

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

F.A. No. 153 of 2006

Smt. Sylvia Caroleene Yuel, W/o. B.K.Yuel, Aged about 61 years, Retired Teacher, R/o. Salem School Compound, Motibag Chowk, Teh. & Distt. Raipur (C.G.).

---- Appellant

Versus

Ashok Sachdev, S/o. Shri M.L.Sachdev, Aged about 50 years, Occupation-Business, R/o. House No.18-A, Geetanjali Nagar, Teh. & Distt. Raipur (C.G.).

---- Respondent

For Appellant : Mr. Sourabh Sharma, Advocate

For Respondent : None

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10/08/2015

1. This appeal is against the judgment and decree dated 05.04.2006 passed by the Third Additional District Judge, Raipur in Civil Suit No. 1-A/2003. The suit was filed for arrears of rent of Rs.36,000/- and damages of Rs.10,590/-.
2. Admittedly, the defendant/ respondent was a tenant in the suit premises and during pendency of the suit, it was vacated. It was further case of the plaintiff that on 01.08.2002, the defendant was inducted to the tenancy @ of Rs.4,000/- per month and an amount of Rs.8,000/- was deposited as a security deposit. It was pleaded by the plaintiff that the ground floor of the House No.18-A situated at Geetanjali Nagar, Raipur, was let out to the defendant at the rate of Rs.4,000/- per month. It was further contended

that the defendant has not paid the rent for the month of April-May, 2002 and in the month of February, he encroached upon the part of the servant quarter which was constructed over 220 sq.ft. without the consent of the plaintiff. It was further contended that whenever there was a request made to vacate the premises, on some reason or other, the defendant did not vacate the premises. Consequently, notice was served on 20.05.2002 and thereafter, the suit was filed for arrears of rent of Rs.36,000/- and damages of Rs.10,590/-.

3. In the main suit, the defendant remained absent; therefore, ex parte decree was passed on 28.06.2003 and in pursuant to an execution proceeding, the suit house was got vacated. Thereafter, an application under Order 9 Rule 13 of CPC was filed to set aside the ex parte decree. Since during the pendency, the suit house was already got vacated, therefore, prayer in the suit was amended and it remained only for arrears of rent and damages. It was further contended that without information to the plaintiff/ appellant, the suit house was vacated without payment of arrears of rent and damages.
4. In reply to the plaint allegations, the defendant stated that he remained in the suit premises till November, 2003 and the entire rent was paid, which was informed to the plaintiff and her husband on 30.11.2003. The defendant further contended that an amount of Rs.8,000/- was deposited as a security amount which was payable after the house is vacated but even after vacating the house the said amount of Rs.8,000/- was not paid back. Therefore, as a compensatory cost, Rs.10,000/- was claimed.
5. The learned Court below after evaluating the facts of the case found that the plaintiff has failed to prove that the defendant was in arrears of rent and plaintiff failed to prove that defendant had encroached upon the

servant quarter of the house, consequently, dismissed the suit for arrears of rent and damages.

6. Learned counsel for the appellant would submit that as per the agreement Ex.P-1 the rent was fixed at Rs.4,000/- per month, which the defendant failed to pay. He submits that the statement would reflect that the arrears of rent was not paid; therefore, the Court should have decreed the suit. It is further contended that the notice which was served to the defendant would show that the arrears of rent has not been paid. It is contended that the dismissal of the suit for arrears of rent is completely illegal. He further submits that since reply of notice was not given, therefore, adverse inference should have been drawn and the suit should have been decreed for arrears of rent and damages.
7. No representation is made on behalf of the respondent. I have perused the case file.
8. Admittedly, initially the suit was filed for ejectment and arrears of rent and damages. The suit at the first instance remained exparte. After the exparte decree, an application under Order 9 Rule 13 of CPC was filed to set aside the exparte decree. While such proceeding was pending, the possession of the suit premises was obtained by the plaintiff/appellant. Subsequently, the exparte decree was set aside thereby the original suit which was filed for ejectment as also for arrears of rent and damages got reinstated. Since during the period the possession of suit premises was already obtained, the plaintiff amended his suit and confined his claim to the arrears of rent and damages. Therefore, the present suit is confined to the finding of the arrears of rent and damages.
9. The plaintiff Smt. Sylvia Caroleene Yuel while was examined on 21.02.2005, after the exparte decree was set aside, she contended that from April to May, 2002, the defendant had stopped paying rent,

