

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Reserved on: January 28, 2025
Pronounced on: February 03, 2025

RSA No.1773 of 1999 (O&M)

Jatinderjit Singh and another Appellants

Vs.

Raj Rani and others Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- *Mr. M.L. Sarin, Sr. Advocate with
Ms. Himani Sarin, Advocate for the appellants.
*None for the respondents.

DEEPAK GUPTA, J.

Civil suit for declaration along with permanent injunction and consequential relief of possession filed by plaintiff – Dheru Ram through his legal representatives (*now respondents through his legal heirs*) regarding shop in dispute was decreed by the trial Court on 02.02.1999 against defendants – Jatinderjit Singh and another (*now appellants*). Appeal filed by the defendants was dismissed by the First Appellate Court of Ld. District Judge, Hoshiarpur vide judgment dated 13.03.1999. Against this concurrent findings of the Courts below, defendants of the case have now approached this Court by way of present regular second appeal.

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 Perusal of the paper book would reveal that plaintiff – Dheru Ram was admittedly a tenant under the defendants on the demised shop @ ₹104/- per month inclusive of the house tax. Two ejectment petitions were earlier filed by the landlords-defendants, claiming rent @ ₹104/- per month including house tax and on both the occasions, claimed rent was tendered

and the ejectment petitions were dismissed. Lastly, landlords filed another ejectment petition claiming rent of subsequent period @ ₹104/- per month inclusive of house tax, which was tendered by the plaintiff - tenant.

3.2 It was pleaded by the plaintiff in the present suit that in the aforesaid last ejectment petition, on an understanding given by the defendants that since the rent claimed had been tendered by him (plaintiff) and so the defendants-landlords will withdraw the petition, the plaintiff absented and was proceeded against *ex parte* by the Rent Controller. Taking advantage of his absence, defendants against their own pleadings claimed that rent of ₹104/- per month did not include the house tax and since the tender was short, so the tenant, i.e. plaintiff was liable to be ejected. Finding the said tender to be short, the Rent Controller allowed the ejectment petition on 02.02.1996.

3.3 The ejectment order was executed without notice to the plaintiff. Plaintiff then brought the present suit challenging the order of ejectment, having been passed on misrepresentation and fraud having been played by the defendants on the plaintiff as well as on the Court.

4. The defendants-appellants herein contested the suit. Necessary issues were framed. Evidence produced by both the parties was taken on record.

5. Trial Court decreed the suit by setting aside the order of ejectment. Defendants filed appeal before the First Appellate Court but the same was dismissed in *limine*.

6. It may be noted here itself that before the First Appellate Court, contention was raised by the appellants-defendants that suit filed by the plaintiff-respondent was not maintainable, as the plaintiff should have challenged the ejectment order before the Rent Controller or before the Appellate Authority, if the order had been passed against facts. However, the said contention was rejected by the First Appellate Court by observing that a poor litigant was at the mercy of legal advice given to him by his counsel and

in case, he had been wrongly advised at some stage, he could not be allowed to suffer for lapse of his counsel on the technical grounds. Thereafter, the First Appellate Court proceeded to dispose of the appeal on merits and dismissed the same in *limine*.

7.1 Assailing the above-said judgments passed by the Courts below, it is contended by learned Sr. counsel for the appellants that the First Appellate Court went in error by holding the suit to be maintainable, inasmuch as in case the *ex parte* ejectment order had been passed against facts, as was contended by the plaintiff, the proper remedy was either to move an application for setting aside the *ex parte* ejectment order before learned Rent Controller, or file the appeal before the Appellate Authority. Learned counsel has referred to Section 15 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred as 'the Punjab Rent Act') in this regard.

7.2 Still further, it is argued that the plea of fraud, like any other charge, whether made in any civil or criminal proceedings must be established beyond reasonable doubt and however, suspicious may be circumstances, however strange the coincidence and however grave the doubts, the suspicion alone can never take the place of proof. Learned Sr. Advocate further argues that mere pleadings do not make a strong case of fraud, as pleadings make only the allegations or averments of facts. Learned Sr. Advocate contends further that fraud is to be pleaded and proved and that level of proof required is extremely higher. It is argued further that in case a decree is challenged on the ground that it is fraudulent and has been passed based upon the plea which was factually incorrect, the Court in the second suit cannot go behind the earlier decree to find out as to whether decree was passed on right or wrong facts, because that decree settled rights of the parties and as such, subsequent Court is not entitled to go into facts to find whether on that basis earlier decree could be passed.

