

- 1 -

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

117

RSA-649-2021 (O&M)

Date of Decision: 20.02.2024.

Food Corporation of India and others

...Appellants.

Versus

Dhillon Godowns Private Limited

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

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Present: Mr. Sunish Bindlish, Advocate
for the appellants.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellants/ defendants against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiff was partly decreed.

2. Brief facts of the case as per plaint are that the plaintiff is a Private Limited Company established under Company's Act, 1956. Vide an advertisement given in the newspaper, the defendants had called upon the general public to construct plinths and earn rent @ 50 paisa per square feet. As per the said advertisement the area expected for the plinths was 500 MT and last date of submission of the application was 15.02.2000.

3. The plaintiff-company applied for providing plinths to the defendant having area of 10,000 MTs at village Dhaliwal Dona. The plinths

RSA-649-2021 (O&M)

- 2-

complete in all respects were handed over to the FCI on 08.10.2000. To build the said plinths within the prescribed time, the plaintiff raised loan of Rs.9,00,000/- from Punjab and Sind Bank, Branch Kapurthala. As per the contract between the parties, the defendants were liable to pay rent @ 50 paisa per square feet, per month. But due to wrong calculations of the area of the plinths, the defendants have been paying to the plaintiff for the area lesser than that of actual area under the possession of the defendants. The rent tendered by defendants is deficient by Rs.3,000/- per month. The plinths remained under the possession of defendants for the time period from 08.10.2000 till 23.04.2005. So, the total deficiency of rent towards the defendants on account of calculation of lesser than actual area by the defendants, comes to Rs.1,63,000/- It was also alleged by the plaintiff that the defendants have paid rent @ 25 paisa per square feet for the period from 08.10.2000 till 17.02.2002, despite the fact that the agreed rate of rent was 50 paisa per square feet, per month. Thus, total deficiency in the rent paid by defendants to the plaintiff comes to Rs.1,84,000/-. Though plinths of plaintiff have been vacated by the defendants on 23.04.2005, yet nothing was paid towards the arrears of rent payable for the time period from 01.02.2004 to 23.04.2005. As such, the plaintiff is entitled for recovery of monthly rent @ 50 paisa per square feet for the aforesaid period and total amount comes to Rs.3,45,000/-. When the plaintiff approached the defendants for recovery of aforesaid money, the defendants refused to pay the same.

4. The suit of plaintiff was partly decreed by the trial Court, vide

RSA-649-2021 (O&M)

- 3-

judgment and decree dated 17.08.2017. Both the appeals, the appeal preferred by plaintiff/ appellant and the appeal preferred by the defendants before the First Appellate Court were dismissed, vide judgment and decree dated 22.01.2020. Hence, the present Regular Second Appeal has been filed by the appellants/ defendants.

5. Learned counsel for the appellants/ defendants has contended that the plaintiff is not entitled to any recovery from the defendants. Both the Courts below have wrongly held that the plaintiff is entitled to recovery of arrears of rent for the period of 01.02.2004 to 23.04.2005 alongwith interest @ 6% per annum from 23.04.2005 till the date of actual recovery, whereas the plinths had been vacated by the defendant-department on 01.02.2004. He has further contended that the cogent and convincing evidence of the defendants regarding it has not been considered. He has also submitted that the plaintiff is to stand at his own legs to prove its case and he cannot take benefit of the weaknesses of the defendants. He has urged that the plaintiff has failed to prove possession of the defendants over the plinths uptill 23.04.2005. While relying upon the letter dated 25.02.2004 Ex.DW2/E, he has contended that the defendants had cleared the vacation of the plinths w.e.f. 01.02.2004 and they were not liable to pay rent after the said communication. But the Courts below have illegally rejected the said evidence by pointing out that in the written statement filed by the defendant-department, it had been alleged that the plinths leased out by the defendants were de-hired by 29.02.2004, while in the letter dated 25.02.2004, the date of vacation has been given as 01.02.2004 and as such

