

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

119

RSA-2860-2019
Date of Decision: 13.09.2023

Mahender Singh

....Appellant

Versus

Sarpanch Gram Panchayat Mohna and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rajesh Lamba, Advocate
for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellant/plaintiff-Mahender Singh, against the concurrent findings of dismissal of civil suit.
2. Appellant/plaintiff filed civil suit for seeking mandatory injunction with consequential relief of permanent injunction against the defendants/respondents. The brief facts of the case are that defendant No.1-Sarpanch Gram Panchayat, Mohna, was having 14 shops at Jamuna Road, Bus Stand of Mohna, Tehsil Ballabgarh, District Faridabad. The said shops were given on lease hold basis by defendant No.1, firstly, for a period of three years and thereafter, lease period was extended to five years. Shop No.6 was taken on lease hold basis by the plaintiff for a period of five years and thereafter, has been

regularly paying the lease amount and all other charges to defendant No.1, from time to time. All of a sudden, defendants held auction for granting the said shops on lease for a period of five year on 28.03.2012 without any intimation and publication to the persons who were occupying the said shops. For participating in the auction proceedings, defendants demanded Rs.50,000/-. Plaintiff participated in the auction proceedings and for the said purpose a cheque No.989552 for an amount of Rs.50,000/- was issued by the plaintiff, which was drawn on State Bank of India, Mohna Branch. Shop No.6, was earlier leased out to the plaintiff at the rate of rent of Rs.1,850/- per month, but this time, the defendants leased out the said shop at the rate of rent of Rs.2,533/- per month. Plaintiff accepted the highest bid and accordingly, defendants agreed to lease out the said shops again to the plaintiff for the period of next five years. Subsequently, plaintiff was informed that on account of bouncing of the cheque issued by him(plaintiff), which was merely for the purpose of security to participate in the auction proceedings, lease in his favour has been cancelled by the defendants, hence plaintiff filed the present civil suit.

3. In the written statement filed by defendants No. 1 to 6, apart from the formal objections such as maintainability, *locus standi*, cause of action and notice under Section 80 C.P.C., it was also pleaded that previously, shop No.6 was leased out to the plaintiff, but he did not pay the lease amount regularly and failed to make the payment of rent for a period of 42 months at the rate of Rs.1,850/- i.e. Rs.77,700/-

. Further, pleaded that at the time of the auction in the year, 2007, lease amount for a period of 18 months was Rs.33,300/-. Fresh auction was held on 28.03.2012, in the presence of defendant No.2 (B.D.P.O Ballabgarh, District Faridabad). As per rules and regulations, a sum of Rs.50,000/- was kept as security. For the said purpose, plaintiff issued cheque amounting to Rs.50,000/-, which got bounced on account of 'insufficient fund'. Thus, plaintiff failed to abide by all the terms and conditions and also failed to deposit the required amount within a period of 24 hours from the time of bid, and accordingly, plaintiff was not even considered **eligible** to get the allotment of shop in the auction proceedings.

4. On the basis of pleadings of the parties, learned trial Court vide order dated 30.08.2016, framed the following six issues:

'1). Whether the plaintiff is entitled for a decree of mandatory with consequential relief of permanent injunction, as prayed for?OPP

2). Whether the suit of the plaintiff is not maintainable in the present form?OPD

3). Whether the plaintiff has no locus standi and no cause of action to file the present suit?OPD

4). Whether the plaintiff has concealed the true and material facts from the court? OPD

5). Whether the proper court fee has not been affixed on the plaint?OPD

6). Relief.'

5. After framing of the issues, plaintiff was granted total four effective opportunities to lead evidence in support of pleadings raised by him, but no one appeared in the witness box. Accordingly, issue No.1 was decided against the plaintiff. Findings recorded by learned trial Court under Issue No.1 reads as under:

'ISSUE No.1

The onus to prove this issue was cast upon the plaintiff. However, it is pertinent to mention here that the plaintiff has not adduced any evidence in this case. The issues in the present case were framed on 30.08.2016. Thereafter, the case was fixed for plaintiff evidence for 20.09.2016, 10.10.2016, 01.11.2016, 16.11.2016 and 23.11.2016. However, on 16.11.2016, no PW was present and the case was adjourned to 23.11.2016, as last opportunity. However, on 23.11.2016, no PW was present and therefore, the evidence of the plaintiff was closed by court orders. Thus, the plaintiff did not adduce even a single witness in support of his claim. Not even an iota of evidence has been led by the plaintiff to prove his case. The law is well settled that mere pleadings cannot take place of evidence. In view of these observations, issue no.1 is decided against the plaintiff.'

Thus, learned trial Court dismissed the suit filed by the plaintiff under Order XVII Rule 3 of C.P.C.,

6. Learned First Appellate Court deeply examined the reasoning given by the plaintiff in detail and concurred with the same. Findings recorded in paragraph Nos.10, 11 and 12 of the judgment of the First Appellate Court are as under:

'10. Admittedly, in the present case, the issues were framed on and thereafter, the case was adjourned to 20.9.2016 for 30.8.2016 appellant's evidence. On 20.9.2016, no evidence on behalf of the appellant was present and on the request made by counsel for the appellant, the case was adjourned to 10.10.2016. It is nowhere mentioned in the order dated 20.9.2016 that the appellant was present in the Court alongwith the affidavit which was to be tendered in evidence but the learned Presiding Officer had asked the appellant that it is the first date and first of all you supply the copy of affidavit to the other party. Similarly, on 10.10.2016 no evidence on behalf of the appellant was present and the case was adjourned to 1.11.2016. However, on, 1.11.2016 the learned Presiding Officer was on leave and the case was adjourned to 16.11.2016. On 16.11.2016, Shri N.K.Chandel, Advocate appeared on behalf of the appellant and on that day also no evidence on behalf of the appellant was present and the case was adjourned to 23.11.2016 and last

opportunity was granted to the appellant. Now, the appellant cannot claim that on 16.11.2016 his counsel was not present in the Court. The order was passed by the learned Presiding Officer in the presence of counsel for the appellant and respondents. On 23.11.2016 also no evidence on behalf of the appellant was presented despite last opportunity and finding no ground to adjourn the case, the learned lower Court had closed the evidence of the appellant and dismissed the suit under Order 17 Rule 3 CPC.

11. In the present case, four effective opportunities were given to the appellant to lead evidence but the appellant had not produced even a single evidence in support of his case. After amendment in the Civil Procedure Code, three opportunities are to be given to a party to lead evidence but in the present case the learned lower Court had afforded four effective opportunities to the appellant but surprisingly the appellant had not led any evidence before the learned lower Court. In these circumstances, the appellant is not entitled for any other opportunity to lead evidence. The learned lower Court had considered the facts of the appellant's case in a correct manner and rightly dismissed his suit under Order 17 Rule 3 CPC.

12. Keeping in view the above facts, I do not find any infirmity or illegality in the impugned judgment and decree dated 23.11.2016, passed by the learned lower Court. Hence, the findings of the Ld. lower Court on all the issues are hereby upheld and the appeal is hereby dismissed with costs. Decree sheet be prepared. Lower Court Record along with copy of this judgment be sent back. Appeal file be consigned to the record room after due compliance.'

7. As plaintiff has failed to prove his own pleadings, there appears to be even no rationale of filing of the present regular second appeal. Moreover, it is noticed by this Court that the auction proceedings which are in question, were conducted in the year 2012 and much water has flown thereafter and it is the plaintiff himself, who was never vigilant for his own rights after filing of the suit.

Accordingly, this Court do not find any infirmity in the impugned judgment and decree passed by both the Courts below and

the same are affirmed. Accordingly, present appeal stands dismissed.

September 13,2023	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no