



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112

RSA-1562-2025 (O&M)

Date of decision: 18.07.2025

Suresh Kumar

...Appellant(s)

Vs.

**Shri Murli Manohar Thatheran Panchayati
Mandir and Dharamshala Samiti and another**

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay Kumar Gupta, Advocate
for the applicant/appellant.

NIDHI GUPTA, J.

CM-5350-C-2025

Prayer in the present application filed under Order 41 Rule 3A read with Section 5 of the Limitation Act is for condonation of delay of 470 days in filing the accompanying appeal, which is duly accompanied by an affidavit of the applicant/appellant.

2. Heard.

3. Although there is inordinate delay of 470 days in filing the accompanying appeal however, as it is stated that the applicant is a poor person suffering from several ailments, illiteracy, and financial crunch, as such, in the interest of justice, the present application stands allowed.

**RSA-1562-2025 (O&M)**

Present Second Appeal has been filed by defendant No.1 against the concurrent judgments and decrees of the learned Courts below; whereby the suit for possession filed by the plaintiff/respondent No.1, has been decreed by both the Courts below.

2. The short argument of the appellant is that the learned Courts below could not have entertained the present suit as the appellant/defendant No.1 was a tenant of the plaintiff. It is contended that in view of the fact that the appellant was occupying the suit property as a tenant, the jurisdiction of the Civil Court was barred. The Civil Court could not have entered into the arena of the Rent controller. Therefore, Issue No.2 framed by the learned trial Court regarding the maintainability of the suit should have been decided in favour of the appellant.

3. In order to establish his status as a Tenant, learned counsel refers to house tax receipts (Ex.D1 and Ex.D2), as per which the suit building is shown to be situated within the Municipal limits of Bhiwani; and appellant is shown to be a tenant in the suit premises. It is contended that even in the compromise (Ex.D6), it has been acknowledged by the plaintiff that the appellant was inducted as a tenant in the suit premises by the previous tenant, namely, Naresh Kumar. Learned counsel submits that from the above evidence, it was established that the appellant was a tenant in the suit premises. As such, only a Rent Petition could have been filed by the plaintiff/respondent No1; and the Civil Court jurisdiction stood barred.



4. Learned counsel for the appellant also submits that in a previous Rent Petition filed by the plaintiff against the tenant Naresh Kumar, wherein the appellant was respondent No.2, the plaintiff had admitted that the appellant and defendant No.2 were tenants in the suit premises. In support, learned counsel for the appellant places reliance upon the judgment passed by a Coordinate Bench of this Court in ***Suresh Kumar vs. Bhim Sain, Law Finder Doc Id # 58327***. It is accordingly prayed that the present Regular Second Appeal be allowed; and the impugned judgments and decrees be set aside.

5. No other argument is raised on behalf of the appellant.

6. I have heard ld. counsel and perused the case file in detail.

7. Although learned counsel for the appellant has very vehemently sought to impress upon this Court that the appellant was occupying the suit property as a tenant however, the Lower Court Record and all the evidence on record indicate to the contrary.

8. In order to prove that the appellant was a tenant in the suit property, learned counsel for the appellant has referred to Ex. D1 (available at page 283 of the LCR) and Ex.D2 (available at page 285 of the LCR), which are the house tax receipts deposited by the plaintiff in respect of the suit property. However, a perusal of these documents shows that in both Ex.D1, and in Ex.D2, it is shown that suit premises are “occupied” by father of the appellant namely Om Parkash. It is nowhere stated that the suit property was occupied by father of the appellant as tenant.



9. Ld. counsel has also relied upon Compromise dated 10.09.2002 (Ex.D6) (at page 207 of the LCR) between the plaintiff and previous occupant of the suit property, namely, Naresh Kumar. However, a perusal of the same reveals that the defendants including the appellant are not mentioned therein. The said Compromise is purely between plaintiff and Naresh Kumar. Thus, this too can also be of no help to the appellant.

10. Last plank of the argument of the appellant was that in the Rent Petition previously filed by the plaintiff before the Rent Controller Bhiwani, the appellant is shown to be a tenant in the suit property. On a Court query, it is admitted by learned counsel for the appellant that the said Rent Petition could not be placed on record by the appellant before the learned first appellate Court as the application of the appellant under Order 41 Rule 27 CPC for additional evidence was dismissed. Even the appeal filed by the appellant against the said order, was dismissed. Thus, appellant cannot rely upon the said Rent petition. Nonetheless, a perusal of para 6 of this Rent Petition shows that the plaintiff has merely stated therein that Naresh Kumar has 'handed over possession of the suit property' to defendants No. 1 and 2. Nowhere is it stated that defendants were occupying the suit property as tenants. As such, submissions of the appellant are based on blatant misreading of the evidence on record.

11. Last but not the least on repeated Court queries learned counsel for the appellant is unable to explain in what capacity he is occupying the suit property. Although in the written statement, it had



been averred by the defendants that they were tenants in the suit property however, despite repeated queries, no such document was placed on record by the defendants to prove relationship of tenant and landlord between the plaintiff and the defendants. It has been admitted by learned counsel for the appellant that no Rent Agreement was executed between the parties. It has only been submitted that it is an old “tenancy” which is continuing from the time of father of the defendants. However, no Rent Agreement has been produced by the appellant. As such, only a bald statement is made by the appellant with no evidence in support.

12. Thus, defendants/appellant miserably failed to show their legal capacity for possession over the suit property. On the contrary plaintiff had sufficiently proved that it was owner of the suit property and therefore entitled to decree of possession. Furthermore, the defendants in their written statement had nowhere taken the stand that plaintiff is not owner of the suit property. Rather in their deposition both defendants No.1 and 2 had admitted that the plaintiffs are owner of the suit property.

13. As regards application filed by the appellants for leading additional evidence, it was averred that at the time of leading evidence, defendants could not produce certified copy of Rent Petition No. 49 of 2001 due to inadvertence. The same has been dealt with by the lower appellate Court in para 22 of the judgment and decree dated 17.10.2023, as follows:-



“In the instant case, through this application, the appellants want to place on record the copy of ejectment petition titled as Smt. Murli Monohar Thatheran Panchayati Mandir and Dharamshala Samiti Vs. Naresh Kumar etc. however, the appellants have not stated why they did not make appropriate application before the learned trial court. Moreover, in the opinion of this court, the proposed evidence is not required for the just decision of the appeal. In view of the aforesaid decision no case is made in favour of the appellants to lead additional evidence. In these circumstances, the application for leading evidence deserves dismissal, so the same is hereby dismissed. So, the question no. 1 posed before this Court stands answered accordingly.”

14. Therefore, except for the bald statement of the defendants, there is no documentary evidence which could remotely show that the appellant/defendants were tenants under the plaintiff.

15. In view of the above, I find no ground is made out to interfere in the concurrent findings of learned Courts below.

16. The present Regular Second Appeal is hereby **dismissed**.

17. Pending applications, if any, stand disposed of.

18.07.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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