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

**RSA-1540-2016 (O&M)
Date of decision : 17.03.2025**

RAJINDER KUMAR

....Appellant

Versus

DEVINDER KUMAR AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Jai Vir Yadav, Sr. Advocate with
Mr. Aman Gautam, Advocate
for the appellant.

Mr. Ashish Sanghi, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

CM-4222-C-2016

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 217 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 217 days in filing the instant appeal is hereby condoned.



RSA-1540-2016 (O&M)

Defendant is in second appeal aggrieved of judgments and decrees passed by the Courts below.

2. For convenience, the parties hereinafter are referred to by their original position before the Court of First Instance i.e. appellant as defendant and respondents as plaintiffs.

3. Plaintiffs filed suit for possession claiming that the shop in dispute (hereinafter referred to as the 'demised premises') was let out by plaintiff No.3 to the defendant @ Rs.800/- per month w.e.f. 01.09.1992 by executing a rent note dated 04.09.1992 for a period of 5 months. The tenancy was terminated by issuing notice dated 13.03.2001. Defendant having failed to vacate the shop despite service of notice, plaintiffs are entitled for possession thereof. Further prayer was for grant of *mesne* profits @ Rs.2,000/- per month.

4. Suit was contested by the defendant denying service of any notice. It was further claimed that the shop being situated in an urban area, the relationship between the parties is governed by the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act of 1973') and the defendant is a statutory tenant, who can be evicted only in terms of Section 13 of the Act of 1973.

5. On the basis of the pleadings, Court of the First Instance framed the following issues:



- “1. Whether tenancy of defendant has been terminated by the plaintiffs by way of a legal and valid notice? OPP
2. Whether construction of the suit shop was completed in the year 1992 and so provisions of Haryana Urban (Control of Rent and Eviction) Act 1973 are not applicable to the case? OPP
3. Whether plaintiffs are entitled to the possession of the suit shop? OPP
4. Whether plaintiffs are entitled to the rent/compensation for use and occupation as claimed? OPP
5. Whether suit is not maintainable in the present form? OPD
6. Whether suit is false and vexatious and defendant is entitled to special cost? OPD
7. Relief.”

6. Issues No.1 to 4 were decided together. Trial Court found that the tenancy was created for a period of five months by way of rent note (Exhibit P-1) which itself shows that the shop was admitted to be a newly constructed premises. Trial Court further held that the plaintiffs successfully proved service of notice, Exhibit P-2, by way of registered post. Postal receipt and acknowledgment stand proved. Tenancy having been validly terminated in terms of Section 106 of the Transfer of Property Act, plaintiffs were entitled for possession of the shop. Trial Court further held plaintiffs entitled for *mesne* profits @ Rs.2,500/- per month.

7. In appeal preferred by the defendant, learned Lower Appellate Court affirmed the aforesaid findings and dismissed the appeal.

8. Mr. Jai Vir Yadav, learned Senior Advocate appearing for the appellant/defendant has assailed the findings recorded by the Courts below.



Mr. Yadav submits that the case projected by the plaintiffs got falsified from the fact that they claimed sanctioning of site plan on 27.10.1995 whereas rent note was executed on 04.09.1992 which shows completion of shop on 31.08.1992. In order to rebut that, an application was moved before the Lower Appellate Court under Order XLI Rule 27 CPC to prove that the site plan was sanctioned in the year 1989 and not in 1995 as claimed by the plaintiffs. However, the said application was wrongly rejected vide order dated 26.11.2014 without assigning any reason. He submits that the aforesaid order needs to be set aside. The matter needs to be remanded back to the Lower Appellate Court to decide afresh. Further submission made by Mr. Yadav is w.r.t. findings recorded by the Courts below regarding service of the notice by way of registered post. He submits that there is no evidence to prove that the letter was despatched by way of registered post. In order to hammer-forth his contention, he relies upon testimony of PW-5 Registry Clerk Rohtash. Lastly, Mr. Yadav submits that the Courts below erred in granting *mesne* profits @ Rs.2,500/- per month even though the plaintiffs themselves claimed the same @ Rs.2,000/- per month.

9. Per contra, Mr. Sanghi submits that in view of admitted fact that rent note was executed and signed by the defendant wherein he admitted that the shop was newly constructed in the month of September, 1992, he cannot be allowed to come out of the said admission. Courts below have thus rightly held that in view of the admission made by non-else but the defendant himself, the date of sanction of the site plan has lost its



significance. He further submits that there is ample evidence on record to show service of the notice by way of registered post. Receipt as well as acknowledgment have been proved on record. He further brings to the notice of the Court that that defendant filed CR No.3425 of 2011 wherein order dated 04.03.2011 passed by the Additional District Judge, Narnaul assessing the *mesne* profits @ Rs.2,500/- per month was challenged. In the said revision, though the defendant was initially granted indulgence by this Court by staying order dated 04.03.2011 however, later on the same was vacated. The revision was finally ordered to be dismissed as withdrawn. In support of his contention, he relies upon ratio of law laid down in the case of **‘Divisional Manager, United India Insurance Co. Ltd. vs. Samir Chandra Chaudhary’, (2005) 5 SCC 784**, **‘Grasim Industries Ltd. and another vs. Agarwal Steel’, (2010) 1 SCC 83**, **‘Ramesh Kumar and another vs. Brij Bhushan Dhall’, 2009(41) R.C.R.(Civil) 196**, **‘Krishan Lal vs. Bahadur Chand’. 2020 (1) RCR (Rent) 132** and **‘Vinod Kumar Sehgal vs. Pushpa Devi’, 2000(1) RCR (Rent) 366**.

10. I have heard counsel for the parties and have gone through records of the case.

11. So far as the issue raised by Mr. Yadav regarding rejection of the application filed by the appellant under Order XLI Rule 27 CPC is concerned, there is no explanation *qua* compliance of the parameters as enumerated under Order XLI Rule 27 CPC. In order to invoke the provisions thereof, the applicant is required to prove that the evidence was



not within his knowledge or could not be produced despite due diligence. Admittedly, right from the beginning, the stand of the appellant/ defendant before the Court of First Instance was that the relationship between the parties is governed by the provisions of the Act of 1973 as he claimed that the shop was constructed 10-15 years prior to the date he came in possession. Defendant remained inert during the course of trial and opted not to produce the evidence that was attempted to be produced before the Appellate Court. In view thereof, this Court finds that the Lower Appellate Court rightly dismissed the application filed by the appellant holding that the same does not satisfy the ingredients of Order XLI Rule 27 CPC.

12. It is not disputed by the defendant that he came in possession of the shop on the strength of rent note dated 04.09.1992. He admits his signatures thereupon. In view thereof, the Courts below rightly held that the defendant having admitted execution of the rent note and there being specific covenant contained therein w.r.t. the shop having been newly constructed, defendant is bound by the said admission. So is the ratio of law laid down in *Ramesh Kumar's* case (supra) by the Coordinate Bench of this Court and in the case of *Divisional Manager, United India Insurance Co. Ltd. vs. Samir Chandra Chaudhary* (supra) by the Supreme Court.

13. So far as plea w.r.t. non-service of notice is concerned, the postal receipt has been produced. Acknowledgement has been proved on record. Mere denial of signatures by defendant would not lead to inference that the same was not served upon him.



14. In view of above, the findings recorded by the Courts below w.r.t. the relationship between the parties being governed by the provisions of Section 106 of the Transfer of Property Act, is affirmed. It is affirmed that the defendant was validly served with the notice under Section 106.

15. Coming on to the issue regarding *mesne* profits, though Mr. Yadav is right that the parties are governed by strict law of pleadings and thus the Courts below ought not have granted *mesne* profits beyond Rs.2,000/- per month. However, keeping in view that no enhancement has been ordered, I refrain myself from interfering in the part of decree granting *mesne* profits @ 2,000/- per month.

16. In view of above, finding no merit in the instant second appeal, the same is ordered to be dismissed.

17. Pending application, if any, shall also stand disposed off.

March 17, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No