

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****237****RSA-5278-2014 (O&M)****Date of decision: 18.11.2025****M/s. Mahesh Pal and Company****...Appellant(s)****Vs.****Punjab State Warehousing Corporation and another...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

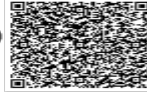
Present:- Mr. Aalok Jagga, Advocate and
Mr. Karan Inder Singh, Advocate
for the appellant.

Mr. Jastej Singh, Advocate
for the respondents.

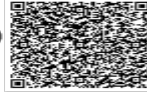
NIDHI GUPTA, J.

Plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the appellant for recovery of Rs.2,67,511/-, has been dismissed by both the Courts below.

2. The facts as pleaded by the appellant in the plaint are that the suit is filed by M/s. Mahesh Pal and Company through Mahesh Pal, who is stated to be one of the co-owners of the plaintiff-Company. It was averred that a Pre-Rent Agreement dated 03.03.1995 was entered into between the parties, in pursuance to which appellant had constructed open plinths for 11850 MTs capacity. Thereafter, parties formalised a written Rent Agreement dated 01.04.1995 as per which respondent-Corporation could store their Grains in the plinths at the agreed rate of



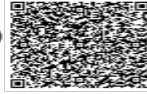
rent of 16 paise per bag per month. The said Agreement was for a period of 5 years commencing from 01.04.1995. It was pleaded that before the expiry of stipulated period, plaintiff-Company sent a letter dated 11.02.2000 Ex.P1 to Regional Manager of the respondent-Punjab Warehousing Corporation, Ferozepur informing him about the expiry of five years period and further requested for execution of new Agreement. In the said letter, plaintiff also requested that the rent be now paid @ 25 paise per bag per month; or in the alternative the plinths may be vacated. However, Defendant No.1 vide order dated 24.04.2000 Ex.P10 sanctioned that w.e.f. 01.04.2000 respondent shall continue to be pay rent @ 16 paise per bag per month only as was being heretofore received by the plaintiff-Company. It is pleaded that however, in the month of April 2003, plaintiff Company was given a cheque of Rs.15,163/- which was received on 15.07.2003. As the said amount was on the lower side, plaintiff Company had approached defendant No.2 to know the reason but no plausible answer was forthcoming. Accordingly, plaintiff had served legal notice dated 30.07.2003 upon the respondents requesting the defendants to either pay agreed rate of rent @ 16 Paise per bag per month or in the alternative vacate the open plinths. It was further pleaded that the defendants slept over the matter and did not even reply to the legal notice. The plaintiff-Company again sent a letter to defendant No.2 but the defendants again did not respond to the plaintiff. Ultimately plaintiff filed CWP No. 10157 of 2004 before this Court, which was disposed of vide order dated 13.7.2004 directing the defendants to take a decision on



the legal notice dated 30.07.2003 by passing a speaking order. Pursuant thereto, Managing Director of the respondent-Corporation passed order dated 10.09.2004 stating that rate of rent was previously fixed at 16 paise per bag per month on “general hiring basis”; however, vide order dated 28.05.2003, payment of rent by the Corporation had been changed to “actual storage basis”. Vide the said order dated 10.09.2004, plaintiff was further informed that plaintiff’s plinths had been vacated by the defendants w.e.f. 21.08.2004. It was pleaded in the plaint that the said order passed by defendants was against the law and spirit of the Agreements entered into between the parties. Accordingly, present suit was instituted on 16.03.2005 for recovery of Rs.2,67,511/- as rent for the period of 01.04.2003 till 21.08.2004.

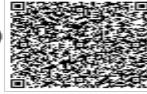
3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Ferozepur had dismissed the suit of the plaintiff vide judgment and decree dated 15.09.2011. The Civil appeal filed by the plaintiff was also dismissed by the learned District Judge, Ferozepur vide judgment and decree dated 16.12.2013. Hence, the present second appeal by the plaintiff.

4. It is inter alia submitted by learned counsel for the appellant that firstly, Ld. Trial Court erred in holding that since plaintiff had obeyed earlier order dated 24.04.2000 vide which, after expiry of original tenancy period from 31.03.2000, the rate of rent was fixed by respondent, which rent was accepted by appellant, therefore, it would be bound to accept the later order as well. It is contended that the said finding is totally



unsustainable for the reason that before expiry of original tenancy period, on 11.02.2000, plaintiff offered continuation of tenancy @ 25 ps/bag/month, against which there was a counter-offer dated 24.04.2000 offering 16 ps/bag/month. The said counter-offer was acceptable to the landlord-plaintiff and acceptance is evident from conduct wherein it accepted the said rent without any protest which continued till 31.03.2003. It is contended that there was no question of obeying any order. Later, when this rental was unilaterally reduced vide order dated 28.05.2003 received by appellant on 15.07.2003, the appellant did not accept the same and immediately issued legal notice dated 30.07.2003 to pay arrears of rent and vacate the premises. Thus, there is no law whereby letters or orders of respondent are bound to be accepted by appellant. It is entirely a contractual relationship guided by contract.

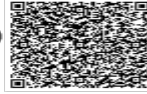
5. Learned counsel for the appellant further submits that Ld. Courts erred in holding that the appellant is bound by the directives of respondent. It is submitted that the respondent may be a governmental corporation but in a relationship of landlord and tenant, the landlord is not bound to accept any dictums of tenant and it does not make any difference whether the respondent is a government or private body. The rent agreement clearly shows that the respondent is tenant and no term can be dictated or enforced upon the landlord without his consent. The relationship of landlord and tenant like plaintiff and defendant herein, are governed by the provisions of Indian Contract Act, which provides that every contract has to be mutual and with the consent of both the parties.



There is no provisions under this Act, providing special status or immunity to respondent on account of being a government corporation, holding that in such cases letters or orders of tenant are binding on landlord. Therefore, in absence of any such provision, it is immaterial as to whether respondent is private or government and any change of rent, can be permissible only when appellant / landlord shall consent for the same.

6. It is further submitted by Id. counsel for the appellant that the Ld. Courts below further erred in holding that since there was a change in policy of respondent to pay charges for storage, the same would be binding and applicable upon appellant. Ld. Counsel argues that any change in policy, is an internal matter and scheme of respondent. Respondent was aware that the change in scheme would result in lower rent and before implementing the same advisable course of action, should have been to take consent from landlord or vacate the premises, since the same would be contrary to the agreed terms and conditions regarding rate of rent. Change of policy would be binding upon the defendant and not rest of the world including appellant.

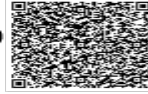
7. Learned counsel for the appellant further submits that Ld. Appellate Court, erred in holding that the appellant was a partnership firm. There was no business dealings with the respondent. The property was leased as per the terms of Transfer of Property Act and applicable State Laws. Before leasing out the property, it is not mandatory that only partnership firm can lease out the property as per Transfer of Property Act. Co-owners are also entitled to do so. If for the sake of convenience,



the co-owners to avoid any controversy executed a co-ownership deed for the convenience of appropriating rent, this does not make them a partnership firm and hence the Ld. Appellate Court could not have held the appellant to be a partnership firm and hold the suit not maintainable in absence of registration. It is not the case of the defendant that only partnership firm could lease out the property nor there is any partnership deed on record. The co-ownership agreement was accepted by the defendants as such without any objection that it was a partnership deed or that the plaintiff should have been a registered firm. Thus, it is an after thought to raise this ground. Moreover, merely if some co-owner writes him as partner that does not alter his status of a partner and under the law, he continues to remain a co-owner as he is not having any business dealing with the respondent for which partnership deed was mandatory.

8. Learned counsel for the appellant accordingly prays that the present Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

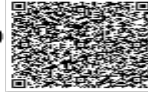
9. *Per contra*, learned counsel for the respondent-Corporation submits that the impugned judgments and decrees of the learned Courts below suffer from no error. It is submitted that learned Courts below, after examination of all the materials on record, have given cogent and concurrent findings which deserve to be upheld. He accordingly prays for dismissal of the present appeal.



10. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellant.

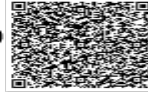
11. It has firstly been contended on behalf of the appellant that the appellant had been receiving a consolidated amount of Rs.18,960/- per month by way of rent; and the same could not have been unilaterally reduced by the respondent to Rs.15,163/- per month from 01.04.2003 onwards. However, the said argument of the appellant is on the face of it, fallacious as admittedly, the first Agreement dated 01.04.1995 entered into between the parties Ex.P5 (available at page 173 of the LCR) nowhere stipulates that a consolidated amount of ₹18,960/- shall be payable to the appellant by way of rent. The Agreement dated 1.4.1995, categorically stipulates that rate of rent shall be “16 paise PBPM” i.e. 16 paise per bag per month. Guarantee period was for 5 years. Thus, the terms and conditions of Agreement are crystal clear.

12. It has next been contended on behalf of the appellant that vide letter dated 11.02.2000 Ex.P1, plaintiff had written to the defendants demanding rent @ 25 Paise PBPM. Admittedly, the said request of the appellant was not accepted by the respondents which had in turn issued letter dated 24.04.2000 Ex.P10 (available at page 187 of the LCR), wherein it is again stated that w.e.f. 01.04.2000, plaintiff-Company shall continue receiving rent @ 16 Paise PBPM under the General Hiring Scheme; and that other conditions will remain as were previously settled. Thus, again, it



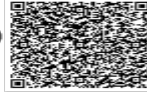
is nowhere stated by the respondent that appellant shall receive rent at consolidated amount of ₹18,960/- per month.

13. The next contention of the appellant is that the dispute started on 15.07.2003 when plaintiff was paid reduced rent of Rs.15,163/- for the month of April 2003. In this regard, observations of the learned Trial Court in para 14 of its judgment dated 15.09.2011 are relevant to the effect that the plaintiff is estopped from raising this plea as he himself had been accepting rent @ 16 Paise PBPM since 01.04.2003. Appellant has denounced this reasoning by contending that rent of Rs.15,163/- for the month of April 2003 was first received by the appellant only in July 2003; promptly whereafter appellant had issued legal notice dated 30.07.2003 upon the respondents. However, learned counsel for the appellant is unable to substantiate his said argument from the record; *in-as-much* as appellant is unable to demonstrate to this Court that rent for the months of April, May, and June 2003 was paid by the respondents only vide a cheque received on dated 15.07.2003. Even the pleadings of the appellant in this regard are Ambiguously couched; as it is the own pleaded case of the appellant in the plaint (at page 23 of the LCR) *“that all of a sudden in the month of April, 2003 the plaintiff-company was given a cheque worth Rs.15163/- which was received by the plaintiff-company on 15-7-2003 and as this amount was on lower side.....”*. Even in the legal notice dated 30.07.2003 Ex.P12, plaintiff has called upon the respondent-Corporation as *“Therefore, through this notice of mine I call upon you either to payment to my client at the rate of 16 paise per bag per month on*



premises basis as the Corporation had already been paying and in case the Corporation is not willing to pay the rent to my client at this rate, please vacate the open plinths of my client at Guru Har Sahai forthwith. I may further pin point that in case of any lapse on the part of the Corporation in this regard my client shall have no other option except to knock the door of the competent jurisdiction at the cost and risk of the Corporation” (at page 193 of the LCR). Thus, from all of the above facts, it is established that Plaintiff has nowhere stated either in the legal notice dated 30.07.2003 Ex.P12 or in the plaint, that consolidated amount of Rs.18,960/- was payable to him. Plaintiff had constantly demanded that rent @ 16 Paise PBPM be paid to him. The same was also being accepted by the appellant without demur. It therefore, implies that rent was accepted by the appellant as per the bags stored by the respondent-Corporation in the plinths provided by the plaintiff.

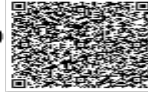
14. Even contention of the plaintiff that the terms and conditions of the Agreements were unilaterally modified by the respondents, is incorrect; as admittedly, in 1st Agreement dated 01.04.1995 or 2nd Agreement dated 24.04.2000 it has nowhere been stated that rent shall be paid as per the consolidated amount. All the Agreements stipulate that rent is payable @ 16 Paise PBPM. Thus, plaintiff cannot seek to go beyond the terms and conditions of the Agreements entered into between the parties. Even argument of the appellant that stand of the respondents is that there has been change in Policy w.e.f. 01.04.2003 and rent was previously payable on “general hiring basis” and is now payable “as per



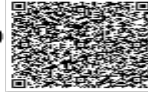
actual storage basis”, can be of no help to the appellant as, parties are bound by the terms and conditions of the Agreements. At best, it would be a mere superfluous change of nomenclature without any effective difference in the terms and conditions of the Agreement as rent was still payable @ 16 PBPM. Thus, appellant cannot take umbrage to the Policy of 01.04.2003 being prejudicial, as admittedly plaintiff had accepted the letter/order dated 24.04.2000 Ex.P10 whereby rate of rent continued to be same.

15. It has next been argued on behalf of the plaintiff that the plaintiff is not an employee of the respondent-Corporation; and is therefore, not bound by their Policy; and that the appellant is landlord of the respondents and in case the respondents feel rent is high, the respondents may vacate the premises. Needless to say, as the appellant was dissatisfied with the rent received by the respondents on 15.07.2003, respondents had forthwith vacated the suit premises on 21.08.2004. It is also to be noted that admittedly, there was an Arbitration Clause in the Agreements entered into between the parties however, as the respondent-Corporation filed no appeal or cross-objections, the defendants could not raise plea to refer the matter to Arbitration. As such, suit of the plaintiff was held to be maintainable.

16. The relevant findings of the learned First Appellate Court are contained in paras 9 and 11 of the judgment and decree dated 16.12.2013, which are as under:-



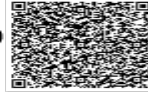
"9. There is no controversy between the parties to the effect that an agreement Ex. P16 was executed between the parties for the purpose of storage of food grains in the plinths of the plaintiff w.e.f. 1.4.1995 @ 16 paisa per bag per month. After the completion of the guarantee period of five years, the plinths were again taken on rent on general hiring basis @ 16 paise per bag per month. There was no controversy between the parties regarding payment of rent till 31.3.2003. The controversy cropped up when the plaintiff was made the payment of rent with regard to the storage of food grains on actual storage basis. The version of the defendants is to the effect that huge space with more than sufficient storage capacity became available due to high liquidity of stocks from the godowns/plinths and the PSWC had decided to dehire plinths/godowns which were not required for the next crop season. Furthermore, the Corporation had changed the policy of hiring vide circular dated 28th May, 2003 and as per the new policy, all the plinths hired on general hiring basis were ordered to be hired on actual hiring basis with effect from 1st April, 2003. Consequently, the payment has been made to the plaintiff for the subsequent period on actual storage basis. It has been contended by the learned counsel for the plaintiff that a unilateral act has been performed by the defendants, without the knowledge of the plaintiff and as such, the plaintiff is entitled to the rent on the basis of general hiring basis. It is significant to note that in the cross examination, Mahesh Pal PW1 has expressed his ignorance with regard to the change of policy. It may be mentioned here that he has admitted the existence of his signatures on the copy of the letter Ex. D1 vide which the plaintiff was informed with regard to the policy of the Corporation. Furthermore, Ex.D7 is also the copy of the letter dated 31.3.2003, which bears the



signatures of Mahesh Pal and the date below has been mentioned as 31.3.2003. As such, it cannot be said that the plaintiff was not aware of the change of the policy. The plaintiff has not sought to dispute the policy at the earlier instance. The plaintiff has also sought to put forth a case during his cross examination that he had been accepting the rent on actual storage basis under protest. No document has been produced or proved on record to indicate that the plaintiff had been receiving the rent subsequent to the period from 1.4.2003 under protest. The rent has been paid on the basis of the actual storage basis in terms of the circular issued by the Corporation and he becomes entitled to the receipt of the rent on the basis of the actual storage basis.

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11. It is no doubt true that as per the agreement Ex.P16, there is an arbitration clause but significantly, on appearance in the court, the defendants never agitated their claim for referring the matter for arbitration nor they filed any such application for referring the dispute to the arbitrator. As such, there cannot be any bar for proceeding in the suit in the Civil Court. However, the material on record is indicative of the fact that the plaintiff is a partnership firm. Ex. P9 is the copy of the co-ownership deed pertaining to the plaintiff firm. The nomenclature of a document cannot be termed to be the deciding factor to arrive at a conclusion with respect to nature of document. The perusal of Ex.P9 indicates that the same is a partnership deed, wherein the shares of the plaintiffs have also been specified. To arrive at a conclusion as to whether the plaintiff firm is a partnership firm, the relationship between the parties has to be looked into. It has been argued on behalf of the appellant that as per Section 6 of the Indian Partnership Act, mere sharing of profits cannot



be termed to be ground to conclude that there exists relationship of partners between co-owners. It shall not be out of place to mention here that Mahesh Pal had been presenting himself as partner of the firm during the course of dealings with the defendants. The agreement Ex.P16 has been executed by Mahesh Pal and his signatures appear on behalf of the plaintiff as partner of the said firm. Furthermore, in the various notices issued by the plaintiffs, it has been specifically and categorically mentioned that Mahesh Pal is the partner of the plaintiff firm. The notice Ex.P3 has been issued by Mahesh Pal as partner of the plaintiff. Furthermore, notices Ex.P4 and Ex.P12 have been issued by the counsel on the instructions of the plaintiff through its partner Mahesh Pal. As such, the material on record is indicative of the fact that the plaintiff is a partnership firm. Significantly, the said firm has not been registered. The plaintiff is seeking to enforce the right arising out of the contract and in such circumstances, a bar raised under Section 69 of the Indian Partnership Act comes into play that no suit can be instituted to enforce the right arising out of the contract unless the firm is registered. In the case in hand, there is no document to show that the firm has been registered with register of firms and Mahesh Pal through whom the present suit has been instituted is recorded to be one of the partners of the firm. As such, the suit is not maintainable. The findings of the learned trial court on issue o. 2 are reversed and recorded in favour of the defendants and against the plaintiffs.”

17. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

18. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.
19. Pending applications, if any, stand disposed of.

18.11.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No