
(2016) 07 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 64 of 2013. (O&M)

Sandeep Tiwari

APPELLANT

Vs

Harbans Kaur

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2017) 1 PLR 98

Hon'ble Judges : Mr. Amol Rattan Singh, J.

Bench : Single Bench

Advocate : Mr. Gurcharan Dass, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Amol Rattan Singh, J.(Oral) - CM No.184-C of 2013

This is an application filed by the applicant-appellant, seeking condonation of a delay of 79 days in refiling the appeal. For the reasons stated in paragraphs 3 to 6 of the application, it is allowed and the delay of 79 days in refiling the appeal is condoned.

RSA No.64 of 2013

This second appeal arises out of a suit filed by the respondent plaintiff, seeking ejectment of the appellant-defendant from a shop situated in a village which is not covered under the purview of the East Punjab Urban Rent Restriction Act, 1949. The learned Courts below, after appraising the evidence, have found that eventually, in terms of Section 106 of the Transfer of Property Act, 1882, it amounted to a lease from month to month and that with the respondent-plaintiff not wanting the lease to continue, there would be no reason to allow the appellant-defendant to continue to occupy the premises.

2. As regards recovery of Rs.45,000/- sought in the suit by the plaintiff, it was found that no cogent evidence had been led and only Rs.100/- per month was

found deficient in the rent paid, which was ordered to be paid by the appellant-defendant to the plaintiff, for the period from May 2002 till February 2004, along with simple interest @ 6% per annum till 10.12.2003, and thereafter, @ 9% per annum, till full and final payment was made.

3. Mr. Gurcharan Dass, learned counsel for the appellant, submits that the respondent-plaintiff could not prove any necessity as was pleaded by her, to get the appellant-defendant evicted from the shop, the occupation of which by the appellant, on rent, was not denied. He further submits that, in fact, the respondent-plaintiff has even sold the shop thereafter, vide a sale deed dated 10.5.2015. As such, he submits that there was, obviously, no personal necessity of the respondent plaintiff.

4. Having heard the aforesaid argument, it is an admitted fact that the suit property is outside the purview of the East Punjab Urban Rent Restriction Act, 1949, and as such with the aforesaid Act not applicable, Section 106 of the Transfer of Property Act, 1882, would become applicable, which reads as follows:-

"106. Duration of certain leases in absence of written contract or local usage.? (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

5. A reading of the above would show, that in the absence of any written contract, a tenancy of a premises on payment of rent, it not being used for agricultural or industrial purpose, would be deemed to be a lease from month to month, which can be terminated on the part of the lessor or the lessee, by giving fifteen days" notice, with neither any personal necessity of the lessor needed to be proved, nor even any non-payment of rent necessary to be proved.

6. As regards the notice, the learned Courts below have found after appraising

the evidence, that notice of one month was given by the respondent-plaintiff, duly served upon the appellant-defendant by registered post, eventually admitted in cross-examination by the appellant-defendant.

7. Hence, in view of the above, finding no merit in this appeal, it is dismissed in limine, with no order as to costs.