

2025:PHHC:023093



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

RSA-3640-2018 (O&M)
Reserved on : 10.02.2025
Pronounced on : 18.02.2025

Anil KumarAppellant

VERSUS

Suresh ChandRespondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Chaudhary, Advocate for
Mr. D. S. Adlakha, Advocate for the appellant.

ALKA SARIN, J.

CM-9462-C-2018 & CM-9463-C-2018

1. For the reasons mentioned in the applications, the delay of 175 days in refiling the appeal and the delay of 8 days in filing the appeal is condoned. Applications stands disposed off.

RSA-3640-2018

2. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 05.08.2015 passed by the Trial Court and judgment and decree dated 29.04.2017 passed by the First Appellate Court.

3. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit averring that on 15.10.2007 he had taken the suit premises on rent from the defendant-respondent for doing the business of a cloth merchant. He spent a huge amount on doing up the suit premises and

stocked cloth worth lakhs of rupees in the shop by the name of Anil Cloth House. Since the suit premises were in an old condition the plaintiff-appellant gave rupees one lakh to the defendant-respondent for carrying out the construction which amount was refundable with interest. It was averred that the defendant-respondent gave the ground floor on rent to the plaintiff-appellant while the first floor was given on rent to some other tenant. The rent was agreed to be Rs.700/- per month for a period of seven years. However, as per the plaintiff-appellant the defendant-respondent had started putting pressure on him to increase the rent to Rs.1200/- per month failing which he was threatening to forcibly dispossess the plaintiff-appellant from the suit premises and throw his stock. Initially, on 05.02.2011, the plaintiff-appellant filed a suit for permanent injunction. However, subsequently the plaintiff-appellant alleged that he had been forcibly dispossessed from the suit premises by the defendant-respondent. The suit was thereafter amended to one for mandatory injunction for directing the defendant-respondent to restore possession of the suit premises along with the stock to the plaintiff-appellant. The defendant-respondent in his written statement submitted that the plaintiff-appellant had agreed to vacate the suit premises in the first week of April 2010 subject to payment to Rs.30,000/- as compensation for vacating the shop and that the agreement was executed in the presence of a witness and Rs.30,000/- was handed over to the plaintiff-appellant on 08.04.2010. It was the stand taken that even after receiving the said amount the plaintiff-appellant did not vacate the suit premises and demanded extension of time and that he finally

vacated the suit premises on 15.03.2011 in the presence of witnesses and since that day the defendant-respondent was in possession of the suit premises.

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

1. Whether the plaintiff is entitled to a decree for mandatory injunction directing the defendant to restore the possession of the property detailed in the head note of the plaint along with all the material lying therein at the time of forcible dispossession and the continuation of restraint order dated 16.02.2011 ? OPP
2. Whether the plaintiff has no locus standi to file the present suit ? OPD
3. Whether the suit is not maintainable ? OPD
4. Whether the plaintiff has concealed the true facts from this court ? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
6. Whether the plaint has not been filed according to the amendment sought, and therefore the plaint is liable to be rejected ? OPD
7. Relief.

5. The Trial Court vide judgment and decree dated 05.08.2015 dismissed the suit holding inter-alia that the plaintiff-appellant himself delivered the possession of the suit premises to the defendant-respondent, and

he was not forcibly dispossessed by the defendant-respondent. It was also held that a suit for mandatory injunction was not maintainable. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 29.04.2017. 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 plaintiff-appellant was forcibly dispossessed from the suit premises and his goods were thrown out. It is argued that in these circumstances a suit for mandatory injunction was maintainable and therefore the suit deserved to be decreed.

7. Heard.

8. In the present case both the Courts have held that the plaintiff-appellant had delivered possession of the suit premises to the defendant-respondent which was witnessed by several persons some of whom also stepped into the witness box. The police complaint lodged by the plaintiff-appellant also stands closed. Further, there is no plausible explanation forthcoming for the plaintiff-appellant to have executed the affidavit Ex.PX if the possession was not being handed over voluntarily. While seeking the relief of mandatory injunction it must be shown by the plaintiff that there is an obligation on the part of the defendant to perform certain acts the breach of which obligation must be alleged by the plaintiff. However, when the plaintiff-appellant is proved to have voluntarily handed over possession of the

suit premises to the defendant-respondent, there remains no obligation on the part of the defendant-respondent to restore possession. In such circumstances the suit for mandatory injunction would not be maintainable. The findings recorded by the Trial Court were affirmed by the First Appellate Court. In the face of the findings recorded by both the, fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

9. 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.

18.02.2025

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*