

2023:PHHC:158641

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

RSA-2160-2022 (O&M)
Date of decision: 11.12.2023

Suresh Gupta and sons (HUF)

....Appellant

Versus

M/s Morgan Signature Towers Pvt. Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Abhishek Goyal, Advocate for the appellant

Mr. Simran Mehta, Advocate and
Mr. Sandeep Jain, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the correctness of the judgment and decree passed by the First Appellate Court is assailed by the defendant. At the outset, it must be noticed that the appellant (defendant before the trial court) was ex-parte not only before the trial court but also before the First Appellate Court. Hence, neither the appellant filed his written statement nor produced documentary evidence.

2. The respondent (the plaintiff) filed a suit for possession with a consequential relief of permanent injunction. It is the case of the respondent that originally this property was allotted to M/s Gadore Tools India Private Limited. Subsequently, the name of the Company was changed to M/s Jhalani Tools (India) Limited. The

property was mortgaged with the Banks and other financial institutions in order to avail the various credit facilities. Ultimately, the Company was unable to pay the debts resulting in filing of the Company Petition in the Delhi High Court. In the aforesaid Company petition, the property was sold. Thereafter, the plaintiff filed suit for possession of the property which was previously owned by M/s Jhalani Tools India Pvt. Ltd.

3. The trial court dismissed the suit on the ground that the plaintiff was required to seek the relief of cancellation of the General Power of Attorney and the sale deed executed in favour of the appellant. However, the First Appellate Court found that the plaintiff (respondent) being an owner is entitled to the decree of possession.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. Learned counsel representing the appellant contends that the Company was unable to pay ESI dues and therefore, the Board of Directors of M/s Gadore Tools vide resolution dated 15.09.1987, authorized the Directors to sell the property. It is contended that pursuant to the aforesaid authorization, general power of attorney was executed in favour of Vijender Singh on 03.01.1999, who in turn, sold the property. He contends that he should be permitted to

produce these documents in additional evidence in order to prove his case.

5. On the other hand, the learned counsel representing the respondent, while drawing the attention of the Court to the general power of attorney, submits that on its careful perusal it is proved that Ashok Jhalani and P.C.Jhalani in their personal capacity executed the aforesaid general power of attorney. He submits that there is no specific reference with respect to the resolution dated 15.09.1987, as projected by the learned counsel representing the appellant.

6. This Court has considered the submissions made by the learned counsel representing the parties and carefully studied the general power of attorney dated 03.02.1989. It is evident that the aforesaid attorney has been executed by Sh.Ashok Jhalani and P.C Jhalani in their personal capacity. Moreover, there is no reference to the resolution dated 15.09.1987. Furthermore, the appellant has failed to contest the suit before the courts below. Instead of filing an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, the appellant has chosen to file the second appeal. He has neither filed any written statement nor led any evidence.

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

8. Hence, dismissed, accordingly.

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

11.12.2023
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE