

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

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RSA No. 2214 of 2018 (O&M)

Date of decision : 23.1.2020

Pawan Kumar and another**.....Appellants****Vs.****Joginder Singh and another****.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Harkesh Manuja, Advocate, for the applicant/appellants.

Rajbir Sehrawat, J. (Oral)

This regular second appeal has been filed by the defendants, challenging the judgment and decree passed by the Courts below and the concurrent findings, in the suit for recovery filed by the plaintiffs.

For convenience, the parties hereinafter would be referred to as the plaintiffs and defendants, as they were referred in the original suit.

Shorn of the details, the relevant facts involved in the case are that the appellant/defendants had taken the house on lease from the plaintiffs. The lease money was not being paid regularly by the defendants/appellants. This led to filing of the suit by the plaintiffs for seeking possession from the defendants/appellants; as well as; for recovery of the arrears of the rent alongwith interest.

The parties had filed their respective pleadings and led the evidence. After appreciating the evidence, the trial Court decreed the suit.

However, during pendency of the suit, the premises was already vacated by the defendants, statedly under a compromise. Accordingly, the only dispute which remained to be determined by the trial Court was; the recovery of the lease money/rent from the defendants. Another fact which is not disputed is that the rent was paid by the defendants up to the month of May, 2012, whereas the premises was vacated by him in the month of December, 2012. Although the defendant/appellants herein claimed a compromise with the plaintiffs to the effect that they had waived payment of the rent from June 2012 to December 2012, however, this claim was not found sustainable; by the trial Court. Accordingly, the decree for recovery of the arrears of the rent was passed. The appellants challenged the said judgment and decree passed by the trial Court in further appeal. However, the lower Appellate Court also did not find any merit in the appeal. Accordingly, the same was also dismissed. Hence, the present appeal has been filed.

Learned counsel for the appellants has submitted that the plaintiff/respondents had also filed a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881, on account of default of one of the cheques given by the appellant/defendants towards payment of the rent. That complaint was withdrawn by the plaintiffs after having entered into compromise with the appellants/defendants. The compromise was reduced in writing as well. It is further contended by the counsel that although the said compromise Ex. P-13 does not specifically talk of waiver of the rent by the plaintiffs, however, the same has to be read into the compromise by necessary implication, because the plaintiffs had withdrawn his criminal complaint under Section 138 of the Negotiable Instruments, Act, 1881; by settling his dispute; under which the appellants/defendants had agreed to

vacate the premises.

Having heard the learned counsel for the appellants and having perused the file, this Court does not find any substance in the argument of the appellants. The entire claim of the appellants is based upon compromise i.e Ex. P-13. Accordingly, it is not even disputed that the claim of the appellants is based upon written document. Under the law of evidence, when a fact is subject matter of a written document, any other evidence qua that fact stands excluded. Hence, to see the terms of the alleged compromise, the civil Court, in a Civil Suit, could not have looked beyond the terms of the said written compromise. The said compromise Ex. P-13 does not contain any stipulation qua waiver of the rent by the plaintiffs.

Hence, both the Courts below have not committed any irregularity in coming to the conclusion that there was no agreement between the parties qua waiver of the arrears of the rent.

Although, learned counsel for the appellants has submitted that a necessary implication qua waiver of arrears of rent has to be drawn from the said document; because pursuant to that agreement the defendants/appellants had vacated the premises, however, this Court does not find any substance in this argument as well. Once, there is a written settlement between the parties specifically dealing with the dispute, there is no scope for drawing any inference outside the scope of the written settlement between the parties. Otherwise also, the attending circumstances do not admit any such kind of inference. In the given facts and circumstance of the case; there was not even any compulsion for the plaintiff to agree to such a term, particularly, when he was already before Court of law, with his claim, on civil as well as on criminal side and had advantageous position.

Hence, this argument of the learned counsel for the appellants is also liable to be rejected.

No other argument was raised.

In view of the above, finding no merit in the appeal, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

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Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No