RSA-649-2021 (O&M)

- 4-

the said letter does not inspire confidence in view of the contrary stands taken in the written statement. But the Courts below have failed to properly take into account the categoric submission made by the defendants/ appellants that the plaintiff was entitled to rent for the period of 01.02.2004 to 29.02.2004. He has contended that there was no contradiction in the stand taken by the appellants/ defendants and the finding regarding vacation of the plinths only on 24.04.2005 has been wrongly given while completely mis-appreciating the evidence on record. He has argued that the trial Court has wrongly relied upon the letter dated 23.04.2005 (Ex.P7), though, it was not containing any receipt number of the defendant department. He has submitted that the testimony of DW1-Harpreet Singh, has also been ignored, who during his cross examination, has stated that the said letter dated 23.04.2005 was not relating to the godown in question. He has urged that the findings of both the Courts below returned on the question of payment of rent to the plaintiff for the period from 01.02.2004 to 23.04.2005 alongwith applicable interest are liable to be set aside.

6. I have heard learned counsel for the appellants and gone through the records thoroughly.

7. The case of the plaintiff is that defendant department paid rent upto 31.01.2004 while the plinths of plaintiff had been vacated by the defendants on 23.04.2005. So the plaintiff is entitled to rent for the period from 01.02.2004 to 23.04.2005.

8. On the other hand, as per the defendants, after they had vacated the plinths of the plaintiff, vide letter dated 25.02.2004 Ex.DW2/E, they informed the plaintiff that the plinths in question had been vacated w.e.f.

RSA-649-2021 (O&M)

- 5-

01.02.2004. Since they conveyed regarding vacation of the plinths on 25.02.2004, so they offered to pay rent for the whole month of February, 2004.

9. As it was the specific assertion of the plaintiff that the plinths leased out by him to the defendant department were not vacated till 23.04.2005 and when this fact has been denied by the defendants by asserting that the same had been vacated w.e.f. 01.02.2004, then it was for the defendants to prove the said fact by adducing cogent and convincing evidence. In the written statement filed by the defendants, it has been alleged that they de-hired the plinths on 29.02.2004. It has destroyed the credibility of letter Ex.DW2/E allegedly issued by the defendants to the plaintiff, as in the said letter it had been mentioned that the plinths had been vacated w.e.f. 01.02.2004. Thus, the stand of the defendants in the written statement is contrary to the letter dated 25.02.2004 (Ex.DW2/E) relied upon by the defendants. Moreover, DW1-Harpreet Singh, has admitted, during his cross-examination that there was no receiving given by the plaintiff regarding receipt of letter dated 25.02.2004 (Ex.DW2/E). He has also categorically admitted that no notice was issued to the plaintiff except the letter dated 25.02.2004 and no postal receipt was brought on record regarding sending of the said letter to the plaintiff. So, the letter dated 25.02.2004 (Ex.DW2/E) has rightly not been considered by the Courts below in support of the plea of the defendants that the plinths had been vacated w.e.f. 01.02.2004 and it had been conveyed vide letter dated 25.02.2004 Ex.DW2/E.

RSA-649-2021 (O&M)

- 6-

10. The plaintiff has relied upon the letter dated 23.04.2005 (Ex.P7), requesting the defendants to hand over the keys of main gate of his godowns and open plinths. Though DW1-Harpreet Singh, during his cross-examination has stated that this letter was not related to the godown in question, but nothing has been produced on record by the defendants to prove that the said letter was not pertaining to the godowns, in question.

11. So, in light of the above, the Courts below have rightly held that the plinths of plaintiff were vacated on 23.04.2005 and thus, the plaintiff is entitled to arrear of rent for the period from 01.02.2004 to 23.04.2005 along with interest @ 6% per annum from 23.04.2005 till actual recovery.

12. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

13. Appeal stands dismissed.

14. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

20.02.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No