rs.1,35,025/- have been deposited by the defendant before the trial Court; in the collateral proceedings initiated by the plaintiff separately. Hence, in total, an amount of Rs.1,85,025/-has gone out of the pocket of the defendant. Hence, even if the plaintiff is to get the possession of the property back; and even if his claim qua the arrears of rent is taken as correct, then also the defendant is entitled to take back an amount of Rs.56,525/- out of the money which have gone out of the pocket of the defendant.

Having heard learned counsel for the parties and having perused the file, this Court find substance in the argument of learned counsel for the plaintiff so far as the reversal of the findings by the lower Appellate Court is concerned. Even as per the undisputed submissions, the Rent Act was not applicable to the area, where the property is situated. Hence, there was no legal basis for the lower Appellate Court to import the strict requirements of bona fide personal necessity on the part of the plaintiff; into the facts of the present case. So far as the termination of the lease is concerned, it is not even disputed

by the defendant that before filing the suit, the notice of termination of the said lease was duly served upon the defendant. Accordingly, the findings of the lower Appellate Court on this point are reversed; and the findings recorded by the trial Court are restored.

So far as the arrears of lease money are concerned, there appears to be a consensus between the parties that the claim made by the plaintiff in the calculation, so submitted before this Court, can be adjusted from the amounts which have been paid by the defendant directly to the plaintiff and from the amount deposited by the defendant with the Court. If this adjustment is to be made, then the defendant is entitled to take back an amount of Rs.56,525/-out of the total amounts, including the amount of Rs.50,000/-paid directly to the plaintiff, and the amount deposited before the trial Court in the collateral proceedings. The balance amount of Rs.1,28,500/-is to go to the plaintiff. During the arguments, learned counsel for the parties, on instructions from their respective parties, have submitted that they intend to abide by the adjustments mentioned above, and that the matter qua recovery of rent be also set at rest by this judgment only. Learned counsel for the appellant has submitted that if the above said adjustment is followed by the defendant, then he would withdraw his appeal which is pending before the Appellate Court in the collateral proceedings, and would take his claim qua the recovery of lease money as having been settled in toto.

In view of the above, the present appeal is allowed. Judgment and decree passed by the lower Appellate Court qua the possession are reversed and the judgment and decree passed by the trial Court are restored. Accordingly, the plaintiff is held entitled to get back the possession of the suit property.

However, the defendant is granted agreed time of 3 months, starting from today, to hand over the vacant possession to the plaintiff.

So far as the dispute regarding the arrears of lease money and the payments made by the defendant is concerned, the said claim is also settled, in view of the settlement mentioned by the parties hereinabove. Accordingly, it is held that plaintiff would be entitled to an amount of Rs.1,28,500/-. Out of this amount, an amount of Rs.50,000/-has already gone to the plaintiff by way of advance payment as security. He shall retain that amount. Balance amount of Rs.78,500/-, the plaintiff would be entitled to take from the amount which has already been deposited with the Court by the defendant in the collateral proceedings. The remainant amount of Rs.56,525/-would be returned by the Court in the collateral proceedings; to the present defendant. This settlement shall be taken as a final determination of all rights of the parties, so far as the dispute regarding lease money is concerned.

Decree sheet be prepared accordingly.

**(RAJBIR SEHRAWAT)**  
**JUDGE**

**22.1.2020**

*Ashwani*

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|-------------------|---|--------|
| Speaking/Reasoned | : | Yes/No |
| Reportable        | : | Yes/No |