

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

**RSA-183-2021 (O&M)
Date of decision: 17.02.2022**

TEHAL SINGH

...Appellant

V/S

MANJIT KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. M.S. Dhami, Advocate,
for the appellant.

Mr. Tanvir S. Attariwala, Advocate,
for the respondent.

(Presence marked through Video Conference)

ARUN MONGA, J. (ORAL)

CM-1323-C-2021

Application is allowed, as prayed for subject to all just exceptions.

Main case

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendant is in second appeal before this Court assailing the trial Court judgment and decree dated 11.01.2019, as upheld by the learned First Appellate Court vide its judgment and decree dated 04.11.2019.

3. Briefly stated, facts as noticed by Courts below are plaintiff Ms. Manjit Kaur allowed the defendant to use and occupy shop in question @ Rs.1300/- per month as a licensee for the period w.e.f. 30.08.2013 to 30.07.2014 vide licence deed dated 30.08.2013. However, the plaintiff terminated and cancelled the license deed dated 30.08.2013 by way of issuing legal notice dated 26.08.2016. Accordingly, defendant was called

of his articles therefrom within a period of one month from the date of issuance of legal notice, but he did not. Hence, the civil suit etc.

4. Based on the rival pleadings, following issues were framed:

1. Whether plaintiff is entitled to mandatory injunction as prayed for? OPP

2. Whether the suit is not maintainable in its present form? OPD

3. Whether the plaintiff is barred by her act and conduct to file the present suit? OPD

4. Whether the suit is bad for non-joinder of necessary parties? OPD

5. Whether the suit not properly valued for the purpose of court fee and jurisdiction? OPD

6. Relief.”

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, issue No.1 was decided in favour of the plaintiff. Issues No. 2 to 5 were decided against the defendant.

7. First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

8. Relevant part of First Appellate Court judgment, for ready reference, is as below:

XXX

XXX

“14. Further, as argued by counsel for the appellant that PW-1 Pavitar Singh Bhogal do not know whether his mother Manjit Kaur had been receiving the rent from the appellant or license fee and he do not have any personal knowledge of matter in between the parties and his evidence cannot be read, this Court is of the view that since there is clear cut clause no.6 in the license deed Ex.P-6 that on the expiration of the license on 30.07.2014, the present appellant will vacate the shop even without serving the notice and at the same time, the present appellant himself has admitted the execution of the

license deed Ex.P-2, as such, even if PW1 Pavitar Singh Bhogal had stated that he cannot disclose whether his mother had been receiving the rent from the present appellant or the license fee, the same is immaterial in view of the above discussion. Thus, the supra authorities, so cited by the counsel for the appellant, are not at all applicable in the case in hand. Thus, this Court feels that the learned Lower Court after appreciating the evidence led by the parties in a correct perspective manner, had rightly decreed the suit of present respondent Manjit Kaur.”

9. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

11. No question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. Furthermore, this Court passed the following order on 31.08.2021:-

On 20.04.2021, the following order was passed:-

“Counsel for the appellant submits that he has instructions that the appellant would vacate the premises provided a reasonable time of one year is given to vacate the shop, since he is running a Medical Store in the same and prior permissions would be required for shifting. He submits that the necessary undertaking would be filed on or before the next date, in which the appellant shall also give undertaking to clear all the arrears of license fee.

Let, necessary affidavit be filed on or before the next date of hearing.

Adjourned to 11.05.2021.”

In compliance of the said order, affidavit dated 26.08.2021 has been placed on record, relevant portion of which reads thus:-

“2. That the deponent/ appellant undertake to vacate the premises/ disputed shop as described in the head note of trial court judgment dated 11/01/2019 as per order passed by this Hon'ble High Court.

3. That the deponent/ appellant has cleared up to date all the arrears of license fee relating to premises/ disputed shop as described in the head note of trial court judgment dated 11/01/2019. The deponent/ appellant will continue to pay the license fee like earlier to the owner of demise shop/ property in future till the time he is allowed to continue in the possession of said premises/ shop by this Hon'ble High Court.”

Counsel submits that keeping in view the above, he would vacate the premises by 31.08.2022 and he further also submits that the license fee shall be paid by the 7th of each month to the respondent.

Keeping in view the above, notice of motion be issued to the respondent for 24.01.2022.

In the meantime, dispossession shall remain stayed.”

13. On 24.01.2022, in civil miscellaneous application, this Court passed the following order and interim stay dated 31.08.2021 was vacated:

Reply to the application has already been filed. A perusal of affidavit dated 26.08.2021 would reveal that the non-applicant/ appellant has taken following unequivocal stand:-

“2. That the deponent/ appellant undertake to vacate the premises/ disputed shop as described in the head note of trial court judgment dated 11/01/2019 as per order passed by this Hon'ble High Court.

3. That the deponent/ appellant has cleared up to date all the arrears of license fee relating to premises/disputed shop as described in the head note of trial court judgment dated 11/01/2019. The deponent/ appellant will continue to pay the license fee like earlier to the owner of demise shop/ property in future till the time he is allowed to continue in the possession of said premises/ shop by this Hon'ble High Court.” (Emphasis supplied)”

In course of the hearing today, on a pointed court query, learned counsel appearing for the non-applicant/ appellant submits that as on the date of aforesaid affidavit he was given the instructions by his client that he had cleared all the arrears of license fee as on the date of deposing the affidavit. Accordingly, aforesaid affidavit was drafted in his office and filed before this Court. However, learned counsel for the applicant/respondent confront by pointing out that money was first offered only after misleading this Court and obtaining an interim order dated 31.08.2021 for the first time concededly on 07.01.2022, that too by purportedly by a registered post letter. Not knowing what are the contents, registered mail was not accepted by applicant.

Confronted, learned counsel for the non-applicant/appellant submits that he was under the bona fide impression, as per the instructions of his client, that money had indeed been paid as on the date of grant of the interim order.

Be that as it may, the non-applicant/appellant seems to have misled his own counsel only to obtain interim order from this court. A person indulgent in concealment and/or over-statement, apart from not approaching the Court with clean hands, does not deserve any leniency.

Ordinarily, this Court would have taken a serious view of the matter for filing false affidavit and proceeded for perjury against the appellant, but for the request of learned counsel for the appellant a lenient view thereof is being taken, however, the interim stay dated 31.08.2021 is vacated forthwith, with consequences to follow.

The application stands disposed of, accordingly.”

14. Perusal of the above said orders reveal that afore conduct of the appellant does not deserve any indulgence by this Court.

15. In any case, as an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

16. Pending application/s, if any, shall also stand disposed of.

17. No order as to costs.

17.02.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No