

(2018) 07 P&H CK 0319

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1312 Of 2011(O&M)

Ranjit Singh And Co. Barnala And Another APPELLANT

Vs

Managing Director, Punjab State Civil Supplies Corporation RESPONDENT
And Others

Date of Decision : 04-07-2018

Acts Referred:

Partnership Act, 1932 — Section 69(2)
Transfer Of Property Act, 1882 — Section 108(q), 11(a)

Citation : (2018) 07 P&H CK 0319

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Sukhbir Singh, Deepali Puri

Final Decision : Dismissed

Judgement

Rekha Mittal, J

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery of arrears of rent for

the period from 2.9.2002 to 30.9.2004 alongwith interest has been dismissed by the Additional Civil Judge (Senior Division), Barnala vide judgment and

decree dated 27.5.2009 and the appeal preferred by the appellants remained unsuccessful before the Additional District Judge, Barnala.

In brief, case of the plaintiffs is that they own one open plinth/godown at Barnala which has capacity to store 88312 bags of commodities. Kulwinder

Singh, managing partner of plaintiff firm leased it out to respondents/defendants @ Rs. 14 paise per bag per month i.e. Rs. 12,363/- per month. The

appellants filed eviction applications on the ground of arrears of rent wherein necessary tender was made and the applications were withdrawn.

Respondents vacated rented premises on 30.9.2004 vide letter dated 7.10.2004. They failed to pay rent for the period from 2.9.2002 to 30.9.2004 at

the agreed rate that comes to Rs. 3,09,075/- which they are liable to pay with interest @ 9% per annum amounting to Rs. 57,950/- till filing of the suit

alongwith pendente lite and future interest at the same rate.

The respondents/defendants filed joint written statement and admitted the factum of lease for a period of three years under guarantee scheme with

effect from 15.4.1994 to 31.3.1997 @ 14 paise per bag per month. It is also admitted that rented premises stood vacated on 30.9.2004 but denied that

the appellants are entitled to recovery of rent from 2.9.2002 to 30.9.2004 at the agreed rate or any interest is payable. As per decision of head office

vide letter dated 18/19.11.1998, rate of rent in such conditions was 10 paise per bag per month on general hiring basis. A similar decision was taken by

the head office of PUNSUP vide letter dated 26.4.1999 which was explained to the plaintiffs but they did not agree. Respondents also deposited Rs.

50,515 and 78,138/- with the Income Tax Department and Rs. 52,986/- as house tax recovery with the Municipal Committee, Barnala which was to be

deposited by the appellants. The respondents paid Rs. 4,78,740/- in excess to appellants and they are entitled to recover the same alongwith interest @

18% per annum.

The trial court framed issues, reproduced in para 6 of the judgment of the said court. The parties were permitted to adduce evidence in support of

their respective claims. Having heard counsel for the parties in the light of materials on record, the trial court held that the appellants cannot claim rent

prior to 16.3.2003 as the suit was filed on 16.3.2006. The respondents are liable to pay rent of the period from 16.3.2003 till 30.9.2004 @ 14 paise per

bag per month (regarding storage capacity of 88312 bags) alongwith interest @ 9% per annum. Further held that the respondents have already paid

Rs. 1,81,639/-, detailed in para 16 of the judgment and the same is liable to be adjusted out of outstanding liability of the respondents. However, in the

light of provisions of Section 69(2) of the Partnership Act, 1932 (in short 'the Act') suit filed by the appellants is held to be not maintainable as

the same has been filed by an unregistered firm and eventually the suit was dismissed with costs.

As has been noticed hereinbefore, the judgment and decree passed by the trial

court were affirmed in appeal by the Additional District Judge, Barnala.

Counsel for the appellants has not disputed that in a suit for recovery, the appellants can maintain their plea for recovery of rent that falls within three years from the date of institution of the suit on 16.3.2006. Counsel has also not disputed that income tax of Rs. 78,138/- + Rs. 50,515/- deposited with the Income Tax Department by the respondents on behalf of the appellants may be adjusted out of outstanding liability of the respondents. However, he has disputed if the amount of Rs. 52,986/- allegedly deposited with the Municipal Committee, Barnala is liable to be adjusted by contending that neither the appellants admitted the factum of any such deposit by the respondents nor the respondents have proved deposit of an amount of Rs.

52,986/- by leading sufficient much less cogent evidence before the trial court.

