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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Writ Petition (227) No. 818 of 2014

Single Bench

PETITIONER

Manoj Bhandari aged about 52 years S/o
Shri Ratanlal Bhandari, Proprietor of M/s
Rinku Stationary, Opposite Konher
pGarden, Main Road, Tilak Nagar,
Bilaspur (C.G.) R/o Bajpai Maidan, Tilak
Nagar, Bilaspur, Tahsil & District Bilaspur
(C.G.) Pin Code - 495001 **(Defendant)**

VERSUS

RESPONDENTS

Shailendra Goverdhan aged about 60 years
S/o Balkrishna Rai Goverdhan,
Occupation-Retired Bank Servant (Senior
Citizen), R/o Biththal Mandir Tilak Nagar
Main Road, Bilaspur Tahsil, Civil and
Revenue District Bilaspur (C.G.) Pin Code -
495001 **(Plaintiff)**

**WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF
INDIA**





HIGH COURT OF CHHATTISGARH : BILASPUR
WRIT PETITION (227) NO.818 OF 2014

PETITIONER

Manoj Bhandari

RESPONDENT

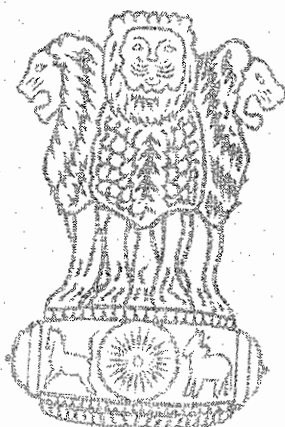
Versus

Shailendra Goverdhan

Post for pronouncement of orders on the 12th day of February, 2015

Sd/-
Prashant Kumar Mishra
Judge

CHHATTISGARH HIGH COURT



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HIGH COURT OF CHHATTISGARH : BILASPUR
WRIT PETITION (227) NO.818 OF 2014

PETITIONER

Manoj Bhandari

Versus

RESPONDENT

Shailendra Goverdhan

Single Bench : Hon'ble Shri Justice Prashant Kumar Mishra

Present :- Shri S.S. Rajput & Shri Anant Bajpai, Advocates for the petitioner.
Shri P.R. Patankar, Advocate for the respondent.

ORDER

(Passed on this 12th day of February, 2015)

Heard learned counsel for the parties.

1. This petition under Article 227 of the Constitution of India has been preferred by the tenant assailing the legality and validity of the order dated 8-10-2014 passed by the Rent Controller, Bilaspur (for short 'the RC'), whereby and whereunder the RC has refused to frame issues and has directed that petitioner's prayer for deposit of rent shall be accepted only if he deposits three times of the agreed rent.
2. The respondent has moved an application before the RC for petitioner's eviction from the suit premises situated at Main Road, Tilak Nagar, Opposite Konher Garden, Bilaspur and for damages at the rate of Rs.3,000/- per month from December, 2013. The petitioner has entered appearance and is contesting the application by filing his reply.
3. When the proceedings were fixed for recording evidence of the parties without framing issues and the landlord refused to receive the

rent, the petitioner moved the subject applications for permission to deposit the rent and for framing the issues.

4. At the very outset, Shri Patankar, learned counsel appearing for the respondent/landlord, would accept that there is no provision under the Chhattisgarh Rent Control Act, 2011 (for short 'the Act, 2011') empowering the RC to direct deposit of rent three times of the agreed rent, therefore, such direction could not have been issued. Thus, this part of the order is quashed.
5. The next issue for determination is – whether the RC is justified in proceeding to record evidence in the matter without framing issues ?
6. To determine as to whether adoption of such procedure is permissible under the scheme of the Act, 2011, this Court is required to refer relevant provisions of the Act, 2011.
7. Section 4 of the Act, 2011 makes it compulsory to reduce all tenancy agreements in writing. Section 5 provides that rent shall not include the charges payable for amenities which may be agreed upon separately and that the agreed rent shall be payable by the fifteenth day of the month next following the month for which the rent is payable. Section 6 makes provision for constitution of the Rent Control Tribunal whereas Section 7 provides for establishment of Rent Controllers. Section 8 makes provision regarding powers and functions of the Rent Control Tribunal whereas Section 9 makes provision for powers and functions of the RC. Section 10 prescribes procedure to be followed by the RC and the Rent Control Tribunal.

8. Provisions contained in Sections 9 & 10 of the Act, 2011 are reproduced hereunder for ready reference :

9. (1) The Rent Controller shall exercise such powers, perform such functions and discharge such responsibilities within its territorial jurisdiction, as the Government may by notification vest in him, which shall include the following:-

- (a) Reconciling dispute(s) between landlord and tenant.
- (b) Securing the rights of landlords and tenants as available to them under this Act.
- (c) Enforcing the obligations enjoyed upon landlords and tenants under this Act.

(2) All proceedings before the Rent Controller shall ordinarily conclude within six months from the date of first appearance of the Respondent in response to the summons issued for his appearance in the case or from the date on which the respondent is set ex-parte.

