

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

**RSA NO. 1387 OF 2021 (O&M)
DATE OF DECISION: 28.01.2022**

M/s Amartex Industries Limited and another ...Appellants

Versus

M/s Akash Educational Services Limited and others ...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. V.K. Sachdeva, Advocate,
for the appellants.

(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

MAIN CASE

For convenience, parties herein are described as per recital before this Court.

2. Having suffered concurrent adverse findings by both the Courts below, the plaintiffs are in second appeal before this Court assailing the trial Court judgment and decree dated 27.09.2019, as upheld by the First Appellate Court, vide its judgment and decree dated 09.08.2021.

3. Briefly stated, the facts as noted by the trial Court are that plaintiff No.1 is the absolute owner in possession of SCO No. 218, Sector-14, Panchkula and plaintiff No.2 is owner in possession of SCO No. 219, Sector-14, Panchkula. Plaintiffs are running a Restaurant and Banquet under the name and style of M/s Gazab India & Grand Maharaja on the ground floor and basement of both the SCOs. Defendant No.1 is

the limited company having its registered office at SCO No. 18, Sector-9/D, Madhya Marg, Chandigarh. Defendant No.2 is a corporate branch office of defendants which has taken the first floors of premises of plaintiffs on rent. Defendants No.3 and 4, being Managing Director and Deputy Director of respondent No.1 respectively, are responsible for the day to day affairs of defendants No.1 and 2. The entire first floors of both the SCOs were let out to the defendants through registered lease deed dated 09.10.2013 for a period of nine years, on monthly rent of Rs.2,65,000/- excluding water and electricity charges. The defendants caused damage to the property in question and they were served with legal notice dated 09.06.2016. The defendants filed reply to the same and denied all the allegations leveled in the legal notice. Hence, the suit was filed.

4. Upon notice, defendants appeared and filed written statement taking preliminary objections regarding improper valuation of suit; suppression of important facts; and plaintiffs not coming to the Court with clean hands. On merits, it was submitted that vide letter dated 14.05.2016 defendants requested the plaintiffs to repair/restructure the main structures damaged due to fire incident which took place on 11.05.2016. The plaintiffs did not respond to the said letter.

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

i) *Whether the plaintiff is entitled to damages as prayed for? OPP*

ii) *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

iii) *Whether the plaintiff has concealed true and material facts? OPP*

iv) *Whether the suit of the plaintiff is barred by limitation? OPD*

v) *Relief.*

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

7. On appraisal of evidence *vis-à-vis* pleadings, Issue No.1 was decided against the plaintiffs. Issues No.2 and 3 were decided in favour of the defendants. Issue No.4 was treated as given up. The suit of plaintiffs was dismissed by the trial Court.

8. Feeling aggrieved, both the plaintiffs preferred appeal which was also dismissed being barred by limitation.

9. I have heard learned counsel and perused the judgments of both the Courts below.

Findings rendered by the trial Court are *inter alia* premised as below:

“19. Therefore, it was incumbent upon the plaintiffs to firstly prove the negligence on the part of the defendants so as to make out the case for their entitlement to any damages. The plaintiffs have not brought on record any report of any government department to show that the defendants were negligent in the occupation and usages of the tenanted premises. The plaintiffs have come with the bald averments that the defendants had installed the electricity fittings which ignited the fire and caused huge loss to the plaintiffs and the defendants. The defendants have brought on record the report of P.S. Sector-14, Panchkula as Ex. D7 which clearly mentions that no any written complaint was made by the owners of the showrooms and the reason of fire could not be ascertained. This clearly shows that the plaintiffs did not bother to initiate any legal action against the defendants immediately when the fire broke out rather the plaintiffs have come up with the present suit after a lapse of more than two years. This shows that the plaintiffs were not sure about the fault of the defendants which resulted in fire.

20. The absence of any instant report by the plaintiffs soon after the ignition of fire and the damage caused by it creates a doubt on the veracity of the version of the plaintiffs. The plaintiffs have also not got on record any correspondence made between them and the defendants regarding the

negligent wiring or any other negligent act on the part of the defendants. The absence of any action on the part of the plaintiffs before the ignition of fire and soon after the ignition of fire depicts that the plaintiffs do not have the case against the defendants.

21. It is further relevant to mention that the plaintiffs have filed the instant suit for claiming damages for the loss suffered by the alleged negligent conduct of the defendants. However, the plaintiffs have failed to quantify the damages which they have suffered by such negligent act and conduct of the defendants rather the plaintiffs have preferred to file the instant suit merely on the unsubstantiated pleadings and such pleadings also have not been supported by any cogent evidence to prove that there was any work got done by the plaintiffs for the repair, if any of the tenanted premises in question. Further, the plaintiffs have merely mentioned an amount of Rs.25,76,000/- but there is nothing on record in the form of evidence of the plaintiffs to prove that the plaintiffs really incurred any amount of Rs.25,76,000/- or any other amount towards the repairs. Therefore, it can safely be said that the present suit is nothing but a bunch of vague allegations against the defendants with an after thought story to take money from the defendants through the Court by way of the instant suit.

22. In view of the above discussion, this Court is of the considered view that the plaintiffs are not entitled to any damages. Hence this issue is decided against the plaintiffs.”

10. To my mind, judgment of the trial Court under challenge has been rendered after due and correct appreciation of evidence adduced by the respective parties.

11. Though I am not in agreement with the reasons given by the First Appellate Court while dismissing the appeal on the ground of limitation. The same ought to have been entertained on merits. Be that as it may, since the reasons given on merits by the trial Court are sound and cogent, I am of the view that had the First Appellate Court entertained the appeal on merits, the outcome would have been still the same.

12. Concededly the plaintiffs do not dispute that the fire in the premises took place causing damage not only to the landlord/plaintiffs but also to the tenant/defendants. It does seem to be a case where plaintiffs are

trying to take advantage of the outbreak of fire due to unfortunate circumstance. On one hand, the plaintiffs have failed to establish that there was any contributory negligence by the tenant/defendants, as has been rightly observed by the trial Court, on the other hand, yet they seek damages from the defendants to get unduly enriched due to accidental fire. As already observed damage was suffered by the tenant/ defendants also. Needless to say, once it is a case of accidental fire not only the owner but the occupier also suffered the consequences.

13. In the premise, the trial Court rightly dismissed the suit filed by the landlords seeking damages against the tenants. No grounds for interference by this Court are made out.

14. There seems no perversity or illegality in the findings of facts returned by the trial Court dismissing the first appeal, though on technical ground of limitation. No interference is thus called for to disturb the impugned orders of dismissal of suit and the first appeal. In this second appeal, no ground worthy of interference is made out.

15. Furthermore, 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.

16. In view of my discussion above and the reasons aforesaid, the instant appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by the learned Courts below are upheld.

17. No order as to costs.

CM-5514-C-2021

In view of dismissal of the appeal on merits, the application stands disposed of accordingly.

JANUARY 28, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No