

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****218****RSA-1560-2013 (O&M)****Date of decision: 19.09.2025****Jarnail Kaur and others****...Appellant(s)****Vs.****Union of India and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. D.D.Bansal, Advocate for the appellant.

Mr. Shivoy Dhir, Sr. Panel Counsel-UOI
For the respondents.**NIDHI GUPTA, J.**

Present Second Appeal has been filed by the plaintiff through his LRs against the judgment of reversal dated 17.12.2012 passed by the Id. Additional District Judge, Bathinda; whereby the appeal of the respondents/defendants was partly accepted.

2. Brief facts of the case are that the plaintiffs had filed a suit for mandatory injunction directing defendant No. 3 to handover the keys of barber shop/suit shop to the plaintiffs; and in the alternative issue a mandate directing the defendants to handover the accessories lying in the shop. The case as pleaded by the plaintiff was that the plaintiff had served in the regular Indian Army and was retired as Honorary Captain. After retirement, vide letter dated 19.11.1995 plaintiff had applied to station Headquarter, Bathinda which was under the Command of defendant No.3 for allotment of a site for running a shop in the shopping complex. The



plaintiff was allowed to construct a shop in the cantonment area for running a business of hair cutting and dressing. A contract was executed by the plaintiff with the Army Authorities in this regard which was renewable every year at the option of the Army Authorities. It is admitted fact on record that last yearly contract was valid upto 31.03.2006. On 15.7.2006, the Board of Officers had conducted a checking inspection and plaintiff was found absent from the shop during inspection. Accordingly, a Show Cause Notice dated 17.07.2006 was issued to the plaintiff, to which plaintiff submitted his reply. Thereafter, eviction notice dated 28.07.2006 was issued to the plaintiff. Vide letter dated 18.08.2006, last warning was issued to the plaintiff. Subsequently, possession of the suit shop was taken by the defendants on 07.12.2006. Accordingly, present suit was filed by the plaintiff on 08.12.2006 seeking decree of mandatory injunction directing the defendant No. 3 to handover the keys of the suit shop; and in the alternative issue a mandate directing the defendants to hand over the accessories lying in the shop and also pay the value of the shop constructed by the plaintiff at his own costs, after getting the same assessed from the Architect or Surveyor, situated within the revenue limits of Bathinda Cantonment Tehsil and District Bathinda.

3. Vide judgment and decree dated 05.12.2011, the learned trial court had partly decreed the suit of the plaintiffs in the following manner:-

“In view of my above mentioned findings on the issues which were framed in this suit, the suit of the plaintiff is partly decreed in the defendants are hereby directed to



handover the accessories lying/installed in the shop to the plaintiff and in case those accessories have been rendered useless, then to pay market value of these articles to the plaintiff. Further defendant no.3 is directed to pay compensation of Rs. 9000/- per month w.e.f. 15.07.2006 to 13.01.2011 alongwith interest @12% with monthly rests on account of financial losses which has been caused to the plaintiff due to their conduct. This amount should be paid within a period of two months from the date of this order failing which interest @ 12% with monthly rests have to be paid on the entire amount sue till its realization.”

4. The appeal filed by respondents/defendants was partly allowed by the learned Additional District Judge, Bathinda vide judgment and decree dated 17.12.2012 in the following manner:-

“26. Resultantly, the appeal is partly accepted with costs. The impugned judgment and decree qua the relief, directing the defendants to hand over the accessories lying/installed in the shop and in case, those accessories have been rendered useless, then to pay market value of those articles to the plaintiff wants no interference and is, thus, upheld. However, the impugned judgment and decree qua the relief directing the defendant No.3 to pay compensation of Rs. 9000/- per month w.e.f. 15.7.2006 to 13.1.2011 along with interest @ 12% with a monthly rests on account of financial losses which has been caused it to the plaintiff due to their conduct, is set aside. Decree sheet be prepared. Lower Court record along with copy of this judgment be returned, forthwith. Appeal be consigned to the Record Room.”



5. Hence, present second appeal by the LRs of the plaintiff.

6. It is *inter alia* submitted by learned counsel for the appellants that the learned Courts below have misread, misconstrued and misappreciated the oral as well as documentary evidence brought on record. It is submitted that there was no violation of any terms and conditions of Agreement by the plaintiff. Learned Trial Court had rightly allowed the financial loss to the plaintiffs. No reasons have been given by learned lower Appellate Court while modifying the well reasoned judgment and decree passed by learned Trial Court as to why the plaintiff was not entitled to financial loss suffered by him on being forcibly evicted without following procedure of law. It is submitted that even if Court fee for grant of compensation on account of financial loss was required to be affixed by the plaintiff, it was incumbent upon the learned first Appellate Court to allow an opportunity to pay the Court fee; and in the absence of such an opportunity, the impugned judgment and decree of the learned first Appellate Court is liable to be set aside.