So far as the bar under Section 69(2) of the Act is concerned, it is argued with vehemence that the premises in question was rented out through an

agreement for a period of three years with effect from 15.4.1994 to 31.3.1997. On expiry of the lease period, respondents became statutory tenants

under the appellants. It is further argued that as the appellants did not seek enforcement of a liability arising out of a contract that already stood

expired on 1.4.1997, courts have committed serious error rather illegality by non-suiting claim of the appellants for recovery alongwith interest. In

support of his contention, he has relied upon judgment of Hon'ble the Supreme Court M/s Raptakos Brett and Co. Limited vs. Ganesh Property AIR

1998 Supreme Court 3085.

Counsel representing the respondents would support factual findings recorded by the courts whereby it has been held that the appellants cannot claim

arrears of rent for the period prior to 16.3.2003 and an amount of Rs. 1,81,639/- paid by the respondents on behalf of the appellants to the Income Tax

Department and Municipal Committee, Barnala is liable to be adjusted out of amount, if any due and payable by the respondents. However, it has been

strenuously argued that as suit filed by the appellants is hit by the provisions of Section 69(2) of the Act for want of appellant No. 1 being a registered

firm, the courts have rightly dismissed the suit.

I have heard counsel for the parties, perused the paper book and the records.

So far as merits of the case qua factual controversy involved, the short point that requires determination is whether plea of the respondents with regard to adjustment of sum of Rs. 52,986/- purported to be paid to Municipal Committee, Barnala towards house tax is liable to adjustment or otherwise out of outstanding liability of rent from 16.3.2003 till 30.9.2004 @ 14 paise per bag per month qua storage capacity of 88312 bags and interest payable thereon.

Before advertng to the submissions in regard to the aforesaid, I would like to deal with legal issue qua maintainability of the suit.

Indisputably, M/s Ranjit Singh and Company Barnala, the partnership firm that leased out the premises in question with effect from 15.4.1994 to

31.3.1997 is an unregistered firm. On expiry of initial lease period, the appellant have been claiming rent @ 14 paise per bag per month by way of

enforcement of terms and conditions initially agreed between the parties for a period of three years.

Section 69 of the Act deals with effect of non-registration. A relevant extract from sub Section (2) thereof, germane to the controversy, reads as

follows:-

“(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the

firm is registered and the persons suing are or have been shown in the register of Firms as partners in the firm.”

Counsel for the appellants has relied upon judgment of Hon'ble the Supreme Court in M/s Raptakos Brett and Co. Limited's case (supra) wherein

Hon'ble the Supreme Court has held that since later cause of action is outside sweep of Section 69(2), suit filed for delivery of vacant possession

which is based on the statutory obligation of the defendant/lessee when it failed to comply with its statutory obligation under Section 108(q) read with

Section 11(a) of the Transfer of Property Act is maintainable as the plaintiff was seeking enforcement of its legal right to possession against the

erstwhile lessee flowing from the aforesaid provisions of the Transfer of Property Act. In the case at hand, the appellants are claiming recovery of

rent @ 14 paise per bag per month by invoking the contractual liability created under the lease deed. On a pointed query, counsel for the appellants is

not in a position to refer to any statutory provision which creates an obligation of

the respondents to pay arrears of rent or to say that a legal provision can be invoked by the appellants for seeking recovery. In this view of the matter, the appellants cannot derive any advantage to their contention from the referred authority.

To be fair to the appellants, counsel has also referred to judgment of Hon'ble the Supreme Court M/s Atma Ram Properties (P) Limited vs. M/s Federal Motors Pvt. Limited 2005(1) RCR(Civil) 212.

The judgment in M/s Atma Ram Properties (P) Limited's case (supra) deals with termination of tenancy with passing of decree for eviction and

liability of a tenant to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have

been able to let out the premises and earn rent if the tenant would have vacated the premises. As in the case at hand, admittedly, no eviction order

was passed against the respondents, therefore, the appellants cannot derive any advantage of what has been held in M/s Atma Ram Properties (P)

Limited's case (supra).

The Courts have rightly held that suit filed by the appellants for recovery is not maintainable in the light of provisions of Section 69(2) of the Act. As

findings of the courts with regard to non-maintainability of the suit are liable to be affirmed, adverting to the issue with regard to outstanding liability of

the respondents would only be an exercise in futility. Hence, the judgments and decrees passed by the courts are liable to be affirmed on the ground

that suit filed by the appellants is not maintainable being barred under Section 69(2) of the Act.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.