7.3 Lastly, it is argued by learned Sr. Advocate that right to file first appeal against the decree under Section 96 of the Code is a valuable right of

the litigant and that jurisdiction of the Appellate Court while hearing the first appeal is very wide like that of the trial Court and it is open to the appellant to attack all the findings of facts or/and of law in the first appeal and that it is the duty of the First Appellate Court to appreciate the entire evidence and then it may come to a conclusion different from that of the trial. Learned Sr. Advocate argues that in the circumstances, the First Appellate Court should not have dismissed the appeal in *limine*, without issuing any notice to the opposite party, i.e. plaintiff-respondents and without appreciating the evidence on record.

8. Present appeal was admitted in the presence of counsel for the respondents-plaintiffs vide order dated 01.05.2002. When the matter was listed for final hearing, fresh notice was sent to the respondents. Respondent No.1 was reported to have died, whereas respondent Nos.2 to 5 did not appear despite service through the family members. As respondent Nos.2 to 5 as LRs of respondent No.1 were already on record, so the matter was proceeded further and the service was assumed to be completed. Nobody turned up for the respondents so as to contest this appeal.

9. This Court has considered submissions of learned Sr. counsel for the appellants and has perused the record carefully.

10. After considering the submissions of learned Sr. Advocate for the appellants, this Court is of the view that present appeal deserves to be allowed on the sole point that suit in itself, filed for setting aside an *ex parte* ejectment order on the ground of fraud, was not maintainable.

11. Section 15 of East Punjab Urban Rent Restriction Act, 1949 reads as under:-

“15. Vesting of appellate authority on officers by State Government.

(1) (a) The State Government may, by a general or special order, by notification confer on such officers and authorities as they think fit, the powers of appellate authorities for the purposes of this Act, in such area in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the period of fifteen days the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.

(4) The decision of the appellate authority and subject only to such decision, an order of the controller shall be final and shall not be liable to be called in question in any Court of Law except as provided in sub-Section (5) of this Section.

(5) The High Court may, at any time on the application of any aggrieved party or on its own motion, call for and examine the records relating to any order passed or proceeding taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit."

12. As is evident from the aforesaid provisions, any person who is aggrieved by an order passed by the Rent Controller, can file an appeal before the Appellate Authority within the prescribed time or extended time, if allowed by the appellate authority; and the decision of said Appellate Authority and subject only to such decision, an order of the controller shall be final and is not liable to be called in question in any Court of Law except as provided in sub-Section (5) of this Section. Thus, a complete remedy is provided to any person aggrieved by the order of the Rent Controller so as approach the appellate authority.

13. In the present case, impugned ejection order dated 02.02.1996 was passed allegedly by pleading wrong facts on the part of the landlords-defendants (*appellants herein*). Without going into the controversy

as to whether the facts pleaded by the landlords before the Rent Controller to the effect that rent of ₹104/- per month was exclusive or inclusive of house tax, the fact remains that ejectment order has been passed *ex parte* by the Rent Controller. In case the tenant i.e., plaintiff-respondent herein was aggrieved by the said *ex-parte* ejectment order passed by the Rent Controller, the proper remedy for him was to challenge the *ex parte* ejectment order before the Appellate Authority under Section 15 of the Act. The other alternative remedy could be to move an application under Order 9 Rule 13 CPC before the Rent Controller for setting aside the order proceeding the tenant *ex-parte* and the subsequent final *ex parte* ejectment order. However, the independent suit filed by him for assailing the *ex parte* order on the ground of fraud or misrepresentation was not at all maintainable. The Courts below clearly went in error in holding the suit to be maintainable.

14. Apart from above, it has been held by this Court in ***"Harpal and others v. Smt. Ram Piari and others"***, 1981 P.L.J. 492 that when challenge is given that a consent decree was collusive and fraudulent and the same is liable to be declared as null and void, based on the plea, which was factually wrong, the Court in the second suit cannot go behind earlier decree to find out as to whether decree was passed on the right or wrong facts, because that decree settled rights of parties. It was held further the subsequent Court is not entitled to go into the facts to find whether on that basis earlier consent decree could be passed.

15. In present case, the First Appellate Court clearly went in error in holding that in case the plaintiff had been ill advised by his counsel, he could not be faulted, is absolutely not sustainable. When a specific remedy under Section 15 of the East Punjab Urban Rent Restriction Act, 1949 is provided to a tenant to assail the *ex parte* ejectment order; or to move the Rent Controller for setting aside the *ex parte* ejectment order under Order 9 Rule 13 CPC, he could not have filed an independent suit to challenge the ejectment order on the ground of fraud and misrepresentation.

16. On the basis of the entire discussion as above, the present appeal is hereby accepted. The judgment and decrees as passed by the Courts below are hereby set aside. The suit as filed by the plaintiff (*respondents herein*) is dismissed with cost.

February 03, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes