

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 11.07.2022

1. RSA-5717-2017 (O&M)

General Manager (TD), Bharat Sanchar Nigam Ltd., Rohtak

... Appellant

Vs.

Gulab Singh

... Respondent

2. RSA-5718-2017 (O&M)

General Manager (TD), Bharat Sanchar Nigam Ltd., Rohtak

... Appellant

Vs.

Gulab Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Anil Rathee, Advocate
for the appellant.

Mr. Ashutosh Kaushik, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in both these appeals is for setting aside the judgment and
decree dated 08.08.2014 passed by the Civil Judge (Junior Division), Charkhi

Dadri, vide which the suit filed by the respondent-plaintiff for granting a decree of possession along with Rs.500/- as mesne profit with 12% interest per annum, was allowed as well as judgment and decree dated 24.07.2017, vide which the lower appellate Court partly allowed the cross-appeal filed by the respondent-plaintiff, while dismissing the appeal filed by the appellant-defendant.

Brief facts of the case are that respondent-plaintiff Gulab Singh filed a suit against the appellant-defendant on the ground that property in dispute was leased out to defendant-BSNL at the rate of Rs.500/- per month for a period of 10 years commencing from 01.02.1994, for installing a telephone exchange by erecting a tower. On completion of the period of lease agreement, same was expired by the efflux of time and the respondent-plaintiff served a legal notice dated 10.06.2010 to the appellant-defendant and thereafter, filed the suit. The suit was contested by the appellant-defendant by filing a written statement that the plaintiff has written a letter on 23.10.2003 to vacate the premises or to enhance the rent from Rs.500/- to Rs.2500/- per month. Thereafter, the appellant-defendant shifted to another premises of one Rajwanti on 28.02.2005.

Issue No.1 framed by the Civil Court was contested, which reads as under: -

*“1) Whether the plaintiff is entitled to the relief of ejectment as well as mesne profit from 01.02.2004 till realization qua the suit property as prayed for on the grounds as alleged in the plaint?
OPP”*

The plaintiff-respondent, in its evidence, produced PW Virender,

Photographer, who produced on record the photographs Ex.PW1/F to Ex.PW1/I, to show that tower was still in existence, when he visited the spot and clicked the photographs. Plaintiff then examined PW2 Satbir Singh, who in his affidavit, stated that defendant has not paid any attention to demand of the plaintiff and is still continuing in unauthorized occupation of the suit property. The plaintiff himself appeared as PW3 and made a statement that he had given 720 square yard and 100 square yard house/outhouse to BSNL on a monthly rent of Rs.500/- for a period of 10 years and despite issuance of legal notice, same was not vacated.

A perusal of cross-examination of all three witnesses shows that nowhere it is suggested to them that premises was vacated on 05.01.2004 by the BSNL.

Defendant examined DW1 Om Parkash, JTO, who in his affidavit stated that possession was vacated on 28.02.2005, however, a perusal of cross-examination would reveal that to whom, the possession was handed over and he admitted that after 01.02.2004, tower of BSNL was still in existence on the premises of plaintiff Gulab Singh without any agreement. On a suggestion given to this witness that tower is still in existence, this witness has denied.

Thereafter, the Civil Court, while allowing the suit, passed a decree that the appellant-defendant is directed to make the payment of Rs.500/- per month as mesne profit to the plaintiff from the date immediately preceding three years from the date of institution of the suit till the date of realization of the decretal amount as mesne profits with interest @12% per annum with early rests thereon and defendant was further directed to remove the tower.

The appellant-defendant preferred an appeal before the lower appellate Court and the respondent-plaintiff also filed cross-appeal praying for enhancement of mesne profits. The lower appellate Court, while dismissing the appeal filed by the defendant-BSNL, allowed the appeal filed by the plaintiff. The operative part of the judgment passed by the lower appellate Court reads as under: -

“12. Now further question arises as to when the disputed premises were vacated. In this regard, this Court is of the considered opinion that the defendant has not given any suggestion to PW1 Virender Photographer that the photographs Ex.PW1/F to Ex.PW1/I did not relate back to the date as reflected in photographs. Comparison of both the sets of photographs goes to show that the whole of the rooms seen in the photograph have natural wear and tear marks by weather and the premises were not in use for couple of years. Therefore, as held earlier when the defendant despite having record in its possession failed to prove as to when the premises were vacated, the oral evidence led by the plaintiff can be made basis for determining disputed fact as to when the premises were vacated. Consequently, this Court finds concurrence with the findings of learned trial Court in this regard.

13. In so far as calculation of mesne profit is concerned, this Court is of the considered opinion that the plaintiff has claimed very specifically that premises of Smt.Rajwanti were taken on lease by the defendant @ Rs.2600/-per month, this fact is not

denied by the defendant. It is also not disputed that both the premises are situated in a village named Chiriya. Thus, in all probabilities, this Court has no hesitation to hold that mesne profit may be calculated on the basis of lease deed executed by the defendant in favour of Smt.Rajwanti i.e. Ex.D3. This Court is also of the considered opinion that as per Ex.D3 an area of 1729 square feet was taken on lease, whereas area of demised premises was 820 square feet. Consequently, this Court has no hesitation to hold that comparison of both the rents, an amount of Rs.1000/-per month will be appropriate to be awarded to the plaintiff on account of mesne profit and thus it is held as such. This Court is also of the considered opinion that the present dispute between the parties does not relate to terms and condition of the contract/agreement and therefore the parties are not governed by the arbitration clause and thus the civil Court has got jurisdiction. In this regard findings given by learned trial Court supported by 2012(2) RCR (Civil) 160 "M/s.V.S.Enterprizes Vs B.R.Sharma" are affirmed.

14. In so far as limitation is concerned, this Court is of the considered opinion that the defendant has not been able to prove as to when the premises of the plaintiff were vacated and thus till the premises in question were vacated by the defendant, the plaintiff was entitled to seek possession within a period of 12 years from his tenant. In so far as limitation for claiming mesne profit is

concerned, it is a continuing cause of action and thus the plaintiff could claim mesne profit for a period of three years backward from the date of institution of the suit. Consequently in this regard, this Court findings concurrence with the findings of the learned trial Court, with modification of rate of mesne profits as discussed hereinbefore.

15. Consequent upon aforesaid findings, the findings given by learned trial Court are hereby affirmed with slight modification to the fact that the plaintiff is entitled to mesne profit @ Rs.1000/- per month for a period of three years just before institution of the suit.”

Learned counsel for the appellant has argued that once the premises in dispute was vacated by shifting the exchange to another building, mere fact that tower remained on the premises, does not amount that the appellant was still in possession of the property in dispute.

Learned counsel for the respondent has, however, submitted that the appellant had taken the premises of 840 square yards at a monthly rent of Rs.2500/- in the same locality, the lower appellate Court rightly assessed the mesne profit @Rs.1,000/- per month.

After hearing learned counsel for the parties, I find that no substantial question is involved and it is pure finding of fact that the appellant has not vacated the premises on 28.02.2005, as it is admitted fact that tower remained on premises of the plaintiff, therefore, the lower appellate Court has rightly assessed the mesne profit @Rs.1,000/-, considering the fact that the

fresh premises was taken by BSNL, of one Rajwanti measuring 840 square yards on a rent of Rs.2500/-.

Accordingly, both the appeals are dismissed.

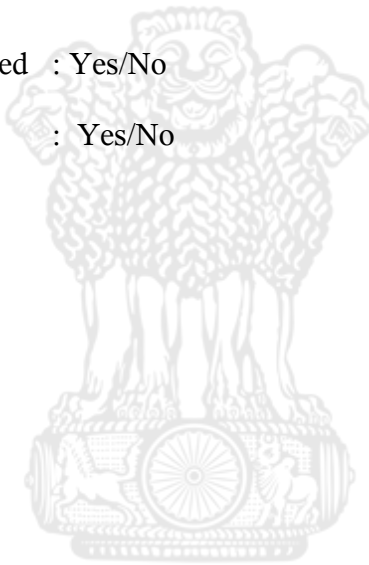
A photocopy of this order be placed on the file of connected case.

[ARVIND SINGH SANGWAN]
JUDGE

11.07.2022
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No



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