7. It is further submitted that the Id. lower Appellate Court has further erred in law in overlooking the fact that while serving legal notice the plaintiff had requested the respondents to return the keys of the shop on the show cause notice dated 18.8.2006 being issued whereby the plaintiff was given last opportunity to ensure that such activities should not take place in future which fact indicates that the plaintiff was allowed to continue the work in the shop in question and as shop the only course available to he plaintiff was to make a request through legal notice to



return the keys of the shop and their was no occasion to seek compensation through the said legal notice and as such also non-mentioning of compensation in the legal notice could not be taken a ground for declining the relief of compensation which was legally granted by trial court. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgment and decree dated 17.12.2013 passed by learned first Appellate Court be set aside.

8. *Per contra*, learned counsel for the respondents opposes submissions made on behalf of the appellants and submits that the judgment of the learned first Appellate Court suffers from no error. Admittedly, plaintiff had sought no alternative relief for grant of compensation. As such, Trial Court had gone beyond the pleadings in awarding compensation to the appellants. Therefore, the learned first Appellate Court is not in error in setting aside the same. Accordingly, he prays for dismissal of the present appeal.

9. No other argument is raised on behalf of the parties. I have heard Id. Counsel and perused the case file in great detail. I find no merit whatsoever in the submissions made on behalf of the appellant.

10. The appellant are the LRs of the original plaintiff Dalip Singh who had expired on 13.01.2011 during the course of trial. As such, Contract Ex.P14 would have come to an end upon the death of the plaintiff; as the same was in nature of a personal Contract executed by the defendants with the plaintiff. Thus, the prayer of the LRs of the



plaintiff/present appellants allowing them to run the shop in accordance with the Agreement Ex.P14 is infructuous.

11. As regards, prayer of the appellants for grant of compensation for the possible eviction of the plaintiff from the shop in question, the same is not acceptable on the ground that no such prayer was made by the plaintiff. Even the plaintiff did not affix the required court fee for grant of such relief. In fact, even no details of the accessories lying in the shop were mentioned by the plaintiff in the plaint. However, as the same found mention in the notice served by the plaintiff under Section 80C CPC upon the defendants, as such, findings of the Trial Court in that respect were confirmed by the learned first appellate Court.

12. The reasoning as recorded in para 23 and 24 of the judgment dated 17.12.2012 of the learned first Appellate Court reads as follows:-

“23. As regards the relief sought by the plaintiff regarding payment of value of the shop is concerned, the Trial Court has rightly observed that since the plaintiff himself had agreed to the conditions of the army authorities that after construction, the same will become an assets of military station, as such, the said relief was rightly declined. So, findings qua this relief are also affirmed.

24. As regards the financial loss suffered by the plaintiff due to his forcible eviction from the shop is concerned, the learned trial Court has erred in presuming the income of a person of running such business to be Rs. 8000-10000/- per month in the year 2006 and directing the defendant No. 3 to pay compensation of Rs. 9000/- per month, w.e.f. 15.7.2006 to 13.1.2011 alongwith interest at the rate of 12% with



monthly rests on account of financial losses caused to the plaintiff due to their conduct, and this relief given by the trial Court can not sustained as the plaintiff while serving a legal notice under section 80 CPC to the defendants has not sought such relief from the defendants. Furthermore, the plaintiff has also not affixed the required Court fee for seeking such relief. So, findings of the learned trial court on issue No.1, granting the said relief is erroneous and is, thus, reversed and issue No. 1 is accordingly partly decided in favour of plaintiff.”

13. Needless to say, the learned trial court erred in going beyond the pleadings and granting compensation, which was not prayed for by the plaintiff. Even there is nothing on record to indicate that the plaintiff was forcibly evicted from the shop in question. Accordingly, I find no error in the judgment dated 17.12.2012 passed by learned Additional District Judge, Bathinda. The present Regular Second Appeal is hereby **dismissed**.

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

19.09.2025

Divyanshi

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

**(NIDHI GUPTA)
JUDGE**