IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2548-2016 (O&M)
Date of Decision:-**02.11.2023**

M/S SPENCERS RETAIL LTD

… Appellants

Versus

M/S GUPTA ESTABLISHMENTS PVT LTD

... Respondent(s)

-.-

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

-.-

Present:- Mr. D.P.Gupta, Advocate and
Mr. Rohan Mittal, Advocate
for the appellants.

Mr. Jeevan Gupta in person for respondent.

-.-

KARAMJIT SINGH, J. (Oral)

1. The present appeal has been filed by the appellant/defendant against the judgment dated 17.10.2014 passed by the Court of Additional Civil Judge (Senior Division) Chandigarh whereby the suit filed by the respondent for recovery of ₹25,01,863/- along with interest was decreed and the judgment dated 14.01.2016 passed by the Additional District Judge, Chandigarh whereby the appeal filed by the appellant against the aforesaid judgment of the trial Court has been dismissed.

2. The brief facts of the case of the respondent-plaintiff are that the plaintiff being owner of SCO No.21-22 Sector – 19C Chandigarh

leased out 1450 square feet with carpet chargeable area of 1250 square feet on the ground floor of said SCO to the appellant /defendant vide lease deed dated 16.05.2007 and lease was for a period of 9 years from the date of commencement i.e. 16.05.2007 and the rate of rent was ₹1,40,000/- per month with 15% increase after every 3 years. Besides the rent, the defendant was required to pay service tax or any other tax if imposed in future. The service tax was imposed @ 12.36% from 1.6.2007, however, the defendant did not pay the same and he also failed to pay rent from 01.02.2008 onwards. The eviction petition filed in this regard by the plaintiff was allowed by the Court concerned on 24.3.2009 and possession of the leased property was delivered to the plaintiff on 16.09.2009 in execution proceedings. However, the amount of ₹23,10,100/- being arrears of rent for the period from 01.02.2008 to 16.09.2009, ₹1,27,628/- as service tax, ₹60,695/- as electricity charges and ₹3,450/- as water charges remains unpaid by the defendant, despite service of legal notice dated 9.11.2009. Hence the suit for recovery of aforesaid amount along with interest.

3. The suit was contested by the defendant, who took plea that the rent was being regularly paid by the defendant to the plaintiff. It was pleaded that recovery of service tax on rent was stayed by Hon'ble Bombay High Court in Writ Petition No.1263 of 2008 titled Retailers Association of India vs. Union of India. The other averments of the plaint were denied being wrong and it was pleaded that the suit be dismissed.

4. The plaintiff filed replication and controverted averments of the plaint.

5. On the pleading of the parties following issues were framed by the trial Court:-

i. Whether the plaintiff is entitled to recover ₹25,01,863/- as arrears of rent, service tax, water and electricity charges? OPP

ii. If issue No.1 is proved successfully by the plaintiff, then whether the plaintiff is entitled to recovery interest from the defendant on the basis of such amount, if so, at what rate? OPP

iii. Whether the suit is maintainable in the present form? OPP

iv. What facts have been concealed by the plaintiff and what is effect of the same on the suit? OPD

v. Whether the suit of plaintiff has not been properly value for the purpose of Court fee and jurisdiction? OPD

vi. Whether this Court has no jurisdiction to entertain and decide the present suit? OPD (Preliminary issue)

vii. Whether the suit of the plaintiff is bad for misjoinder and nonjoinder of the parties? OPD

viii. Relief.

6. In order to prove its case, the plaintiff examined its Director Jiwan Kumar Gupta as PW-1 and tendered documents Ex.P1 to Ex.P10. On the other hand the defendant examined its Manager (Legal) Mukesh Kumar as DW-1 and tendered documents Ex.D1 to Ex.D7, mark A and mark B.

7. After hearing the counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff vide judgment dated 17.10.2014.

8. The defendant preferred an appeal against the said judgment but the same was also dismissed by the Court of learned Additional District Judge, Chandigarh vide judgment dated 14.1.2016.

9. The defendant being aggrieved by the impugned judgments passed by both the Courts below filed the present appeal.

10. During the pendency of the appeal the matter was referred to the Mediation Centre of this Court and during mediation proceedings, the matter has been settled between the parties and settlement/agreement deed dated 12.10.2023 was prepared by the Mediator and the same bears signatures of the authorized representative of appellant and Jiwan Kumar Gupta, Director of the respondent.

11. Today the aforesaid Jiwan Kumar Gupta, Director of the respondent appeared in person and admitted the factum of amicable settlement which has been effected between the parties vide settlement deed dated 12.10.2023 and he also admitted his signatures on the settlement deed and further pleaded no objection if the judgment and decree passed by the trial Court dated 17.10.2014 upheld by the 1st Appellate Court vide judgment dated 14.01.2016 is modified in terms of settlement deed dated 12.10.2023.

12. The counsel appearing on behalf of the appellant has also admitted the factum of aforesaid compromise and is having no objection if the judgment and decree passed by the trial Court dated 17.10.2014

upheld by the 1st Appellate Court vide judgment dated 14.01.2016 is modified in terms of settlement deed dated 12.10.2023.

13. The aforesaid settlement/agreement deed dated 12.10.2023, which has been admitted by both the parties is hereby directed to be placed on record.

14. In the light of the above, the judgment and decree passed by the trial Court dated 17.10.2014 upheld by the 1st Appellate Court vide judgment dated 14.01.2016 is modified in terms of settlement/agreement deed dated 12.10.2023, which is to be treated as part of the decree. Decree sheet be prepared accordingly.

15. This appeal stands disposed of in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

02.11.2023
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No