

**RSA-6146-2015(O&M) with
XOBS-40-C-2016(O&M) 1**

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

**RSA-6146-2015(O&M) with
XOBS-40-C-2016(O&M)
Date of decision:24.02.2020**

Subhash Chand Verma

.....Appellant

Versus

Charan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.N.C.Kinra, Advocate for the appellant

**Mr.Deepak Sharma, Advocate for the respondent/
cross objector**

ANIL KSHETARPAL, J.(ORAL)

Defendant-appellant has filed the present appeal against the judgments passed by the Courts below. Defendant-appellant was a tenant in a shop situated in Village Barwala. Landlord after terminating the tenancy filed a suit for possession. Learned Trial Court after appreciating the evidence decreed the suit for handing over vacant possession of the tenanted premises to the plaintiff within two months from the date of passing of the judgment with a decree for recovery of mesne profit at the rate of ₹ 5,000/- per month from the date of judgment i.e w.e.f 16.1.2015. Appellate Court partly accepted the appeal filed by the tenant and reduced the amount of mesne profit to ₹ 1000/- per month w.e.f 2014 till the date of actual vacation of the shop. The Appellate

Court further ordered that if the defendant fails to vacate the shop within one month, he shall be liable to pay mesne profit at the rate of ₹ 2000/- per month as penalty.

On 21.3.2016 after hearing learned counsel for the appellant, following order was passed:-

“Heard.

Learned counsel for the appellant argues that the plaintiff-respondent filed suit seeking ejectment of defendant-appellant from the disputed shop, after termination of his tenancy, vide notice, copy of which was placed on record as Ex.P3. The appellant denied the receipt of notice. In order to prove that the notice was sent, respondent placed on record postal receipts and registered envelope, but that registered envelope was not opened to find whether it contains the notice, if so, what were the contents of that notice. Without opening the registered envelope, the Court recorded the finding that a valid notice was served. The appellant was a tenant in shop of plaintiff/respondent, who sought ejectment of appellant pleading that his tenancy was terminated vide notice Ex.P3. In order to prove the sending of notice, he placed on record copy of the notice (Ex.P3) and also the postal receipts. The registered envelope, in which the notice was sent, was also placed on

record. Before the Courts below, no plea was raised that the registered envelope does not contain the copy of notice Ex.P3. From the suit filed by the plaintiff, the defendant has come to know about the dispute. The plaintiff was required to prove that the notice was sent on the correct address of tenant (appellant). The registered envelope Ex.P3 sent at correct address of appellant was received back with the report of refusal. The appellant did not challenge his address, mentioned on the registered envelope. The first Appellate Court has also taken note of the fact that on seeing the attempt of plaintiff-respondent to eject him, the appellant had also convened a Panchayat in the police post. All this shows that, appellant was aware of the termination of his tenancy by the respondent. The plea, now raised by learned counsel for the appellant, has no merit and is discarded.

The other contention raised by learned counsel for the appellant is that learned Civil Judge (Junior Division), Panchkula, allowed the mesne profits at the rate of ₹5000/- per month from the date of judgment. The first Appellate Court, while modifying the amount of mesne profits to ₹1000/- allowed its recovery from January 2014 i.e. a year prior to the period for which the mesne profit has been

allowed by the learned Civil Judge (Junior Division), Panchkula. This relief has been allowed to the plaintiff-respondent, without there being any appeal or cross-objections filed by him. The first Appellate Court has also put penal clause in the decree, to the effect that shop be vacated within one month failing which, the appellant will be liable to pay mense profits at the rate of ₹2000/- per month instead of ₹1000/- per month. The imposing of penal clause is illegal.

Notice of motion only to this extent for 25.07.2016.”

Learned counsel appearing for the plaintiff-respondent has also filed cross objections. He has also moved an application for permission to lead additional evidence.

Learned counsel for the parties do not dispute that possession of the tenanted premises has already been handed over to the landlord. Keeping in view the aforesaid fact that only dispute which remains is what should be the appropriate amount for use and occupation of the premises. Considering the fact that possession has already been delivered to the landlord, this Court is of the considered view that the present litigation must come to an end as substantive relief for which the suit was filed has already been granted. Learned counsel for the respondent-plaintiff does not dispute that there is a typographical error in the judgment of the learned Trial Court with respect to the date from

Keeping in view the facts and circumstances of the case with the aforesaid modification, the present appeal as well as cross objections are disposed of.

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No