therefore, when the rent was not given the notice was served to vacate the premises and the letters were also sent which was marked as Ex.P-3 & P-4. She has proved the rent agreement Ex.P-2. It is stated that initially the suit for ejectment was filed wherein exparte decree was passed and even in execution, the defendant did not participated. It is further stated that in the month of December, 2003 without giving any information, the suit house was vacated. In the cross examination of this witness, she stated that the defendant was a tenant since 2002 but no rent receipt was given to him. She further admits in the cross examination that whatever arrears are remained for rent, she has not filed the accounts for that. She further stated that she used to file the income tax return wherein the rent which was being received were shown, however, the return of income tax was not filed. She further admits that whenever the rent was being paid, it was entered into a copy by herself or by her husband. She further admits the fact that she is not in know of the fact that whether the defendant has encroached upon the servant quarter. In the cross examination, she further submits that the entire house was given on rent and further stated that the servant quarter was separate. She also admitted the suggestion that while the house was given on rent an amount of Rs.8,000/- was received as security deposit.

10. The other witness Basant Kumar Yuel was examined on 16.11.2005. The witness who is husband of the plaintiff stated that the rent of the house was Rs.4,000/-. It was stated that initially the suit for ejectment was decreed exparte and thereafter while the execution proceeding was carried out, the defendant vacated the house in the month of December, 2003, however, he was not informed about the same and one of the key was left with other tenant. It was further stated that after vacating the premises neither the arrears of rent was paid nor the electricity charges

were paid. In the cross examination, the witness had stated that the rent was being recovered by himself or his driver namely Dayaram Sharma. He further admits that after payment of rent, no receipt were given. This witness was confronted with the document Ex.D-1 which he admits that the same receipt was given by him.

11. Perusal of Ex.D-1 would show that it records that the receipt of Rs.4,000/- cash due for April-May, 2002. The said receipt is dated 10.05.2002. Perusal of the said receipt Ex.D-1 shows that Rs.4,000/- was received cash due of April-May, 2002, which has also been admitted by this witness in the cross examination. This witness has also confirmed the fact that he used to show the receipt of income in the income tax return, however, any copy of the return was not produced before the Court and it is stated that he did not thought it proper to file the same.
12. One more witness Dayanand Sharma has stated in the same line that on two occasion, he has received the rent from the defendant, however, no receipts were given and the rent was being paid in cash. As against this, the defendant had contended that he has paid the entire rent, however, receipts were not being given by the plaintiff/landlord. It is further stated by the defendant that an amount of Rs.8,000/- as security amount was also paid and after vacating the house, the same was not returned.
13. Therefore, reading of the entire oral statement, one fact is substantiated that no receipts were being given for the rent paid. The husband of the plaintiff who was confronted with Ex.D-1 has admitted that the rent was paid for April-May, 2002 whereas in the oral statement the plaintiff has stated that the rent was not paid for April-May, 2002 too. It is also on record that the plaintiff admitted that she had shown the receipt of the amount in the income tax return as also has kept a separate account but the same has not been produced. Contradiction also exists between

PW-1 and PW-2 with respect to the date of vacating the premises. The wife landlord has stated to be in November while husband PW-2 stated it to be December. If Ex.D-1 is compared as against the oral statement, it amounts that the plaintiff had not stated correct facts since in the oral evidence at one part it is stated that the rent for April-May has not been paid but Ex.D-1 is otherwise. Therefore, in absence of filing of the necessary document and the fact which has come on record and the oral evidence, which is negated by the documentary evidence Ex.D-1, the evidence adduced by the plaintiff do not appears to be trustworthy. Further, with respect of arrears of rent admittedly as per statement of PW-1 & PW-2 separate accounts were maintained but such documentary evidence was kept in hold. Likewise, the amount shown in income tax return was also not produced. As against this, the tenant maintained the stand that all arrears of rent were paid. Admittedly, the deposit of Rs.8,000/- was also not returned to the tenant. In such circumstances withholding of best documentary evidence by the landlord would lead to draw adverse inference against the oral statement. The plaintiff has also failed to prove the fact that the defendant has encroached upon the servant quarter when confronted with the cross examination. Consequently, the finding arrived at by the learned Court below appears to be reasonable and do not require any interference.

14. In the result, the appeal has not merit and it is accordingly dismissed.
No order as to costs.

**Sd/-
(Goutam Bhaduri)
Judge**