

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****109****RSA-1606-2021 (O&M)****Date of decision: 11.03.2025****Punjab Tourist Development Corporation****...Appellant(s)****Vs.****M/s. Sharma and Company****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. B.D.Sharma, Advocate for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiff for recovery of Rs.7,34,425.89 along with interest, has been dismissed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondent is the 'defendant'.

3. Brief facts of the case as set out in the plaint are that the defendant-Company had taken licence of the Tourist Complex of the plaintiff-Corporation/appellant herein, at Kaputhala for running the business of food, beverages and occupancy of rooms vide Licence Agreement dated 20.01.1998 on payment of licence fee of Rs. 51,700/- per month. The defendant had deposited security amount of Rs.6,20,400/- with the plaintiff Corporation. It was the pleaded case of the plaintiff that since



December 1999 the defendant had become consistent defaulter and had failed to pay the licence fee. On 7.3.2001, an amount of Rs.6,86,300/- became due from the defendant-Company; and Rs.6,94,600/- was due as penalty for not depositing the licence fee. Even a legal notice was served upon the defendant, however to no avail. Hence, the present suit.

4. The defendant-Company filed written statement contesting the suit by *inter alia* stating that the defendant had deposited an amount of Rs. 1,00,000/- on the demand of plaintiff. Despite that, the plaintiff had taken over the possession of the entire business of the defendant as a result of which, defendant-Company became idle and could not earn anything. It was further averred that the plaintiff is not entitled to recover any amount from the defendant. Accordingly, dismissal of the suit was prayed for.

5. It may be mentioned here that previously this suit was decided ex parte vide judgment dated 3.8.2013. However, vide order dated 10.09.2015, application under Order 9 Rule 13 CPC for setting aside ex parte order and judgment was allowed. Issues had already been framed in the ex parte judgment which are as under:

“1 Whether the plaintiff is entitled for recovery of Rs. 7,34,425.89 along with interest? OPP

2 Whether the plaintiff has locus standi and cause of action to file the present suit? OPP

3 Whether this Court has jurisdiction to entertain and try the present suit? OPP

4 Whether the suit is filed by a competent person? OPP

5 Whether the suit is not maintainable? OPD

Relief



But onus to prove all these issues was placed upon the plaintiff which is not as per law. Accordingly, issues are hereby re-framed as under:-

- 1. Whether the plaintiff is entitled for recovery of Rs. 7,34,425.89 along with interest, as prayed for? OPP*
- 2. Whether the present suit is not maintainable? OPD Relief.”*

6. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 2 against the plaintiff; and accordingly vide judgment and decree dated 21.05.2016, the learned Civil Judge (Junior Division), Chandigarh dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Chandigarh vide judgment and decree dated 24.12.2020. Hence, the present second appeal.

7. Learned counsel for the plaintiff-Corporation inter alia submits that the impugned judgments and decrees of the learned Courts below are liable to be set aside as the learned Courts below have failed to consider the pleadings, as also the oral and documentary evidence led by the parties in right perspective. The suit of the plaintiff has been dismissed merely on assumptions, conjectures and surmises. The learned Courts below have failed to take into consideration that the defendant in the written statement, as also while appearing in the witness box has also not denied the issuance of legal notice dated 24.01.2020 (Ex.PW5/Ex.P5). Further, the defendant has not denied the letter dated 07.03.2000 (Ex.PW7/Ex.P7), whereby the defendant had made offer to pay the balance amount in instalments which was confirmed/accepted by the plaintiff. The deposit of



amount of Rs.1 lac vide demand draft dated 01.03.2000 clearly shows that defendant had acted upon his reply dated 07.03.2000 (Ex.PW7/Ex.P7).It is contended that therefore, the defendant had admitted his liability, which was the best piece of evidence however, the same has been ignored by both the Courts below. The Id. Courts below have failed to consider that the defendant has itself summoned the ledger for the year 1998-99 (Ex.DW-4/5); and ledger for the year 1999-2000 (Ex. DW-4/6). Therefore, the amount payable as licence fee can easily be calculated from the bare perusal of the said ledgers.It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

8. No other argument is raised on behalf of the appellant/plaintiff

9. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

10. The case set up by the appellant/plaintiff is demolished by the findings of the learned trial Court as contained in para 13 of the judgment and decree dated 21.05.2016 which read as under: -

