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

**RSA-519-2020 (O&M)**

**Date of Decision:09.08.2022**

Karan Bhasin

**.. Appellant**

**Vs.**

Piyush and others

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. Govind Chauhan, Advocate for applicant-appellant.

Mr. Rajesh Bansal, Advocate for the respondents.

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**Manoj Bajaj, J. (Oral)**

**CM-5121-C-2022 and  
CM-5122-C-2022**

These applications have been filed by applicant/appellant under Order XLI Rule 5 CPC read with Section 151 CPC for stay of the execution of the impugned decree dated 14.12.2018 passed by appellate Court. The other application has been filed under Section 151 CPC for preponing the date of hearing in the main appeal, which is fixed for hearing on 10.01.2023.

Learned counsel has submitted that the appellate Court has erroneously reversed the decree passed by the trial Court, and decreed the suit of the plaintiffs by ignoring the material evidence and though the notice of motion has been issued by this Court in this appeal, but the same is not taken up for hearing and on the other hand, the executing Court is proceeding with the execution. In this regard, he has produced the copy of the order dated 26.07.2022 passed by Addl. Civil Judge (Sr. Divn.),

Kurukshetra, whereby warrants of arrest against judgment debtors have been issued for non-execution of decree. He prays that the execution proceedings be stayed and the date of hearing in the main appeal be also preponed.

Notice in the applications.

At this stage, Mr. Rajesh Bansal, Advocate for the respondents, accepts notice and states that he has no objection, if the date of hearing in the appeal is preponed.

In view of the above, the application for preponement is allowed and date of hearing in the main appeal is preponed to today. The other application for staying the impugned judgment and decree is disposed of as infructuous.

### **Main case**

Appellant/defendant No.1 has preferred this regular second appeal to challenge the judgment and decree dated 14.12.2018 passed in Civil Appeal No.367 of 2015 by Addl. District Judge, Kurukshetra, whereby the judgment and decree dated 31.07.2015 passed in Civil Suit No.90 of 2014 by Addl. Civil Judge (Sr. Divn.), Kurukshetra, partly decreeing the suit for recovery filed by plaintiffs/respondents, was reversed and their suit was decreed.

Briefly, the facts leading to the appeal are that the plaintiffs claiming themselves to be owners of the suit property situated at Red Road Kurukshetra, had executed a lease deed dated 06.09.2012 in favour of the defendants for a period of three years i.e. w.e.f. 01.12.2012 to 30.09.2015 on a monthly rent of Rs.1,50,000/-. As per terms and conditions, the rent was to be paid to the plaintiffs within 7 days of every month in advance and

in case of delay, Rs.500/- per day would be chargeable from the defendants. As per pleadings, the defendants failed to pay the rent for the months of October-November, 2012, as well as from January to April, 2014 and are in arrears of total Rs.9,00,000/- along with Rs.6,75,000/- (penalty), Rs.50,946/- as municipal tax and Rs.36,578/- towards electricity charges. The plaintiffs served a legal notice dated 21.02.2014 upon defendants asking them to make the payment of Rs.16,62,524/- and in response, the defendant No.1 sent his reply dated 25.02.2014. The plaintiffs made various requests to the defendants to make the payment of arrears of rent etc., but they have refused to make the payment, therefore, on this cause of action, the plaintiffs filed a suit for recovery of Rs.16,62,524/-.

Upon notice, defendants had filed their joint written statement to contest the suit and raised preliminary objections relating to maintainability, locus standi, cause of action, concealment of facts etc. and on merits, the relationship between the parties as well as rate of rent have not been disputed. The defendants pleaded that they had paid the rent for the months of October-November, 2012 by way of a cheque amounting to Rs.3,00,000/- and the same was encashed in favour of plaintiff No.1 on 24.07.2012. They further claimed that the rent for the month of January, 2014 was also paid in cash and another sum of Rs.1,50,000/- was paid through a cheque drawn at Corporation Bank, Bhikaji Cama Place, New Delhi, which also stood credited in the account of the plaintiffs. The issuance of notice by the plaintiffs was not disputed and it was explained that the demand of rent is illegal. According to the defendants, they admitted their liability to pay the rent only for a period of tenancy, which came to end on 31.05.2014, when the premises was vacated and its

possession was handed over to the plaintiffs. In the end, it was prayed that the suit be dismissed.

After completion of the pleadings of the parties, the trial Court framed in all five issues and thereafter, parties adduced their respective evidence. The trial Court upon considering the pleadings, evidence and material on record, partly decreed the suit for recovery vide judgment and decree dated 31.07.2015 and held that plaintiffs are entered to the decree for recovery of municipal tax of Rs.50,946/- and electricity charges of Rs.36,578/-.

Dissatisfied with the judgment and decree passed by the trial Court, plaintiffs preferred appeal bearing No.367 of 2015 before the first appellate Court and the same was accepted through impugned judgment and decree dated 14.12.2018. Hence, this regular second appeal.

Learned counsel for the appellant has argued that the judgment and decree passed by the trial Court is well reasoned and based upon the admission of the plaintiff No.1 Piyush, therefore, the interference by the Appellate Court is unjustified. He submits that mainly the suit by the plaintiffs relates to the arrears of rent for six months i.e. October-November, 2012 and January to April, 2014 and the said rent already stood paid to the plaintiffs and this material fact has been admitted by plaintiff No.1 Piyush during his cross-examination. He submits that considering the same, the trial Court passed the decree only in respect of the dues relating to the municipal tax and electricity charges, but the Appellate Court in appeal filed by the plaintiffs accepted their claim by ignoring the evidence on record and decreed the suit of the plaintiffs. Learned counsel has argued that the approach adopted by the appellate Court is erroneous in law, therefore, the

impugned judgment and decree deserves to be set aside.

On the other hand, while controverting the arguments, learned counsel for the respondents has argued that if the defendants have made the payment, in respect of the arrears of rent, it was for them to prove the same, but they have not produced any receipt relating to the payment of arrears of rent. He has argued that the appellate Court has rightly exercised the jurisdiction in decreeing the suit because as per the stand of the defendants in their written statement, they have only claimed that the rent of October-November, 2012 and January, 2014 was paid to the plaintiffs. Learned counsel has further argued that even in the reply sent by the defendants, they have not claimed that the entire arrears of rent have been paid by them, therefore, the judgment and decree passed by the trial Court was against the evidence. He prays that the present appeal be dismissed.

At this stage, learned counsel for the appellants has argued that the suit was filed on 24.04.2014, whereas the premises in question was vacated by 31.05.2014 and the rent for the said month was also given to the plaintiffs. Learned counsel has produced the cross-examination of plaintiff No.1 Piyush to rely upon his admission relating to the payment of arrears of rent.

Heard. Primarily, the appeal involves the following substantial question of law:

*“Whether the first appellate Court fell in error of law by brushing aside the vital admissions suffered by plaintiffs, while setting aside the impugned judgment and decree dated 14.12.2018?”*

After hearing the learned counsel and considering the evidence on record, this Court finds that the plaintiffs had filed the suit for recovery based upon arrears of rent of six months, apart from other charges, penalty etc. and the relationship between the parties, as well as rate of rent are not

disputed. The controversy in this regular second appeal revolves around the alleged admissions suffered by the plaintiffs during cross-examination which has been accepted by the trial Court, whereas the appellate Court proceeded to ignore it by observing that the defendants have failed to prove the payment of rent as no receipt against the said payment has been produced by them. Plaintiff-Piyush, in evidence filed his affidavit dated 27.11.2014 (Ex. PW-1), wherein he has given the details of the lease deed, its terms and conditions as well as the arrears of rent etc., to be paid by the defendants, and also referred the legal notice of demand dated 21.02.2014 and reply dated 25.02.2014 sent by defendants.

During cross-examination, it was stated by PW-1 that they had received a sum of Rs.3,00,000/- as security before giving the property on lease, which was refundable and adjustable towards rent. This witness stated that before vacating the property, the rent for the months of October-November, 2012 and January to April, 2014 also stood received. Thus, this vital admission on the part of the plaintiffs shows that the judgment and decree passed by the trial Court is based upon proper appreciation of evidence, whereas the appellate Court erroneously disturbed it only on the ground that the defendants have failed to prove the payment by producing the receipts. Notably, the admission is the best evidence, which can be used against a party, so there was no necessity for the defendants to adduce any evidence on a fact, which is not even controverted by the plaintiffs.

Further, the argument of the learned counsel for the respondents that in response to their notice dated 21.02.2014 Ex. P-1, the reply dated 25.02.2014 (Ex. P-4) by defendants, there is no mention that the entire arrears of rent have been cleared, is also without any merit, as the

reply was sent in February, and there was no occasion for defendants to plead that rent for the months of March to April, 2014 has been paid. At this juncture, it is important to note the part of the reply (Ex.P-4), which is extracted in the plaintiff's affidavit (Ex.PW-1), and it reads as under:

*“I acknowledge the receipt of your notice dated 21.02.2014 and wish to inform you that I am already in the process to resolve the matter. I have been in regular contact with Mr. Piyush and his father and reached to an agreement to pay the dues with a notice period of three months. I, therefore, request you to give me some time so that I can pay all the dues as per our mutual agreement and solve the matter amicably.”*

A reading of the above shows that the defendants at the very first instance responded with their stand to clear the arrears of rent and offered for settlement. In the affidavit, the plaintiff has stated that the rent for the month of May, 2014 has also been received, and there is clear admission in his cross-examination that rent for the months of January to April, 2014 is received. At this stage, this Court is constrained to observe that the interference by the Appellate Court is justified only when the findings returned in the impugned judgment and decree are not based upon proper appreciation of evidence on record, and merely because the evidence on record suggests possibility of another view, it would not be appropriate for the Appellate Court to substitute the impugned findings with the alternative view. Thus, the judgment and decree passed by the appellate Court is against the evidence on record and deserves to be set aside.

Resultantly, the appeal succeeds the judgment and decree dated 14.12.2018 passed by the first appellate Court is set aside and the judgment and decree dated 31.07.2015 passed by the Addl. Civil Judge (Sr. Divn.),

Kurukshetra is restored.

09.08.2022  
*Jasmine Kaur*

(MANOJ BAJAJ)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes    No  
Yes    No