



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

RSA-2273-2022 (O&M)

Reserved on : 25.03.2025

Pronounced on : 08.04.2025

Narender Kumar Chugh

....Appellant

VERSUS

Nagar Palika, Barwala, District Hisar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akash Yadav, Advocate for
Mr. Babbar Bhan, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 02.03.2019 passed by the Trial Court and the judgment and decree dated 17.03.2022 passed by the First Appellate Court whereby his suit for permanent injunction has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant took the shop in question on lease/rent from the defendant-respondent in an open auction held on 14.10.2015 at a monthly lease/rent of Rs.39,500/ and total lease/rent for three months totalling Rs.1,18,500/- for the period 01.11.2015 to 31.01.2016 and an amount of Rs.2,25,000/- (security of Rs.2.00 lacs plus Rs.25,000/- as lease/rent) was deposited by him vide demand draft dated 14.10.2015 and an amount of Rs.93,500/- was paid vide receipt No.304/80 dated 21.10.2015. It was averred that the condition of the auction stipulated that no cheque would be accepted from

the bidders. Though the plaintiff-appellant and 6-7 other bidders deposited their demand drafts, however, at 11.30 am on 14.10.2015 the Municipal Committee allowed their persons to deposit security through cheques and these bogus bidders, including Manjit s/o Ranvir Singh, increased the lease/rent to about Rs.39,500/- of shop no.55 and Rs.40,000/- for shop no.54. It was alleged that the said Manjit increased the bid for lease/rent upto Rs.39,500/- for shop no.55 and Rs.40,000/- for shop no.54 but later one cheque of Manjit bounced and his bid for shop no.54 was cancelled. The plaintiff-appellant took the same shop no.54 on lease/rent of Rs.21,600/- pm in an open auction which took place after a few days of the first auction. The plaintiff-appellant requested the defendant-respondent to decrease the lease/rent of shop no.55 from Rs.39500/- to Rs.21,600/- many times but instead of decreasing the rent, the defendant-respondent issued a notice dated 08.12.2016 to which the plaintiff-appellant replied on 13.12.2016 but to no effect. The officials of the defendant-respondent came to shop no.55 on 03.01.2017 to take forcible possession. Hence, the suit.

3. The suit was contested by the defendant-respondent who filed a written statement raising preliminary objections of the suit being false and frivolous, cause of action, locus standi, estoppel, maintainability, jurisdiction, limitation, mis-joinder and non-joinder of parties and not coming to court with clean hands. It was submitted that the plaintiff-appellant was the highest bidder for shop no.55 and had offered the highest bid of Rs.39,500/- per month and accordingly the shop in question was leased out to him and advance lease money for 3 months was got deposited from the plaintiff-appellant and an agreement was also executed whereby the plaintiff-appellant had, inter-alia, agreed to pay the monthly lease money by

the 7th day of each consecutive month. It was also agreed that if there was a delay in making payment of the lease money the plaintiff-appellant shall be bound to pay Rs.50/- per day as late fee and interest @ 18% p.a. was also payable if the default continued for a period of two month continuously. However, if the default continued upto 3 months or more then the plaintiff-appellant would have to vacate and hand over the possession of the shop in question within 7 days to the defendant-respondent otherwise the defendant-respondent would be bound to take possession of the shop in question and take further necessary action as per law. The lease was for a period of 5 years w.e.f. 01.11.2015 upto 31.10.2020. It was further stated that the plaintiff-appellant ceased to pay the lease money w.e.f. 01.2.2016 onwards for which he was served with notices dated 02.03.2016, 15.06.2016 and 08.12.2016 whereupon the present suit had been filed. In his replication the plaintiff-appellant reiterated the contents of the plaint and denied those of the written statement.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for relief of permanent injunction, as prayed for ? OPP
2. Whether suit of the plaintiff is not maintainable ? OPD
3. Whether plaintiff has no locus standi and cause of action to file the present suit ? OPD
4. Whether the suit of the plaintiff is hopelessly time barred ? OPD
5. Relief.

5. The Trial Court vide judgment and decree dated 02.03.2019 dismissed the suit. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 17.03.2022. Hence, the present regular second appeal by the plaintiff-appellant.

6. The learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is urged that the defendant-respondent had been claiming lease/rent from the plaintiff-appellant from 01.11.2015 but the possession of the shop in question was only handed over to the plaintiff-appellant on 16.02.2016. It is further contended that the defendant-respondent had itself violated the conditions of the auction by allowing participants to deposit the security amount through cheque instead of a bank draft. It is submitted that the facts of the case show that the suit infact deserved to be decreed.

7. Heard.

8. In the present case both the Courts have held that the plaintiff-appellant failed to prove that the possession of the shop in question was handed over to him on 16.02.2016. Rather, the judgment of the Trial Court reveals that the document Ex.D2, which bears the signatures of the plaintiff-appellant, shows that the possession was offered to him on 13.11.2015. The Trial Court found that *“However, from document Ex.D2 it is evident that possession of the shop in question was offered to the plaintiff on 13.11.2015, which also bears the signature of plaintiff Narender Kumar. During his cross-examination, the plaintiff has admitted his signature on Ex.D2, while adding that his signature were procured forcibly. His averments as to being forced by defendant cannot be believed as there is nothing on record to*

substantiate the same". The First Appellate Court also found that there were multiple contradictions in the stand taken by the plaintiff-appellant regarding the date of taking possession of the shop in question. Even before this Court the learned counsel for the plaintiff-appellant has been unable to point any cogent and reliable evidence of the record to show that the possession of the shop in question was handed over to him on 16.02.2016.

9. Regarding the second argument raised that the defendant-respondent had itself violated the conditions of the auction by allowing participants to deposit the security amount through cheque instead of a bank draft, the same is also liable to be rejected. The First Appellate Court held that *"The detailed proceedings of the auction have been produced on record as Ex.D1. No doubt, as per terms and conditions of the auction at Page no.1, a bidder was required to deposit a demand draft of Rs.2,25,000/-, however, at Page no.12, there is a specific noting that before the start of auction, the public persons requested the Administrative-cum-SDO Civil to allow deposit of security amount by way of cheque and the said request was accepted and thereafter, the auction proceedings were conducted"*. The plaintiff-appellant having participated in the very same auction under the very same terms and conditions cannot now turn around and impugn the very same terms and conditions especially when he was successful in that very auction.

10. In the present case there is no credible evidence available on the record which would prove the stand taken by the plaintiff-appellant in his plaint. Learned counsel for the plaintiff-appellant has failed to point out as to how the concurrent findings recorded by both the Courts are erroneous or perverse. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that possession of the shop in

question was handed over on 16.02.2016 or that the relaxation in the terms and conditions of the auction were illegal. This Court finds no reason to differ from the findings returned by both the Courts. No other point was argued.

11. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.04.2025
Ankur

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO