

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

RSA-2852-2012 (O&M)

Reserved on: 14.11.2022

Date of pronouncement: 16.11.2022

Parlhad Bhagat

...Appellant

Versus

The Phagwara Primary Cooperative Land Mortgage Bank Ltd.,
and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Mohit Jaggi, Advocate for the appellant.

Mr. J.S. Thind, Advocate for the respondents.

H.S. MADAAN, J.

Appellant Parlhad Bhagat-plaintiff in the civil suit filed by him against defendants the Phagwara Primary Cooperative Land Mortgage Bank Ltd., Model Town, Phagwara and its Manager, seeking recovery of Rs.64,056/- was unsuccessful before the trial Court of Addl. Civil Judge (Sr. Divn.) Phagwara, who dismissed his suit, vide judgment and decree dt. 27.02.2010 as well as before Appellate Court of District Judge, Kapurthala, which had dismissed the appeal filed by him, vide judgment dt. 03.10.2011, has now knocked at the door of this Court by way of filing the present Regular Second Appeal, praying that the same be accepted; the impugned judgments passed by the Courts below be set aside and the suit for recovery brought by him be decreed.

2. Briefly stated facts of the case are that plaintiff Parlhad

Bhagat had filed the suit in question, contending that he was owner/landlord of building bearing No.18-C, Model Town, Phagwara which was rented out to defendants on monthly rent of Rs.2190/-; earlier the rate of interest was Rs.700/- per month, however, subsequently, it was enhanced to Rs.2190/-; the plaintiff had filed an ejectment petition where the defendants had tendered rate @ Rs.700/- per month instead of Rs.2190/- per month, in that way, the tender was short; the Rent Controller, Phagwara had passed an ejectment order against the tenants holding tender was short, in that way, the plaintiff was legally entitled to recover a sum of Rs.64056/- from the defendants because the defendants had tendered rent @ Rs.700/- per month, leaving balance of Rs.1490/- per month w.e.f. 21.11.1984 to 20.11.1987, amounting to Rs.53040/- and interest @ 12% p.a., amounting to Rs.10416/-, total Rs.64056/-. According to the plaintiff, although, he was entitled to recover the balance rent from 01.04.1983 to 20.11.1984 but said claim was not within time; according to the plaintiff, the defendants had agreed to enhance the rent from Rs.700/- per month to Rs.2190/- per month, vide resolution no.7 dated 20.08.1983. According to the plaintiff, when the defendants failed to make the payment of the due amount, he brought the suit in question.

3. On notice, the defendants appeared and filed written statement, contesting the suit, raising various legal objections. On merits, contending that the defendants had been in possession of the building as tenants since the year 1971; originally the rate of rent was Rs.150/- per

month but subsequently it was enhanced to Rs.300/- per month and then to Rs.700/- per month; no resolution was passed by the defendants to increase the rent; resolution No.7 is just a piece of waste paper and it was not passed legally, since under provisions of Punjab Cooperative Societies Rules, no resolution can be passed by the managing committee until and unless the agenda to that extent has been circulated amongst the committee members, therefore, the alleged resolution was illegal, ineffective, not binding upon the defendants and it was never confirmed. According to the defendants, the rate of rent had been Rs.700/- per month and it was not enhanced to Rs.2190/- per month. Denying the remaining allegations, the defendants prayed for dismissal of the suit.

4. Plaintiff filed replication, controverting the allegations in the written statement, whereas reiterating the averments of the plaint.

5. From the pleadings of the parties, following issues were framed by the trial Court:-

- (1) Whether the plaintiffs is entitled to recover Rs.64056/- (53640/- as principal plus Rs.10416/-) as interest at the rate of 12% p.a., as claimed? OPP
- (2) Whether the suit is liable to stayed? OPD
- (3) Whether no cause of action has arisen to file the suit? OPD
- (4) Relief.

6. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the trial Court decided issue No.1 in favour of the defendants against the plaintiff; issue No.2 was decided as having become redundant in view of the order dt. 29.05.2007 passed by this Court in CR-2570-1991; issue

No.3 was decided against the defendants in favour of the plaintiff. As a result of findings on the issues, suit of the plaintiff was dismissed as mentioned above.

7. I have heard learned counsel for the parties besides going through the record.

8. The moot question to be seen is as to whether the rate of rent was enhanced from Rs.700/- per month to Rs.2190/- per month. The plaintiff while asserting so is relying upon resolution No.7 dated 20.08.1983 said to have been conveyed to him by the defendants for taking his consent. According to the plaintiff, certain alterations had been made by him in the demised premises in the months of January, February, 1983 at request of defendants, for that reason, the rate of rent was enhanced. The plaintiff is further relying upon the proceedings with regard to ejectment petition filed by him before the Rent Controller, Phagwara where the rate of rent was assessed as Rs.2190/- per month. The ejectment order passed in those proceedings was exhibited as Ex.PA by the plaintiff, whereas, the defendants are stoutly denying passing any legal and valid resolution as alleged by the plaintiff thereby increasing the rate of rent to Rs.2190/- per month.

9. DW-1 Tarsem Singh, Manager of the Primary Coop. Land Mortgage Bank Ltd., had brought the record of managing committee, stating that as per rules, agenda is issued to the members of managing committee for clear 15 days and the intimation of agenda is sent to all the members of the managing committee under postal certificate. He stated that in resolution No.7 dated 20.08.1983, there is no mention of the

circulation of agenda prior to the meeting. He further stated that resolution passed in one meeting is to be confirmed in the next meeting and resolution in question was not confirmed and as a matter of fact, only resolution No.6 was confirmed whereas resolution No.7 was rejected inasmuch as the Manager had given a special note that the resolution No.7 was illegal under Rule 80 sub Clause 2 of the Punjab Coop. Societies Rules, 1963. He proved copies of resolutions in that regard as Ex.DW1/A and Ex.DW1/B.

10. Furthermore, DW-2 Gurnam Singh, Manager of defendant No.1-Bank stated that he was posted as such in the year 1975 and continued till the year 1987. He also deposed on similar lines as that of DW-1, further adding that no agenda was issued with regard to resolution No.7, passed by the managing committee, copy of which being Ex.DW1/A. This witness stated that resolution No.7 was written by him and signed by Charan Singh, President of defendant-Bank and he (this witness) had given a note in his hand on the said resolution at page No.55 that resolution No.7 could not be discussed as it was illegal under Rule 80 sub Clause 2 of the Punjab Coop. Societies Rules, 1963. Photocopy of the endorsement being Ex.DW2/1. Going further this witness stated that the said resolution was rejected in the next meeting held on 21.09.1983 whereby item Nos.1 to 6 were confirmed whereas item No.7 was rejected by the committee. He stated that the rate of rent had been Rs.700/- per month and it was not increased there from. No addition or alteration were made in the premises of the bank. The defendants had been paying rent to

the plaintiff/landlord @ Rs.700/- per month by way of cash against proper receipt and some time by way of cheque in the name of the landlord.

11. Thus, it clearly comes out that the rate of rent was neither increased to Rs.2190/- by defendants nor payment at that rate was ever made by them to the plaintiff. Resolution No.7 on which the plaintiff is relying upon had been rejected by the committee in the next meeting. Therefore, it cannot be made basis for claim of the plaintiff with regard to increase in the rent. The rent can certainly be not increased in such a manner by a cooperative society without passing of a legal and valid resolution. Therefore, the rate of rent is to be determined on the facts and circumstances of the case and evidence adduced by the parties and any observation made by the Rent Controller, Phagwara for the limited purpose of deciding the ejectment petition is certainly not the final verdict on the subject. The findings recorded by the Courts below in that regard rejecting the claim of the plaintiff seeking recovery of rent at the enhanced rate of Rs.2190/- per month are proper, appropriate and not to be differed with.

12. No substantial question of law or fact arises in this case. The appeal is found to be without merit, and is dismissed accordingly with costs.

16.11.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No