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

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Reserved on:- 03.10.2023

Pronounced on:- 15.11.2023

Ashok Kumar and another

....Appellants

Versus

Executive Engineer and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sushant Mahajan, Advocate
for the appellants.

Mr. Rozer Kumar Aggarwal, AAG Punjab.

AMARJOT BHATTI, J.

1. The appellants/plaintiffs have filed the present Regular Second Appeal against judgment and decree dated 04.09.1992 passed by learned Additional District Judge, Patiala vide which the appeal preferred by them was dismissed by upholding the judgment and decree dated 18.02.1991 passed by learned Subordinate Judge Ist Class, Nabha, Camp Patiala, vide which the suit filed by the plaintiffs was partly decreed and a decree for recovery of Rs. 1853.73 Ps. was passed in favour of plaintiffs and against the defendants with proportionate costs.

2. The facts of the case are that Ashok Kumar Bhandari and Asha Bhandari filed suit for recovery of Rs. 38,661.83 paise against the defendants i.e. Executive Engineer (Inspection) and State of Punjab through Secretary, Irrigation and Power, Chandigarh. It was the case of plaintiffs that they were joint owners of House No. 43/3, situated at Passey Road, Patiala. The defendant No. 1 took the said house on rent in the year

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1983, agreeing to pay the rent along with House Tax, Electric charges, Water charges. The house was rented out for a period of two years and it was agreed that rent would be assessed by the PWD B&R as per their norms. After obtaining affidavit containing terms and conditions of rent agreement and sanction order, the house was taken on rent by PWD B&R at the rate of Rs. 1285/- per month for a period of two years. After the termination of tenancy in the month of January, 1985, defendant No. 1 obtained fresh affidavit from the plaintiffs and the matter was again referred to PWD B&R for reassessing the rent. The defendant No. 1 had been paying rent at the old rate with assurance to pay the dues after receiving assessment from the office of PWD B&R. However, defendants did not pay the re-assessed rent to the plaintiffs. In April, 1987, tenancy was further enhanced by one year. After termination of first tenancy, house was rented out to defendant on fresh rent to be re-assessed by PWD B&R. However, the defendant failed and neglected to comply the terms of agreement and failed to pay re-assessed rent to the plaintiffs, despite repeated requests and reminders. It was further alleged that at the time of vacation of house, the defendants broke the front parapet wall of the building and other items, causing total damage of Rs. 3300/-. Ultimately, the present suit.

3. Notice of the suit was given to the defendants. The defendants appeared and filed joint written statement, admitting the fact that the house was taken on rent initially for two years and the rent was got assessed from PWD B&R. However, it was denied that the agreement was executed regarding payment of house-tax, water and electricity charges. It was submitted that the case for re-assessment of rent was sent to PWD B&R,

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which was rejected on the ground that re-assessment cannot be done before the completion of 5 years and accordingly, the rent was re-assessed at the rate of Rs. 1600/- per month w.e.f. 14.01.1988 i.e. after completion of five years of tenancy. The amount of Rs. 2200/- has been arbitrarily assumed by the plaintiffs. It was denied that at the time of vacation of the house, the respondent had broken the front parapet wall at terrace and some other items. The said damage took place due to natural calamity and the said fact was already informed to the plaintiffs but they never got repaired the same. Therefore, the amount of damage of Rs. 3300/- assumed by the plaintiffs is highly exaggerated. Remaining averments were denied by the defendants. It was prayed that the suit filed by the plaintiffs may kindly be rejected with costs.

4. Replication to the written statement was filed, denying the averments made in the written statement. From the pleadings of the parties, following issues were framed by the trial Court on 15.05.1990:-

(1) *Whether plaintiff is entitled to recover Rs. 38,661.83 paise?*

OPP

(2) *Relief.*

5. In order to prove the suit, the plaintiff No.1 Ashok Kumar Bhandari himself stepped into the witness box as PW-2. The plaintiffs also examined Iqbal Singh as PW-1.

6. In order to rebut the case of the plaintiffs, defendants examined only one witness i.e. Harmohan Lal as DW-1.

7. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the plaintiffs was decreed for recovery of Rs. 1853.73 paise vide judgment and decree dated 18.02.1991. Feeling aggrieved of this judgment and decree, the plaintiffs filed Civil Appeal

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No.277-T of 15.02.1991, which was dismissed vide judgment and decree dated 04.09.1992. Feeling aggrieved of this judgment and decree, the present Regular Second Appeal has been filed by the plaintiffs.

8. I have heard the arguments advanced by learned counsel for the parties and have gone through the record carefully. The learned counsel for the appellants/plaintiffs argued that the facts of the case and the evidence brought on record were not rightly considered by the trial Court as well as First Appellate Court. As per the affidavit regarding tenancy Ex.P-1, the initial lease was for two years and after two years, a fresh affidavit was sought from the appellants/plaintiffs in which there was a condition for re-assessment of rent by the department of PWD B&R. The aforesaid condition was duly accepted by the respondents/defendants and they are bound by the same. The fresh rent agreement is Ex.P-3, according to which the tenancy was extended for a period of one year but the rent was not re-assessed by PWD B&R by relying upon Rule 5.24 of C.S.R. Volume -I Part-I, which is not acceptable in the present case. The respondents were required to re-assess the rent as per the terms and conditions detailed in the affidavit Ex.P-1 and rent agreement Ex.P3. The department lingered on the matter by saying that after re-assessment of rent, the balance payment of rent will be paid. The old rate of rent was accepted provisionally. The statement of Iqbal Singh, Head Draftsman, PWD B&R has been wrongly ignored by the First Appellate Court. Once the department agreed with the condition to re-assess the rent after two years, they cannot back out from the said condition. The Courts below further did not allow any payment for the damage caused to the building. The suit of the appellants/plaintiffs was decreed only to the extent of Rs.

