



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

202

**RSA-1646-1997 (O&M)
Reserved on: 19.02.2026
Pronounced on: 17.04.2026**

Ram Phal

...Appellant

Versus

Dr. Shyam Sunder

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. R.S. Sangwan, Advocate
for appellant.

Mr. Surinder Gandhi, Advocate
for respondent.

PARMOD GOYAL, J.

Present regular second appeal has been preferred by appellant-defendant being aggrieved by judgment and decree dated 30.04.1997 passed by learned Additional District Judge-II, Bhiwani, vide which first appeal preferred by respondent-plaintiff was allowed and suit of respondent-plaintiff was decreed.

2. Respondent-plaintiff had filed suit for possession and sought eviction of appellant-defendant from the shop in dispute, which was dismissed by learned Court of First Instance vide judgment and decree dated 27.10.1995. It was held that suit for possession was not maintainable as suit property was constructed 10 years prior to eviction sought by respondent-plaintiff-landlord.

3. Respondent-plaintiff-landlord, in suit for possession, had asserted that appellant-defendant had taken shop in dispute on rent on 06.06.1984 and rent was enhanced to Rs.165/- per month w.e.f. 01.10.1988

by executing a rent note dated 02.06.1986. It was asserted by respondent-plaintiff that shop was constructed within 10 years from date of filing of suit, therefore provision of Haryana Urban (Control of Rent and Eviction) Act, 1973, hereinafter referred to as **(1973 Act)**, were not applicable. It was further asserted that vide notice dated 09.05.1990, tenancy of appellant-defendant was terminated by respondent-plaintiff. Respondent-plaintiff had also claimed rent amounting to Rs.495/- per month from 01.03.1990 to 31.05.1990 along with Rs.400/- per month as compensation for occupation of shop in dispute thereafter.

4. Appellant-defendant-tenant vide his written statement had admitted relationship of landlord and tenant and had also admitted that shop was on rent @ Rs.165/- per month. Appellant-defendant, however, asserted that 1973 Act is fully applicable to the shop as it was constructed 10 years prior to filing of petition. Appellant-defendant further claimed that respondent-plaintiff had preferred four eviction petitions under 1973 Act before Rent Controller and same were withdrawn after receiving the rent. Appellant-defendant had accordingly prayed for dismissal of suit.

5. Following issues were framed from the pleadings of the parties:-

- i) Whether the shop in dispute was constructed as alleged in the plaint? OPP
- ii) Whether the provisions of Haryana (Urban Control of Rent and Eviction) Act, 1973, are not applicable to the shop in dispute? OPA
- iii) Whether the tenancy of the defendant has been

terminated by 15 days' notice upon the defendant by the plaintiff as alleged? OPA

- iv) Whether the plaintiff is entitled to mesne profits @ 400/- per month from 1.6.1990 for the use and occupation of the shop in dispute by the defendant after the termination of his tenancy? OPA
- v) Whether the plaintiff is entitled to recovery of Rs.495/- by way of rent from defendant? OPA
- vi) Whether the suit of plaintiff is not maintainable in the present form? OPR
- vii) Whether the petitioner had got no locus standi to file the petition? OPR
- viii) whether the petitioner is not maintainable in the present form? OPR
- ix) Relief.

6. The foremost issue which is required to be adjudicated is whether shop was constructed within 10 years of filing of suit so as to exclude operation of 1973 Act. Learned Court of First Instance, in view of the fact that prior to filing of suit for possession, respondent-plaintiff had already filed four eviction petitions under 1973 Act and had withdrawn the same after receipt of rent rendered by tenant, held that the respondent-plaintiff had admitted that shop was constructed 10 years before filing of suit and cannot claim possession by filing present suit. Accordingly, the suit by respondent-plaintiff for possession was dismissed. Whereas learned First Appellate Court, after scrutinizing evidence, concluded that since shop was

constructed in the year 1984, therefore suit was within 10 years of construction of the shop, excluding jurisdiction of Rent Controller under 1973 Act and had allowed the appeal as well as the suit.

7. In present case, following facts are not in dispute:-

- i. Relationship of landlord and tenant is admitted by both the parties.
- ii. The rate of rent was Rs.165/- per month.
- iii. Prior to filing of present suit for possession, admittedly, respondent-plaintiff had allegedly preferred four eviction petitions under 1973 Act which he had withdrawn on tendering of rent by appellant-defendant-tenant.

8. The main dispute, therefore, is whether shop was constructed within 10 years of filing of suit, giving, the Civil Court jurisdiction to decide whether appellant-defendant is a lessee and whether relationship of landlord-tenant is governed by provisions of 1973 Act.

9. Prior to deciding above-noted issue, it would be necessary to find out whether by filing previous eviction petition under 1973 Act, landlord is estopped from seeking his remedy by filing present suit for possession. One of the main arguments raised on behalf of appellant-defendant is that once respondent-plaintiff-landlord had invoked jurisdiction of Rent Controller under 1973 Act, he cannot claim possession by way of suit for possession as being sought by filing present proceedings. On consideration, I find that no estoppel can operate against law. All the petitions preferred earlier under 1973 Act were never adjudicated by the

Rent Controller, but were rather withdrawn by respondent-plaintiff-landlord on tendering of rent by appellant-defendant-tenant. Merely because a party had invoked the jurisdiction of court which had no jurisdiction over the matter, would not act as an estoppel for invoking jurisdiction of court which has got jurisdiction over the matter. Therefore, filing of earlier petition under 1973 Act would not debar suit if it is shown that shop was constructed within ten years.

10. In present case, the simple case of respondent-plaintiff landlord is that shop was constructed within 10 years from date of termination of lease/filing of suit, therefore, being a new construction it is exempted from provisions of 1973 Act for next 10 years from date of construction and since jurisdiction of authorities under 1973 Act stood excluded, therefore approaching rent controller was wrong and illegal and cannot stop appellant plaintiff from approaching court having jurisdiction over the matter. Therefore, in present case, the main issue is whether the tenancy was terminated within 10 years of construction of shop and in case it is found that suit was filed within 10 years of construction after terminating tenancy, in that case suit would be maintainable. However, if it is found that construction was raised prior to 10 years, the suit will not be maintainable and shall be liable to be dismissed.

11. In present case, respondent-plaintiff-landlord has claimed that construction of shop was raised in 1984, thereafter the shop was given on rent on 06.06.1984 to appellant-defendant-tenant and rent was enhanced to Rs.165/- w.e.f. 01.10.1986 by executing rent note dated 02.06.1986. It was claimed that the tenancy was terminated on 09.05.1990 after giving 15 days'

notice to appellant-defendant. The writing of appellant-defendant, admitting construction of shop having been raised in the year 1984, was placed on record as Ex.PW5/A. Respondent plaintiff had also examined handwriting and fingerprint expert, Deepak Jain as AW-7 to prove that signatures on writing Ex.PW5/A are that of appellant-defendant alone.

12. On the other hand, appellant-defendant had relied on the site plan Ex.D1 which was sanctioned on 18.09.1978 to assert that shop was constructed 10 years prior to filing of the suit on 08.06.1990. No evidence in rebuttal was adduced by appellant-defendant to show that report of handwriting and fingerprint expert (AW-7) is incorrect. Termination notice dated 09.05.1990 had been proved as Ex.PW5/C.

13. Once the respondent-plaintiff allegedly had succeeded in proving writing Ex.PW5/A vide which rent was enhanced to Rs.165/-, wherein appellant-defendant had admitted that shop was constructed in the year 1984, the Court of First Instance had erred in recording the finding that shop was constructed 10 years prior to date of termination of lease/suit. Admission is best evidence. Vide Ex.PW5/A, construction was admitted to be raised in the year 1984. Execution of Ex.PW-5/A stands proved by opinion of AW-7 whose evidence has gone unrebutted. Fact that appellant-defendant had entered the suit property in 1984 also goes to prove that the construction was raised within 10 years from date of filing of suit i.e. after 09.06.1980. Mere sanction of site plan does not prove completion of construction. Site plan dated 18.09.1978 only goes to show that suit property in the year 1978 was a vacant plot and construction took place thereafter. Some time must have been taken by respondent-plaintiff for carrying out

construction. Appellant-defendant had admitted that construction was raised in 1984 and shop was given to him on rent. It was appellant-defendants who was duty bound to prove that his admission made vide Ex.PW5/A was wrong. However, in present case, appellant-defendant has failed to prove that shop was constructed 10 years prior to the filing of suit. Learned appellate court has therefore rightly held that civil court has jurisdiction in present case and had rightly allowed the first appeal and decreed the suit. No interference with the conclusion drawn by learned appellate court can be made.

- 14. Appeal is without any merit and dismissed.
- 15. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)
JUDGE

17.04.2026
Sunil Chander

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No