

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA-5358-2018 (O&M)
Date of decision : 18.07.2022

Prabha Sehgal and another

...Appellants

Versus

M/s Ganpati Balaji Enterprises and another

....Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Puneet Jindal, Sr. Advocate with
Mr. Sanjiv Ghai, Advocate
for the appellants.

Mr. Amit Jain, Sr. Advocate with
Mr. Keshav Pratap, Advocate,
Mr. Karambir Singh Choudhary, Advocate,
Ms.Tanu Priya Singh, Advocate and
Mr. Vishal Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. The appellants herein are the landlords, whereas, the respondents are the tenants. The relationship between the parties as landlords and tenants is not in dispute. The landlords filed a suit for

possession after terminating the tenancy. They claimed that in view of sub-section (3) of Section 1 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter be referred to as 'the 1973 Act'), a newly constructed building is exempt from applicability of the 1973 Act for a period of 10 years. On the other hand, the respondents claim that the building was completed in the year 1999, therefore, the 1973 Act is applicable.

3. Hence, the question arises as to the relevant date on which the construction of the building was completed. Section 1(3) provides that a new building shall be exempt from the applicability of the Act of 1973. In these circumstances, the date of completion of the building assumes significance.

4. The trial Court held that the building was completed after 2005, therefore, the Act was not applicable. However, the Appellate Court reversed the finding and held that the plaintiffs failed to prove that the building was completed in the year 2005.

5. The premises in dispute is House No.246, Sector 2, Panchkula, constructed on a 350 square yards plot. Its a single story house consisting of three bed rooms with attached toilets, lobby, drawing room and a small courtyard.

6. When the landlady appeared in evidence as PW1, she stated that in order to avoid the payment of penalty, initially, some temporary building was constructed. However, the same was demolished and in the year 2005, a new building was constructed. In order to prove her case, she has produced Ex.PW2/A, a certificate issued by the Estate Officer,

HUDA, Panchkula, certifying that construction of Plot No.246, Sector 2, Panchkula, has been completed upto plinth level. The Sub Divisional Engineer has certified that the measurement has been checked at the site and found to comply with the demarcation and zoning plan of the sector and the construction up to plinth level is in accordance with the sanctioned plan. In common parlance, it is known as DPC certificate (Damp Proof Course). It is a mixture of concrete, sand and cement, a layer of which is applied on the completion of the foundation of the building in order to prevent the dampness from travelling above the ground. The landlady has also produced occupation certificate, of the building in question, issued on 10.12.2010. These documents have been proved by DW2 Sub Divisional Clerk. In his cross-examination, the tenant produced a provisional occupation certificate Ex.D1 issued in the year 1999. In cross-examination, he denied the suggestion of learned counsel for defendants that the existing construction was completed in the year 1999.

7. The tenants, in order to prove their case, examined Sh. Ranjit Chauhan, partner of Functional Forms (Architect and Engineer Designers). He has produced Ex.DW4/B to prove the existing construction. He has stated that the building was constructed at one go. The tenants have also examined Sh. Krishan Kumar, Clerk in the Estate Office, Huda, Panchkula, in order to prove Ex.D1 which is original occupation certificate issued with respect to two bed rooms, kitchen, toilet, store at ground floor only. When Sh. Krishan Kumar appeared in evidence, he did not state whether there was any additional construction

or the building, as it exists today, is the same which existed in the year 1999.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book as well as the record of the Courts below, which was requisitioned.

9. Learned counsel representing the appellants contends that the First Appellate Court has erred in reversing the judgment of the trial Court. He submits that as per Ex.PW2/A and PW2/B, it is proved that the construction of the building was completed after 2005.

10. Per contra, learned counsel representing the tenants contends that the landlords failed to prove their case and the evidence led by them is beyond the pleadings. While elaborating, learned counsel submits that the plaintiffs, while filing the case, did not claim that the building constructed in the year 1999 was, in fact, demolished and a new building was constructed in its place. He submits that the case of the plaintiffs (landlords) is required to stand on its own legs and once the plaintiffs have failed to establish their case, their suit has been correctly dismissed by the First Appellate Court. He further submits that DW4 has stated that DPC certificate can be obtained subsequently, by paying a fine. He submits that DPC certificate issued in the year 2005 does not prove that the building was constructed in the year 2005 and not in 1999.

11. Fortunately, the provisional permission of occupation of the building for a period of 6 months issued by the Haryana Urban Development Authority is a part of the record. On perusal of the same, it is evident that the building consisted of two bed rooms, kitchen, toilet and

store, whereas, as per the certificate Ex.DW4/B, the existing construction consists of three bed rooms with attached toilets, lobby, drawing room and a small courtyard. It is significant to note that in the year 1999, there were no attached toilets with the three bed rooms. Previously, the building constructed consisted only of two bed rooms, whereas, now the building consists of three bed rooms with attached toilets, lobby and a drawing room. Thus, there is a significant change in the new building.

12. It is evident on perusal of Ex.DW2/A that the construction upto plinth level was completed by 08.11.2005. Ex.PW2/B proves that occupancy certificate was taken in the year 2010. Hence, it is safe to conclude that the construction of the building was completed between the years 2005 to 2010. The tenants did examine DW1, an official from the Estate Office, HUDA. Learned counsel representing the tenants has submitted that DPC might have been issued subsequently on the payment of penalty, however, the defendants failed to prove this fact. Once the landlords have proved their case, the tenants were required to rebut the same. However, tenants have failed to rebut the case established by the landlords.

13. On the analysis of the evidence produced on record, it is safe to conclude that in the year 1999, some temporary construction was carried out which was demolished and in the year 2005, a new building was constructed. The suit was filed on 02.02.2011. On the basis of the statement of Smt. Prabha Sehgal, the First Appellate Court has erred in concluding that the building was constructed more than 10 years before the filing of the suit. She has stated that before the defendants were

inducted as tenants, there was another tenant, who had occupied the premises for a period of nearly one year. It is noted here that the defendants were inducted as tenants on 10.05.2007. Even if it is assumed that the new building was completed somewhere in the year 2005 which appears to be highly improbable, still the suit, filed in the year 2011, is maintainable.

14. The Court now proceeds to examine the reasons recorded by the First Appellate Court while allowing the appeal. The first reason is that the document Ex.PW2/B (occupation certificate) stands falsified. In the opinion of this Court, the findings are wholly perverse. Ex.PW2/B only proves that the occupation certificate of the building was taken subsequently. However, this fact does not nullify document Ex.PW2/A which proves that the construction of the new building was completed upto plinth level in November 2005.

15. The First Appellate Court has also erred while observing that it is not believable that the earlier construction was demolished. Such an observation is without any basis. The landlady, while appearing in evidence, has, satisfactorily, deposed that in the year 1999, a temporary building was constructed in order to avoid payment of penalty and in the year 2005, the construction of a new building was started, after demolishing the previous one. It will be noted here that no evidence has been led by the respondents to prove that the previous construction was retained and certain additions were made. As already noticed, the temporary construction was only included two bed rooms, kitchen, separate toilets and a store. Now, the new construction includes three bed

rooms with attached toilets, lobby, a drawing room, kitchen and a small courtyard etc. The First Appellate Court has also erred in observing that there is only an addition of a single room and a drawing room. The Court has overlooked that three bed rooms with attached toilets have been constructed along with a lobby and a drawing room which did not exist previously. In the temporary building, there was neither any lobby nor any drawing room. Even the two rooms did not have attached washrooms. When the official from the Haryana Urban Development Authority appeared in evidence, learned counsel appearing for the tenants did not put any suggestion to the official of HUDA that the temporary construction was retained while making additions. The tenants themselves examined another official from the Haryana Urban Development Authority but the tenants failed to prove that the previous building was retained.

16. The First Appellate Court has also erred in observing that an adverse inference is required to be drawn against the plaintiffs (landlords) as they have withheld the best evidence i.e. they have failed to produce the building plan, receipts of purchase, of material, mason or contractor for construction of the house. It will be noted that the landlord was required to prove that it was a new building and was constructed within a period of 10 years before the filing of the suit. The landlady deposed herself and also examined an official, who has proved that the construction upto the plinth level was completed somewhere in November 2005. In these circumstances, there is hardly any scope for drawing an adverse inference against the landlady when the fact of construction

stands sufficiently established even otherwise.

17. The next reason recorded by the First Appellate Court is based on conjectures and surmises. The First Appellate Court holds that the rest of the construction might have been raised by the landlord within a period of six months from 23.03.1999. Such observations are based upon suspicion in discharged to the evidence available on the record. The First Appellate Court has failed to notice that there is a significant difference in the previous construction and new construction.

18. The argument of learned senior counsel representing the tenants to the effect that such plea is beyond pleadings cannot be accepted. Order VI Rule 2 of the Code of Civil Procedure, 1908, provides that the pleadings shall consist of material facts in a concise and precise manner. The landlords have claimed that a new building has been constructed and therefore, it is exempt from the applicability of the 1973 Act. They are entitled to prove this assertion while leading evidence. It is well settled that the evidence is not required to be pleaded.

19. The tenants have filed an application for permission to lead additional evidence in order to prove that electricity connection was released in the year 1999. The tenants also wish to produce information gathered under the Right to Information Act, 2005 certifying that sewerage connection was also issued in the year 1999. There is no dispute on the aforesaid facts. The only relevant question here is as to whether the previous construction was demolished and a new building was constructed thereupon or not?. In the absence of evidence to prove that damp proof certificate was obtained with respect to an already constructed

building on payment of the penalty, it is established that the landlords, after demolishing the earlier construction, did reconstruct the building anew. Under Section 1(3), it is provided that the 1973 Act does not apply to any building, the construction whereof is completed on or after the commencement of this Act for a period of 10 years from the date of its completion. The Legislature has made no distinction with regard to a building which has been reconstructed. In other words, even if a new building is constructed after demolishing the previous one, the provisions of the Act shall not be applicable.

20. Consequently, the judgment and decree passed by the Ist Appellate Court is set aside whereas that of the trial Court is restored. The appeal stands allowed. The application for permission to lead additional evidence stands disposed of.

21. It has been brought to the notice of this Court by the learned senior counsel representing the appellants that the tenant has not paid the use and occupation charges as agreed in the rent note.

22. Learned counsel representing the respondent (tenants) does not dispute this fact. Accordingly, a decree be drawn up for recovery of the amount @ Rs.17,000/- per month from 01.01.2019 till the handing over of the possession of the said premises.

23. All pending miscellaneous application(s), if any, shall also stand (s) disposed of.

18.07.2022

anju

(ANIL KSHETARPAL)
JUDGE

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No