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1853.73 paise towards the house tax. It is prayed that the appellants/plaintiffs are entitled to receive the rent as per the terms and conditions of tenancy as detailed in the affidavit Ex.P-1 and Ex.P-3. They are further entitled to the damages, for the loss caused to the building. Therefore, the judgment and decree passed by the Courts below may kindly be modified.

9. On the other hand, learned counsel representing the State argued that the facts of the case and the documents on record were rightly considered by the Courts below. The terms and conditions of tenancy were agreed upon as detailed in the affidavit Ex.P-1. It is conceded that as per these terms and conditions, the tenancy was for two years which could be extended on fresh terms and conditions. As per the terms of the said affidavit, letter was written to the department for re-assessment of rent, which is Ex.D-4. The department vide letter Ex.D-5 clarified that the rent could be re-assessed as per Rule 5.24 of C.S.R. Volume-I Part-I and as per this rule, the re-assessment was not permissible before expiry of 5 years. Thereafter, the appellants/plaintiffs wrote a letter dated 30.05.1988 Ex.D-2 for re-assessment of rent after the lapse of 5 years and accordingly, it was re-assessed to the tune of Rs. 1600/- per month. Now, the appellants/plaintiffs cannot claim rent at the rate of Rs. 2200/- per month without any basis. The facts of the case and the documents on record were rightly appreciated by the First Appellate Court and the appeal preferred by the appellants/plaintiffs was rightly dismissed vide impugned judgment and decree dated 04.09.1992. It was submitted that Regular Second Appeal preferred by the appellants/plaintiffs is without merits and the same deserves dismissal.

10. I have considered the arguments and have gone through the record carefully. It is an admitted fact that the respondent/defendant No. 1 took on rent the premises owned by the appellants/plaintiffs bearing House No. 43/3, Passey Road, Patiala for an initial period of two years. The affidavit of Ashok Kumar Bhandari regarding this tenancy is Ex.P-1. As per the terms of said tenancy, the lease period was initially for two years only and the same could be extended further on the terms and conditions to be decided afresh. It was agreed between the parties that the rate of rent will be assessed by PWD B&R department. Thereafter, the rate of rent was settled to the tune of Rs. 1285/- per month for two years. Thereafter, Ashok Kumar Bhandari executed another rent agreement Ex.P-3, according to which the lease period was extended for one year with effect from 14.01.1985 on the rent to be re-assessed by PWD B&R. Thereafter, the Executive Engineer wrote letters to Executive Engineer, Provl. Divisional PWD B&R, Patiala for the re-assessment of rent as per the terms of affidavit Ex.P-1. The said letter is Ex.D-4 and as per the reply given by Executive Engineer, Provl. Divisional PWD B&R, Patiala dated 09.09.1988 Ex.D-5, the attention of the department was drawn to Rule 5.24 of C.S.R. Volume-I Part-I, according to which the rent could not be re-assessed before the expiry of five years. As per the terms and conditions of rent i.e. affidavit Ex.P-1, no rate of rent was fixed and it was agreed upon that the rate of rent will be assessed by PWD B&R. There was no specific clause regarding increase of rent except the condition that the rent will be re-assessed after two years. However, as per the rules quoted by the department, the rent could not be re-assessed before the expiry of five years. The record shows that this fact was conceded by the

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appellants/plaintiffs when they wrote letter to the department dated 30.05.1988 Ex.D-2 for re-assessment of rent after expiry of five years. Accordingly, the rent was re-assessed to the tune of Rs. 1600/- per month as per letter dated 19.04.1988 Ex.D-6. Therefore, the claim of the appellants/plaintiffs seeking re-assessment of rent after the lapse of two years is without justification. The appellants/plaintiffs agreed to receive rent as fixed by PWD B&R and the re-assessment was denied after lapse of two years by relying upon the rules of C.S.R. Volume-I Part-I. The appellants/plaintiffs had the option to give notice to the department to vacate the premises which they did not do. The department remained in possession of the premises from 14.01.1983 to 14.06.1989 and the enhanced rent was paid after the lapse of five years. Considering the aforesaid facts, the findings given by the trial Court as well as First Appellate Court are fully justified and the same do not require any interference.

The learned counsel for appellants also raised the issue regarding claim of damages for the loss caused to the building so long it remained in the possession of respondent No. 1/defendant No. 1. In the case in hand, there is nothing on record to show that the appellants ever indulged in minor repairs of the building. There is no evidence of any expert witness to justify their claim for damages for loss to the building. Minor wears and tears in the building are bound to happen during the tenancy period. The damage caused to parapet wall was also considered by the Courts below. Therefore, considering the facts and the evidence on record, the claim for damages caused to the building was rightly declined.

The appellants/plaintiffs were granted relief regarding recovery of house-

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tax of the premises as per the clause 5 of terms and conditions of tenancy as detailed in affidavit Ex.P-1.

In view of these facts and circumstances of the case, the verdict given by the two Courts below is passed on proper appreciation of the facts and the evidence on record. Therefore, I do not find any reason to interfere in the findings given by the two Courts below and the same are accordingly, upheld. No substantial question of law or fact arises in the appeal. Resultantly, the Regular Second Appeal filed by the appellants stands dismissed with costs.

Pending application(s) if any, also stands disposed of.

The photocopy of records received from the two Courts below be sent back to the concerned quarter.

15.11.2023

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(AMARJOT BHATTI)
JUDGE

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