“It was an admitted fact on behalf of PW-1 Sandeep Sharma that there was an amount of Rs. 6,20,400/- which was the security amount. The said amount was never refunded to the defendant. It has been admitted by PW-1 Sandeep Sharma that after the defendant vacated the premises; plaintiff ran a resort in the same. Thereafter the building was let to PSEB who used it for 1-2 years. It has also been admitted by the said witness that the articles of the defendant which were lying in the building i.e electric fittings and furnitures were sold along with building in 2006. It has been alleged that remaining articles were destroyed/broken but there is no such record. No calculation sheet was produced by the plaintiff to show the



recoverable amount. It has been admitted that the possession of the tourist complex was taken from defendant No. 25.10.2000. Thus, even, if it is taken to be gospel truth that the defendant was in arrear of rent since December, 1999 even then the rent of the building would not have been more than Rs. 6,00,000/-. It is admitted fact that a demand draft of Rs. 1,00,000/- had been received by the plaintiff from the defendant. The penalty qua the non payment would have been not more than Rs.30,000/-, House tax including penalty was only 3,45,600/- for a period of 9 years i.e. 1998 to 2006. Thus, liability of house tax of defendant would have been only Rs. 1,00,000/- approximately. The liability that comes out against the defendant is Rs.6,30,000/- at the most when electricity bills and telephone bills have not been proved by the plaintiff. An amount of Rs. 10 lacs had already been recovered by the plaintiff by way of security amount and sale of seized articles of the defendant. No recovery is absolutely is made out from the defendant. The present plaintiff has inflated the interests upon the alleged recovery amount allegedly recoverable from the defendant. Once the possession was resumed and security amount of Rs. 6,20,000/- was already with the plaintiff which was much higher than the recovery to be made; there was no question of foisting interest upon any rent recoverable from the defendant. All the assets of defendant were sold but the high handedness of the plaintiff did not stop and it continued with the suit inspite of recovering Rs. 10 lacs from the defendant as shown in the above discussion. Accordingly, issue No.1 is decided against the plaintiff."

11. It has also come on record that the plaintiff had not produced any calculation on the basis of which it had reached the figure of Rs.6,86,300/- as dues payable by the defendant-Company on account of arrears of licence fee. Furthermore, as per legal notice dated 24.01.2000 (Ex.P5), plaintiff had claimed that the defendant had not paid licence fee since July, 1999; whereas as per notice dated 16.08.2000 (Ex.P8), it was stated that the licence fee had not been paid since October, 1999. This



discrepancy has not been explained by the plaintiff. Even the basis on which the plaintiff had calculated penalty amount of Rs.6,94,600/- is not explained. In para 27 of the judgment dated 24.12.2020 passed by learned appellate Court, it has been recorded that the penalty of Rs.6,94,600/- is more than the twice the penalty actually leviable by way of detailed calculation. It has further come on record that the plaintiff had taken possession of the Tourist Complex in October 2000. Thereafter all furnitures, fittings, fixtures belonging to the defendant as available in the Tourist Complex were taken over by the plaintiff. The inventory thereof is on record as Ex.D2/Ex.DW3/5 which bears the signatures of the defendant. However, it is admitted that the defendant was never associated in the process of valuation of the articles taken over by the plaintiff. The valuation (Ex.PX/1) is undated; and PW1 Sandeep Sharma Senior Accountant with the plaintiff Corporation has admitted during his evidence that no expert was joined while making valuation of the fittings, fixtures etc. vide Ex.PX/1 which bears the signatures of only SDE and DGM (TC) rank officials. Even the concerned persons were not examined as witnesses. On the other hand, the defendant led evidence to demonstrate that the value of the assets taken over by the plaintiff was approximately Rs.20 lacs. Even the original valuation of Ex.PX/1 was not produced by the plaintiff and only photocopy thereof was placed on record. PW1 has further admitted in his cross-examination that number of articles came to be broken and no account thereof was maintained. The remaining articles were sold 6 years thereafter after taking over the Tourist Complex along with the building thereof. Further plaintiff failed to produce



original record of the valuation and therefore withheld the best evidence. As such, adverse inference was rightly drawn against the plaintiff. As such, vide judgment dated 24.12.2020, the learned lower appellate Court correctly held that *“in this view of the matter, considering that defendant had deposited an amount of Rs.6,20,400/- as security and an amount exceeding Rs.3,90,087/- was the value of the articles removed from the Tourist Complex, it can well be said that on adjustment of the above amounts, nothing remained due towards the plaintiff. Hence, as on the date of filing of the suit, there was no liability which the defendant was required to discharge towards plaintiff and hence, suit was correctly dismissed.”*

12. Learned counsel for the appellant/plaintiff is unable to dispute or controvert the above said facts and findings.

13. Accordingly, the present regular second appeal is **dismissed**.

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

11.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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