

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 194 of 2023 (O&M)

Date of decision : 20.1.2023

...

Vishal Goyal

.....Appellant

vs.

N.K. Gupta

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. K.D.S. Hooda, Advocate for the appellant

...

H. S. Madaan, J.

1. Briefly stated, facts of the case are that , plaintiff N.K. Gupta, had brought a suit for recovery against defendant Vishal Goel, i.e. Rs.22,400/- as arrears of rent for the period from 1.6.2015 to 31.7.2016, Rs.19,945/- as arrears of electricity bill and Rs.1,02,500/- as society charges, total amounting to Rs. 1,50,545/- alongwith interest @ 18% per annum from the date of filing of suit till realization.

2. As per version of the plaintiff, the defendant had taken flat No. 202 GH 78, Sector 20, Panchkula, on rent from the plaintiff vide agreement dated 30.6.2010. In that agreement, it was specifically mentioned that rent for the premises shall be Rs.8,000/- per month, payable in advance + Society charges. The plaintiff had filed an ejectment petition against the defendant, which was partly allowed by the Rent Controller, Panchkula, vide judgment dated 2.5.2015. The defendant - tenant had filed an appeal against that judgment. The

Appellate Court of Additional District Judge, Panchkula, while disposing of the appeal had observed that society maintenance charges are part of the rent. The plaintiff had asked the defendant to pay that amount to him but to no effect, as such he had brought the suit in question.

3. On notice, the defendant appeared and filed the written statement contesting the suit raising various legal objections. On merits, admitting that the defendant had taken on rent the flat in question, from plaintiff vide agreement which expired on 30.6.2010, but it is deemed to continue. The defendant admitted the rate of rent to be Rs.8,000/- per month + society charges, though contended that at the time of provisional assessment of rent, the society charges alongwith provisional rent were paid in the court. However, the plaintiff landlord did not provide any list of society charges at the time of entering into rent agreement. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

4. From the pleadings of the parties, following issues were framed :-

1. Whether the plaintiff is entitled to a decree for recovery of Rs.22,400/- as arrears of rent w.e.f. 1.6.2015 to 31.7.2016, Rs.19,945/- as arrears of electricity bill and Rs.1,02,500/- as society charges total amounting to Rs, 1,50,545/- alongwith interest @ 18% per annum from the date of filing of the present petition till its realization, as prayed for ?

OPP

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

3. Whether the plaintiff has concealed the true and material facts from this court ? OPD

4. Whether the plaintiff has no cause of action to file the present suit? OPD

5. Relief.

5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing the arguments, vide impugned judgment dated 10.8.2018, the suit of the plaintiff was decreed partly for recovery of Rs.22,400/- towards arrears of rent and Rs.95,352/- towards society charges alongwith interest @ 6% per annum from the date of institution of the suit till its realization.

6. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal before District Judge, Panchkula, which was contested, but was dismissed by the learned District Judge, Panchkula, vide judgment and decree dated 11.10.2022. Still feeling dissatisfied, the defendant has knocked at the door of this Court, by way of filing the present regular second appeal.

7. I have heard learned counsel for the appellant – defendant, besides going through the record.

8. In this case both the courts below in light of the pleadings of the parties and on thorough and deep analysis of evidence brought on record by the two sides, in view of the settled law on the subject, have returned concurrent findings that defendant

is liable to pay a sum of Rs.22,400/- towards arrears of rent and Rs.95,352/- towards society charges. The plea taken by the defendant that amount of Rs.1,350/- as society charges had already been recovered in provisional assessment of rent, was not found to have any merit. Even otherwise, the defendant had admitted in his cross examination that if a tenant resides in the flat, then the society charges are to be paid by him. The defendant had failed to place on record any document to show that he had paid society charges, which were included in provisional assessment of rent. The denial of liability on part of the tenant to pay the society charges was not found to be justified.

9. As far as the judgment, by the Ist Appellate Court of District Judge, Panchkula, is concerned, the crux of the findings recorded by him finds mention in paragraphs No. 27 to 33 of the judgment, which for ready reference are reproduced as under.

27. I am afraid that none of the aforesaid contentions contain any merit. As the documents placed and proved on record by the PW2 – the official of the society reveal that defendant was using the tenanted Flat for commercial purposes by running coaching centre. It is because of that reason that society took decision way back in 2013 to charge separately for user of the lift by the students attending the coaching classes in the tenanted premises of the defendant. There is no evidence worth the name that defendant ever challenged the

said action of the society.

28. As has already been observed that in the ejectment proceedings, learned Appellate Authority vide Ex.P1 specifically held the defendant – tenant to be liable to pay the maintenance charges, which at the time of those proceedings were ₹44,800/-. It has also been already observed that defendant did not challenge the said judgment Ex.P1 before any competent Court of law. Therefore, he is now estopped to contend that he is not liable to pay the additional / extra maintenance charges demanded by the society.

29. Apart from this, no question whatsoever was put to the official of the society i.e. PW2 Shri S.K.Bansal that whether resolution passed by them was at the behest of the plaintiff or not. No question was put to him as to whether any other flat owner / person similarly situated, was asked to pay the additional society charges or not. In these circumstances, defendant – tenant cannot be allowed to say that he is not liable to pay the additional charges payable to the society.

30. Since the tenanted Flat had been vacated by the appellant – defendant on 18.08.2015, so, he was liable to pay the society charges outstanding at that time. As per letter Ex.P3, the outstanding dues as on

31.07.2015 were ₹95,352/-; and therefore, learned lower Court has rightly held that tenant – defendant is liable to pay the same.

31. No other point was urged or argued before me.

32. On account of entire discussion as above, it is held that learned lower Court did not commit any error in coming to the conclusion that defendant – appellant is liable to pay arrears of rent of ₹22,400/- towards rent for the months of June and July 2015; and ₹95,352/- as arrears towards society charges. Though, plaintiff is also entitled for the electricity charges, as has been discussed by this Court, but as noticed earlier, plaintiff did not file cross-appeal for recovery of that amount. Hence, the findings of the learned lower Court on all the issues are hereby affirmed.

33. Consequently, impugned judgment and decree dated 10.08.2018 partly decreeing the suit of the plaintiff, are hereby maintained. Holding the present appeal to be devoid of any merit, same is hereby dismissed with costs. Decree-sheet be drawn accordingly. Lower Court record along with a copy of this judgment be sent back. Appeal file be consigned to records.”

10.

I find both the judgments are based upon proper

appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this court.

11. No substantial question of law arises in the present appeal and the same stands dismissed.

20.1.2023
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No