

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

RSA-876-2015(O&M)

Date of decision: 08.08.2022

Versha Sood

....Appellant

Versus

Shiv Nandan Lal Arora and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Jain, Advocate for the appellant

Mr. Sandeep Khunger and

Ms. Nitika Jaura, Advocates for respondent no.1 to 3

ANIL KSHETARPAL, J (Oral)

The appellant herein is a tenant. The suit for possession by way of his eviction filed within a period of 5 years from the date of issuance of a sewerage connection has been decreed. As per the provisions of East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as '1949 Act'), the new building is exempt from applicability of the 1949 Act for the period of first five years. The landlord filed a suit after terminating the lease deed by sending a notice. The appellant, while defending did not dispute the tenancy, however, he claims that there was renewal of tenancy in terms of some settlement.

Both the courts on appreciation of evidence have decreed the suit.

Heard the learned counsel representing the parties and with their able assistance perused the paperbook. Learned counsel representing the appellant contends that the appellant was never served

with a notice terminating the tenancy as the appellant was not available. He further contends that at one point of time the defence of the appellant was struck off. However, subsequently, in CR-929-2008 it was set aside. He submits that the appellant has not been granted an opportunity to cross examine the witness. Therefore, the judgments passed by the courts below are not sustainable.

On the other hand, learned counsel representing the plaintiff has submitted that the plaintiff examined four witnesses on his behalf on 16.03.2006. However, the court found that the counsel representing the defendant though appeared but shown his inability to cross-examine the witness. Thereafter, the court also noticed that the defendant has failed to pay the cost for the previous adjournment. While discharging the witnesses as their examination in chief was already recorded, the court struck off the defence of defendant. He further contends that on 17.04.2006 another witness was examined but the defendants did not come forward to cross examine the witness also. He further submits that in CR-929-2008, the High Court granted only one opportunity to the appellant to lead his entire evidence but no opportunity to cross examine the witnesses was granted. He further submits that an application for recalling as already examined witnesses filed by the appellant was withdrawn on 18.08.2008.

In a suit for possession of such nature, the plaintiff is only required to prove that he has terminated the tenancy by sending a notice. The strict provisions of Section 106 of Transfer of Property Act, 1882, are not applicable as it has not been extended to the areas of Punjab,

Haryana and UT, Chandigarh. Therefore, the plaintiff was only required to prove that it was a new building to which provisions of East Punjab Urban Rent Restriction Act, 1949 are not applicable. The sewerage connection of the building was issued on 30.08.1994 whereas the suit was filed on 22.07.1999. Thus, the building could not have been occupied before issuance of a sewerage connection. The property was given on lease on 01.01.1995.

As regards, the argument of the learned counsel that there was a subsequent settlement, it may be noted that no fresh lease deed was ever executed between the parties. The previous suit filed by the plaintiffs was dismissed in default. Thus, there was no fresh contract between the parties.

As regards, the next argument of the learned counsel, it may be noted that the notice terminating the lease was sent on the address of the tenanted premises, which is in the possession of the appellant. Three copies of the notices were sent. On two of the given addresses, the Postman reported that on repeated visits, the appellant was not available while on the third address, it has been reported that the appellant has refused to accept the notice. Hence, the appellant would be deemed to have been served with a notice. In any case, the suit was filed on 22.07.1999. The suit itself is a sufficient notice to the opposite party.

As regards the next argument of the learned counsel representing the appellant, it may be noted that while deciding CR-923-2008, the High Court never granted opportunity to the appellant to cross-examine the plaintiff's witnesses. He was just given an opportunity to

produce his evidence but no opportunity to cross examine the already examined witnesses was granted. Moreover, an application filed by the appellant for recalling the witnesses was withdrawn on 18.08.2008 by the defendant. Additionally on reading of the order dated 16.03.2006, it is evident that the defence of the appellant was struck off as his counsel never came forward either to cross examine the witness or to pay costs despite having been instituted by the court. Thus, the appellant has been trying to delay the proceedings in the suit by adopting all plausible means. Furthermore, on 17.04.2006 the plaintiff examined another witness i.e Neeraj Arora. The correctness of the aforesaid order was never assailed.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

08.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE