
(2016) 05 P&H CK 0334
In the Punjab And Haryana At Chandigarh
Case No : R.S.A No. 2602 of 2016 (O&M)

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Balbir Singh

RESPONDENT

Date of Decision : 23-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 4 PLR 438

Hon'ble Judges : Mr. Darshan Singh, J.

Bench : Single Bench

Advocate : Mr. D.R. Sharma, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

Mr. Darshan Singh, J.—CM No. 6941-C of 2016

This application has been filed under Section 151 of the Code of Civil Procedure, 1908 for condoning 3 days delay in re-filing the appeal.

Heard.

For the reasons mentioned in the application, the present application stands allowed and the delay of 3 days in re-filing the present appeal is hereby condoned.

R.S.A No. 2602 of 2016 (O&M)

The present appeal has been preferred against the judgment and decree dated 26.11.2015 passed by learned Additional District Judge, Ferozepur, vide which the appeal filed by the appellants-defendants against the judgment and decree dated 06.07.2013 passed by the learned Additional Civil Judge (Senior Division), Zira, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent has filed the suit for possession by way of ejectment of appellant-defendants from the demised premises measuring 24" X 80" as shown with letters ABCD in the site plan attached with the plaint situated in the area of Village Longodeva, Tehsil Zira. As per the case of the plaintiff-respondent, he is owner of the property in dispute. On 01.04.1998, the said property was leased out to the appellants for a period of five years. The registered lease deed was executed on 14.6.1999. It was agreed that appellant-defendant no.1 will pay the lease money at the rate of Rs. 500/- per month to the plaintiff-respondent. The period of five years has already expired on 31.03.2003. The plaintiff approached appellants-defendants no.2 and 3 number of times to vacate the demised premises, but of no avail. Thereafter, he served a legal notice on 24.08.2010 to appellants-defendants requesting them to vacate the demised premises by the end of the month of September 2010. The defendants have sent reply to the said notice requesting the plaintiff to execute the further lease deed. Hence the suit.

4. Appellants-defendants contested the suit on the ground inter alia that even after the expiry of the lease period, the plaintiff has duly received the rent from the defendants at the rate of Rs. 500/- per month. But, he has not got executed the document from the defendants in his favour. It was further pleaded that it will be impossible for appellants-defendants to vacate the building in the interest of General Public, because the essential services are to be provided to the public. The defendants are ready to enhance the rent and execute the new and fresh lease deed. It was further pleaded that the notice served by the plaintiff was not correct and in accordance with the provisions of Section 106 of the Transfer of Property Act, 1882 (for short "T.P Act"). With these pleas, the appellants-defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for relief of possession by ejectment of defendants from the property in dispute?OPP

2. Whether the suit of the plaintiff is not in its proper form as no relationship of lessor and lessee exists between the parties?OPD

3. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent with costs, vide impugned judgment and decree dated 06.07.2013.

7. Aggrieved with the aforesaid judgment and decree, appellants-defendants preferred the appeal and the same was also dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 26.11.2015. Hence this Regular Second Appeal.

8. I have heard Mr.D.R.Sharma, Advocate, learned counsel for the appellants and

have carefully gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that even after the expiry of the lease period, the plaintiff-respondent has been accepting the rent at the rate of Rs. 500/- per month for the demised premises. He contended that the lease has already expired on 31.03.2003. But, the suit has been filed on 02.02.2011 i.e. after about 8 years of the expiry of the lease. Thus, he contended that the plaintiff-respondent has accepted the appellants as his tenant. He further contended that the plaintiff-respondent has not adduced any evidence to show that there was any bona fide personal requirement of the plaintiff-respondent for his own use and occupation of the building. Thus, he contended that the judgment and decrees passed by the learned Courts below are illegal.

10. I have duly considered the aforesaid contentions.

11. The salient facts in this case are not disputed. It is not disputed by the appellants-defendants that the plaintiff is owner of the demised premises. It is also not disputed that the demised premises were leased out by the plaintiff-respondent to appellant-defendants for a period of five years w.e.f. 01.04.1998 at the rate of Rs. 500/- per month as lease money. It is also not disputed that the said lease had already expired on 31.03.2003 and the lease was not renewed thereafter. It is also not disputed that before filing the suit, the plaintiff-respondent has served the appellants with a legal notice calling upon them to vacate the demised premises by the end of month of September 2010 and thereafter, he has filed the suit for possession. It is also not disputed that as the demised premises are not situated in any urban area, rather those are situated in Village Longodeva, Tehsil Zira so, the provisions of the East Punjab Urban Rent Restriction Act, 1949 (for short "Act"), were not applicable.

12. Once the provisions of the Act were not applicable to the demised premises, so the plaintiff-respondent was not required to prove his bona fide requirement/ personal necessity. The present suit has been filed for possession by way of eviction due to expiry of the lease period. As already mentioned, the demised premises were leased out to the appellants for a period of five years w.e.f. 01.04.1998. The lease has already expired on 31.03.2003. Thereafter, the lease in favour of the appellants were never extended or renewed by the plaintiff-respondent. Even in the reply to the legal notice, appellants have expressed their willingness to execute the further agreement by enhancement of the rent as prevailing in the market. It shows that there was no extension of the lease after 31.03.2003.

13. Learned counsel for the appellants has vehemently argued that as the plaintiff-respondent has been accepting the rent/lease money even after the expiry of lease so it amounts to extension of tenancy. But, this plea raised by learned counsel for the appellants is without any substance. The tenancy is always a bilateral contract. It can be created by agreement. No fresh tenancy can

be created merely by acceptance of the rent after the expiry of the lease period. The Hon''ble Apex Court in case *Dhawanji Lakhamshu v. Himatlal Jamnadas Dani* AIR 1972 S.C 819, has laid down that where the tenancy stands determined by efflux of time, the fresh tenancy is not created merely if the landlord accepted rent. Again in case *Firm Saradarilal Vishwanath v. Pritam Singh* 1978 AIR (SC) 1518, the Hon''ble Apex Court has laid down that acceptance of the rent by the landlord does not create fresh tenancy after the determination of the lease. The same principle of law has been reiterated by this Court in case *Piare Lal since deceased through L.Rs v. Kishori Lal* 1997(1) PLR 507 that no fresh tenancy can be created by mere acceptance of rent. Thus, mere acceptance of the rent by the plaintiff-respondent will not create any fresh lease/tenancy in favour of the appellants.

14. It is an admitted fact that before filing the suit, plaintiff-respondent has issued the legal notice calling upon the appellants to vacate the premises by the end of September 2010. No legal defect could be pointed out by learned counsel for the appellants in the said legal notice issued by the plaintiff-respondent and duly served upon the appellants-defendants. Even, service of the notice under Section 106 of the T.P. Act was not prerequisite to file the suit for possession where the lease has already come to an end. The filing of the suit by itself is a notice to quit. Reference can be made to cases *Om Parkash and another v. Kamlesh Mittal through Her Attorney Sewa Ram* 2011 5 RCR(Civil) 633 and *Hazari v. Vinod Kumar (now deceased) through LR's and others* 2015 4 RCR(Civil) 688.

15. Mere this fact that the suit has been filed after eight years of the expiry of the lease period is also no ground to non-suit the plaintiff-respondent, as the appellants have no right to continue with the occupation of the demised premises until a fresh lease is executed. Once, the lease deed has expired and is not renewed, the tenancy will be month to month basis and lessor has a right to terminate the same by serving a legal notice. Reference can be made to case *M/s Mandap International Pvt. Ltd. v. M/s Ahuja Kashyap Pvt. Ltd.* 2014 5 RCR(Civil) 797.

In the instant case also, the plaintiff-respondent has issued the legal notice to quit before filing the suit. After the expiry of the lease period, the appellants have no right to continue in possession of the suit premises and plaintiff-respondent is entitled for the possession thereof. Thus, no fault can be found with the decree for possession passed by the learned Courts below.

16. Thus, there is no ground to interfere with the concurrent findings recorded by the learned Courts below.

17. Resultantly, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.