10. (1) The Rent Controller and the Rent Control Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), but shall be guided by the principle of natural justice and subject to other provisions of this Act or the Rules made thereunder and shall have powers to regulate their own procedure, and for the purpose of discharging their functions under this Act they shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit or an appeal in respect of following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;

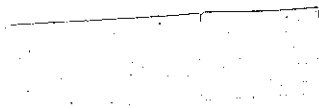
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- (b) requiring the discovery and production of documents;
- (c) reviewing its decision;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) dismissing petition for default or deciding it ex-parte;
- (f) setting aside any order of dismissal of any petition for default or any order passed by it ex-parte.
- (g) bringing legal representatives on record; and
- (h) any other matter as may be prescribed.

(2) Rent Control Tribunal shall not grant any adjournment without written application and recording the reasons therefor in writing.

(3) Any proceeding before the Rent Control Tribunal or Rent Controller shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and the Rent Controller shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

9. As would be clear on a reading of the above quoted provisions contained in Sections 9 & 10, ^{सन्तुष्टि न्यून} the RC has been empowered to reconcile disputes between the landlord and the tenant; secure the rights of landlords and tenants as available to them under the Act; and enforce the obligations enjoyed upon them under the Act.
10. The ground on which the landlord can seek eviction of the tenant is provided under clause 11 of Schedule 2, which reads as thus :





11. Right to seek from the Rent Controller eviction of the tenant on the following grounds:-

- (a) If the tenant is a habitual defaulter in payment of rent and/or other dues.
- (b) If the tenant causes, or allows to be caused, substantial damage to the accommodation, for any reason whatsoever.
- (c) If the tenant uses the accommodation for purpose(s) other than that for which it was leased out.
- (d) If the tenant becomes a social nuisance.
- (e) If the tenant is convicted under any section of the Indian Penal Code.
- (f) For carrying out major renovation work which is not possible with the tenant housed in.
- (g) On 3 months notice to the tenant in writing, if the accommodation is required for own occupation and/or occupation by any member of the family including spouse, parent(s), son(s), daughter, daughter(s)-in-law, son(s)-in-law.
- (h) On 6 months notice to the tenant in writing, without any obligation to assign any reason, but on the condition that the accommodation will not be leased out at a higher rent for at least 12 months thereafter.

Provided, however, that in case of the following special categories of landlords and/or their spouse desiring the accommodation back for own use, the period of notice shall be one month: current or retired government servants, widows, personnel of the armed forces, persons coming to physical or mental handicap, and senior citizens (above the age of 65 years).

11. It would appear, if the landlord seeks to evict the tenant on one or the other ground enumerated under sub-clause (a) to (g) of clause 11 of Schedule 2, he has to prove existence of such facts which have necessitated the landlord to seek eviction, however, when eviction is sought under sub-clause (h) of clause 11 of Schedule 2, the landlord is only required to prove service of 6 months notice before initiating eviction proceeding and no other fact is to be proved because the said sub-clause provides that on 6 months notice to the tenant in writing, the landlord can seek eviction without any obligation to assign any reason, subject however, to the condition that the accommodation will not be leased out at a higher rent for at least 12 months thereafter.
12. The procedure to be adopted by the RC while adjudicating the eviction petition is governed by the procedure as prescribed in Section 10. It is provided therein that the RC shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (for short 'the CPC'), but shall be guided by the principles of natural justice and subject to other provisions of the Act or the Rules made thereunder, it shall have powers to regulate its own procedure and for the purpose of discharging functions under the Act, it is vested with the powers of a Civil Court.
13. The powers of the Rent Controlling Authority (for short 'the RCA'), while trying an eviction application under Chapter III-A under the Chhattisgarh Accommodation Control Act, 1961 (old Act) (for short

'the old Act, 1961'), is provided under Section 23-D of the old Act, 1961.

14. In **D.P. Yadav @ G.P. Yadav v. Gouri Shankar Tamrakar**¹, this Court while considering the scope of the said provision and the procedure to be followed by the RCA under the old Act, 1961, has held thus in para 18 :

(18) Sub-section (2) of Section 23-D as quoted above requires the RCA to follow the practice and procedure of a Court of small cause including the recording of evidence under the Provincial Small Cause Courts Act, 1887 (henceforth 'the Act, 1887'). Under Section 17 of the Act, 1887 the procedure prescribed in the Code of Civil Procedure, 1908 have been made applicable, save in so far as it otherwise provided by that Code or by the Act. Thus the Code of Civil Procedure which has been made applicable under Section 17 of the Act, 1887 will also be applicable in the proceedings before the RCA, however RCA has passed the order of eviction without recording evidence of the parties thus there is violation of the provisions contained in Section 23-D(2) of the Act, 1961. Inasmuch as an application for eviction presented before the RCA under Section 23-A of the Act, 1961 cannot be granted without recording evidence of the applicant/landlord.

15. Thus, under the old Act, 1961, the RCA was bound to follow the procedure prescribed in the CPC, however, the new Act i.e. Act, 2011 makes a departure from the old Act, 1961 inasmuch as the language of the two provisions are markedly different, as is apparent from the following comparative chart :

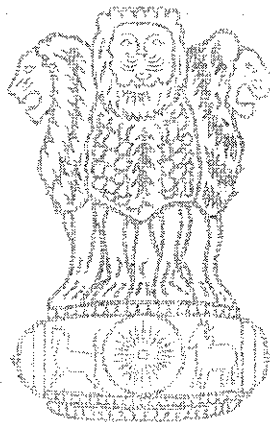
Powers of the RCA under the old Act, 1961 Section 23-D (2)	Procedure before the RC under the Act, 2011 Section 10 (1)
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¹Civil Revision No.89 of 2009 (decided on 31.8.2010)

(2) The Rent Controlling Authority shall, while holding an enquiry in a proceeding to which this Chapter applies, follow as far as practicable, the practice and procedure of a Court of Small Causes including the recording of evidence under the Provincial Small Cause Courts Act, 1887 (IX of 1887). The Rent Controlling Authority shall as far as possible, proceed with the hearing of the application from day to day.

10 (1) The Rent Controller and the Rent Control Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), but shall be guided by the principle of natural justice and subject to other provisions of this Act or the Rules made thereunder, and shall have powers to regulate their own procedure, and for the purpose of discharging their functions under this Act they shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit or an appeal in respect of following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) reviewing its decision;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) dismissing petition for default or deciding it ex-parte;
- (f) setting aside any order of dismissal of any petition for default or any order passed by it ex-parte.
- (g) bringing legal representatives on record; and
- (h) any other matter as may be prescribed.



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16. A comparative analysis of the provisions would make it explicit that while under the old Act, 1961 procedure prescribed in the CPC was made applicable by enjoining the RCA to follow the practice and procedure of a Court of Small Causes and since under the Small Cause Courts Act, 1887 the said Court was required to follow the CPC, by necessary implication, the RCA was also required to follow the procedure prescribed under the CPC under the old Act, 1961. It would be useful to refer to the judgments rendered by the Delhi High Court in **Springdales School, New Delhi and Others v. Sati Tahilramani, New Delhi**² and Bombay High Court in **Vithoba Balaji Ghodke and others v. Balkrishna Ganesh Bhalerao and others**³ on the procedure and applicability of the CPC under Section 17 of the Provincial Small Cause Courts Act, 1887.
17. Section 10 (1) of the Act, 2011 expressly provides that the RC and the Rent Control Tribunal shall not be bound by the procedure laid down by the CPC, but shall be guided by the principles of natural justice. Therefore, even if CPC has not been made applicable but the law confers power and the authority is expected to follow the principles of natural justice with further provision conferring power with the same authority to summon and enforce the attendance of any person and examining him on oath and requiring the discovery and production of documents, it enables the said authority to summon witnesses for recording their evidence also. Thus, while evolving its own procedure, depending upon the facts of the case, the RCA would be required to

²AIR 1969 Delhi 7

³AIR 1968 Bombay 14

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decide as to whether in a given case the parties are required to lead evidence and if parties are required to lead evidence, the principles of natural justice requires that they should be made aware as to the issues on which oral evidence is required. Therefore, wherever the RC decides to examine the witnesses, issues are required to be framed.

18. Observance of principles of natural justice which has been engrafted under Section 10 of the Act, 2011 implies that the RC is under obligation to provide a fair hearing and proper opportunity to the parties to prove or defend their cases. Unless the other party is made aware of the points for considerations or the issues on which the evidence is required to be adduced, the principles of natural justice may not be effectively followed in a given case, therefore, even if under Section 10 of the Act, 2011 the RC may not be expressly bound to frame issues, it would be proper for him to frame issues in a case where he proceeds to record evidence.
19. Having thus summarized the legal position qua the powers of the RC to regulate its own procedures and the limitations thereof, when the said principle is applied in the facts of the present case, it is found that the landlord has filed the application for eviction under Section 12 read with Schedule 2 (11) (h) of the Act, 2011, therefore, the landlord is seeking eviction without any obligation to assign any reason. The landlord is not required to prove any ground for eviction except the fact that a notice was served on the tenant 6 months prior to moving application before the RC and, as such, the RC should have framed

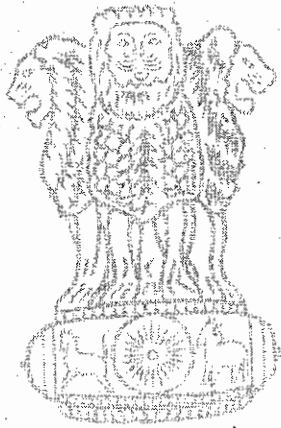
the issue as to whether 6 months notice as required under the law has been duly served on the tenant.

20. For the foregoing, the writ petition is allowed to the extent indicated above. RC is directed to frame the issue, as indicated above, record evidence and decide the eviction application within a period of six months from the date of submission of certified copy of this order.
21. There shall, however, be no order as to costs.

Sd/-
Prashant Kumar Mishra
Judge

Gowri

CHHATTISGARH HIGH COURT



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