

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

126

2023:PHHC:109394

1. CR-5887-2019

Date of decision: 22.08.2023

MALVINDER SINGH

..Petitioner

Versus

M/S MAHA GUJRAT SEEDS PVT LTD

..Respondent

2. CR-5904-2019

MALVINDER SINGH

..Petitioner

Versus

M/S MAHA GUJRAT SEEDS PVT LTD

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Surinder Garg, Advocate
for the petitioner.

Mr. A.S. Sekhon, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. In these two connected revision petitions, the plaintiff assails the correctness of two separate interlocutory orders passed by the trial Court. In CR-5887-2019, an application filed by the plaintiff to examine the handwriting and fingerprint expert has been dismissed, whereas, in CR-5904-2019, an application filed by the plaintiff for grant of permission to file replication and to frame proper issues for adjudication, has been dismissed.

2. In the beginning of the dispute, a civil suit for mandatory injunction directing the defendants to vacate and hand over the vacant possession of the godown along with recovery of lease money was filed. During the pendency of the said suit, the possession of the tenanted premises has already been handed over to the plaintiff. The only dispute which

remains between the parties is with respect to the rate of rent.

3. On the one hand, the plaintiff claims that the rate of rent is Rs.10,000/- per month, whereas, on the other hand, it is the case of the defendant that the rate of rent was Rs.1,000/- per month.

4. On 23.10.2015, the trial Court framed the following issues for adjudication:-

- “1. Whether the plaintiff is entitled for mandatory injunction, as prayed for ? OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the suit is properly valued for the purpose of Court fee? OPD*
- 4. Relief.”*

5. It is evident that no distinct issue with regard to the rate of rent was culled out by the trial Court. No doubt, the plaintiff in beginning filed a copy of the lease deed Ex.PW2/J reflecting the rate of lease amount to the tune of Rs.1,000/- per month, however, the plaintiff now claims that the aforesaid lease deed is a result of forgery as unauthorized changes have been made in the rate of lease amount.

6. The trial Court has dismissed both the applications on the ground that the plaintiff has himself relied upon Ex.PW2/J while leading evidence.

7. This Bench has heard the learned counsel representing the parties at length and with their assistance perused the paperbook.

8. The learned counsel representing the petitioner while referring to his plaint submits that the plaintiff in para 2, 3 and 4 of the plaint has consistently pleaded that the lease deed was executed while specifying the lease amount at the rate of Rs.10,000/- per month. He submits that inadvertently a copy of the lease deed was produced, which was interpolated

by the defendant. He submits that the plaintiff should have been given an opportunity to prove the aforesaid fact.

9. On the other hand, the learned counsel representing the respondent submits that once the plaintiff himself relied upon the copy of Ex.PW2/J, consequently, he is estopped from filing the application.

10. This Court has considered the submissions of the learned counsel representing the parties.

11. As per Order XIV Rule 5 of the Code of Civil Procedure, 1908, the Court is required to ascertain the material proposition of fact or of law at variance, i.e. alleged by one party and denied by the other and thereupon to frame and record the issues arising for adjudication. Thus, it was incumbent on the trial Court to frame a distinct issue on the rate of rent/lease money. As is evident, the Court has framed the issues only on the basis of the prayer made in the suit and the preliminary objections taken in the written statement. Thus, it is obvious that the trial Court failed to frame proper issues in accordance with Order XIV Rule 5 of the Code of Civil Procedure, 1908.

12. In any case, the suit is still pending. The possession has already been handed over to the plaintiff. The only issue that requires adjudication is the rate of rent and the amount to which the plaintiff is entitled to, if any.

13. In such circumstances, the interest of justice demands that the plaintiff should be given an opportunity to prove his case.

14. Keeping in view the aforesaid facts, an additional issue is framed as under:-

“What was the rate of lease money/rent per month between the parties? OPP”

15. The plaintiff shall be granted two opportunities to lead evidence. Similarly, the defendants shall also be granted two opportunities to prove their case. Thereafter, the trial Court will proceed to decide the matter in accordance with law.

16. With these observations, both the revision petitions are disposed of.

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

August 22nd, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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