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

RSA-1462-2023 (O&M)
Date of decision : 08.04.2026

RASENDER AND ORS.

....Appellants

Versus

OM PARKASH AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Madan Lal Saini, Advocate
for the appellants.

PANKAJ JAIN, J. (ORAL)

CM-5404-C-2023

This is an application filed under Section 151 CPC seeking condonation of delay of 20 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 20 days in re-filing the instant appeal is hereby condoned.

CM-5403-C-2023

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 24 days in filing the instant appeal.

For the reasons recorded in the application, this Court is



satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 24 days in filing the instant appeal is hereby condoned.

RSA-1462-2023 (O&M)

By way of present appeal, plaintiffs No.2 to 4 have challenged the judgment and decree passed by the Courts below whereby their suit for possession, declaration and permanent injunction, stands dismissed.

2. For convenience, the parties hereinafter are referred to by their original position before the Court of the First Instance, i.e., appellants as ‘plaintiffs No.2 to 4’, respondents No.1 to 15 as ‘defendants No.1 to 15’ and respondent No.16 as ‘appellant No.1’,

3. Plaintiffs claim to be owners of the suit land. As per plaint, the land in question was given by predecessors-in-interest of the plaintiffs to the forefathers of the defendants for cultivation. No rent was ever paid to the plaintiffs. As per the revenue record, the defendants and their predecessors-in-interest were recorded as *Gair Marusi Bai Wajah Kabja Derina*. As per the plaintiffs, they terminated tenancy by serving legal notice dated 10.11.2014 upon the defendants, requesting them to hand-over the possession of the land. Defendants having failed to comply with the same, the plaintiffs are entitled to seek possession.

4. Suit was contested by the defendants claiming themselves to be occupancy tenants. As per defendants, they have attained ownership by the



dint of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as 'the 1952 Act'). Defendants also preferred counter claim seeking declaration to the effect that they have become owners in possession of the suit property by the dint of 1952 Act.

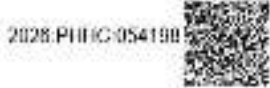
5. Both the Courts below have rejected the claim of the defendants *qua* occupancy tenancy and dismissed their counter-claim.

6. The Courts below have non-suited the plaintiffs as well, holding that even though defendants have failed to prove themselves to be occupancy tenants, but still are tenants and thus plaintiffs need to proceed against the defendants for possession under the provisions of Punjab Tenancy Act, 1887.

7. After arguing for some time, Mr. Saini prays for withdrawal of the present appeal with liberty to approach the Revenue Courts for eviction of the defendants.

8. This Court finds that the permission has already been granted to the appellants in view of following observations made by the Trial Court in the impugned judgment:

25. Now coming to the question that whether the plaintiffs who are recorded owner in the jamabandi are entitled to a decree for possession. The plaintiff has himself pleaded the permissive possession of the defendants over the suit land. So they claimed defendants to be their tenants. Under section 43 of Punjab Tenancy Act 1887, the landlord may apply to the revenue officer for the ejectment of the tenant when a tenant has not a right of occupancy. Therefore, plaintiff is not entitled to seek a decree for possession from the civil court. Further, no evidence of any kind has been led



to prove that the entries in the revenue record are wrong because the plaintiffs has himself admitted the possession of the defendants over the suit land as Gair Marusi Tenant. The two witness examined by the plaintiff namely Bhima as PW1 and Bijender as PW2 does not prove the same. It has been held by the Hon’ble Supreme Court of India in case titled as *Punjab Urban Planning and Development Authority vs. M/s Shiv Saraswati Iron & Steel Re-Rolling Mills 1998 (3) LJR 106*, wherein it has been held that Burden of proof – plaintiff must succeed or fail on his own case. He cannot take advantage of weakness in the defendants case to get a decree. Consequently, he is not entitled to any declaration or permanent injunction. Similarly, the defendants/ counter-claimants failed to prove that they are occupancy tenants over the suit land or entitled to relief of permanent injunction. Hence issue nos. 1 to 3 is decided against the plaintiffs whereas issue no. 4 is decided against defendants/ counter-claimants.

9. Once the defendants have been held to be tenants, the plaintiffs have liberty to approach the Revenue Courts seeking eviction of the defendants.
10. With the aforesaid observations, the instant appeal is disposed off with liberty to the plaintiffs as prayed for.
11. Pending application, if any, shall also stand disposed off.

April 08, 2026	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No