

HIGH COURT OF CHHATTISGARH, BILASPUR

F.A. No. 79 of 2005

1. Patrakar Prakashan Pvt. Ltd. Through– Mahaprabandhak, Deshbandhu & Highway Channel, Daily News Paper, Behind Kanya Mahavidhyalaya, Jarhabhata, Bilaspur (C.G.).
2. Lalit Surjan, S/o. Late Shri Mayaram Surjan, Proprietor- Dainik Deshbandhu Samachar Patra, R/o. Dainik Deshbandhu Karyalaya, Raipur (C.G.).

---- Appellants

Versus

Smt. Sandhya Bhandari, W/o. Shri Dilip Bhandari, Aged about 44 years, R/o. Tikrapara, Bilaspur, Tahsil & District Bilaspur (C.G.).

---- Respondent

For Appellants : Mr. Sanjay S. Agrawal with Mr. Ashutosh Ghade,
Advocates

For Respondent : Mr. Prashant Jaiswal, Senior Advocate with Mr.
Ashutosh Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27/07/2015

1. The appeal is against the judgment and decree dated 24.02.2005 passed in Civil Suit No.16-A/2003 by the Court of First Additional District Judge, Bilaspur (C.G.).
2. The appeal is by the tenant. A suit was filed by the respondent landlord on various grounds under Section 12(1)(a), 12(1)(c), 12(1)(f) & 12(1)(m) of the M.P./C.G. Accommodation Control Act, 1961. It is pleaded that the suit premises is required *bonafide* by the landlord Smt. Sandhya Bhandari to start her own business under Section 12(1)(f) and on the other grounds were also projected under Section 12(1)(a) for arrears of

rent, under Section 12(1)(c) for nuisance and under Section 12(1)(m) for illegal construction and eviction was sought on such multiple grounds.

3. The learned trial Court decreed the suit under Section 12(1)(f) of the Accommodation Control Act while other grounds projected for eviction were disallowed. It was the case of the plaintiff landlord that a suit premises was given on rent for Rs.12,151/- to the appellant/defendant on 01.04.1999. Different pleadings were made in respect of the arrears of rent, change of structure of accommodation for construction, however, the suit was decreed in the instant case under Section 12(1)(f). Therefore, the adjudication is confined to Section 12(1)(f), which predominantly deals with *bonafide* requirement of the landlord to start the business.
4. Before the Court below, it was stated by the plaintiff that the plaintiff wants to start her business of baking, cooking and preparing soft toys and woman training center. It was pleaded that she carries such business at her residence only, it was stated that the suit premises is required *bonafide* by the landlord. The pleading was also to the effect that when the suit premises was demanded, to vacate the same, it was not adhere to. Consequently, a civil suit was filed.
5. The defendant/ tenant denied the averments of the plaint in the written statement and it was contended that the suit premises is not required *bonafide* by the landlord, hence, there has been an effort to enhance the monthly rent and since the monthly rent was not enhanced, therefore, the suit for ejectment is filed on frivolous grounds. All the averments of the plaint allegations were also denied.
6. Learned Court below after evaluating the facts and evidence came to the conclusion that the suit premises is required *bonafide* by the landlord and

decreed the suit only under Section 12(1)(f) of the Accommodation Control Act. Hence this appeal.

7. Learned counsel Mr. Sanjay S. Agrawal with Mr. Ashutosh Ghade would submit that in order to succeed under Section 12(1)(f), the plaintiff has to prove before the Court that the non-residential purpose is required *bonafide* by the landlord and the landlord has no other suitable non-residential accommodation is available for the same. Para 8 of the plaint was referred wherein the landlord has contended that she do not have any other suitable accommodation. The counsel further referred to Para 8 of the written statement wherein it was stated that the plaintiff and her husband owns a property of 5000 sq.ft. which is a pucca construction in front of Shyam Talkies and it is situated at the main road. Further reference is made to the statement of the plaintiff at Para 6 and it is contended that this fact has been admitted by the landlord that she has other premises and therefore because of such concealment, which has unearthed in the cross examination and there being no explanation made by the landlord in their plaint about non-suitability of such accommodation, it would be presumed that the other accommodation available are suitable to start the business. The counsel would submit that for such concealment the *bonafide* need cannot be said to have proved as the twin requirement of Section 12(1)(f) has not been satisfied. He relied on the judgment reported in **2001 (3) M.P.H.T. 371** in case of **Ashok Kumar v. Kishan Singh**, and would submit that under the similar circumstances, the Court held that when concealment is made in the pleading, the presumption follows to the fact that the other accommodation available are suitable to start the business. He further submits under the facts and circumstances of the case, the judgment and decree passed by the learned trial Court be set aside.

8. Per contra, learned senior counsel Mr. Prashant Jaiswal assisted by Mr. Ashutosh Shukla would submit that there has been effort to misread Para 8 of the plaint as also Para 6 of the statement of the plaintiff. He submits that in Para 6 of the statement, the plaintiff has never contended the fact that she has the premises of her own. The counsel further referred to the statement of DW-1 and would submit that the premises, which are situated at Shyam Talkies road belonged to the husband of the plaintiff. This fact is admitted by the defendant which goes to show that the plaintiff of her own do not have any alternative accommodation. He further submits that the premises owned by the husband cannot be stated to be that of the plaintiff landlord, consequently, the judgment and decree of the Court below are well merited.
9. I have heard learned counsel appearing for the parties at length and perused the record.
10. Since the decree is only under Section 12(1)(f) of the Accommodation Control Act, therefore, the survey of pleading and evidence is made only with respect to the *bonafide* requirement on such facts.
11. Since the issue involves with respect to Section 12(1)(f) of the Accommodation Control Act, it would be relevant to quote the Section herein under :

12(1)(f) : that the accommodation let for non-residential purposes is required bonafide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably non-residential accommodation of his own in his occupation in the city or town concerned.
12. Reading of the Section would show that in order to succeed under Section 12(1)(f), the two requirements are needed, one requirement is of *bonafide* need for purpose of starting business and the landlord or other

person has no other reasonably non-residential accommodation of his own in his occupation in the city or town concerned to start such business.

13. At Para 8 of the plaint, the plaintiff had stated that she carries on the business of baking, cooking and soft toys, woman training and for that purpose, she does not have any suitable other accommodation at Bilaspur. It is further stated that because of such non-availability of the accommodation, the plaintiff carries on the business at her residence only. It is further stated that the residence also do not contain sufficient area but because of the necessity, it is being carried out and she is being constrained to carry on the business at her residential premises for non-availability.
14. In the written statement, in response to Para 8 of the plaint, the averments have been denied. The defendant contended that the plaintiff is in possession of many other plots and constructed house and shops in city of Bilaspur. It is further stated that the plaintiff and her husband owns many shops at the place Jarhabhata and other plots in the main road wherein if she *bonafidely* wants to start her business, she can start. It is further stated that apart from the same, the plaintiff and her husband owns a property of 5000 sq.ft. which is pucca construction shops in front of Shyam Talkies, which is also situated at main road. The defendant further stated that the entire effort is to enhance the rent or to give it to some other person at higher rate.
15. With respect to the bonafide need and alternate accommodation, the plaintiff in her statement and in the affidavit filed before the Court had stated that she wanted to start the business of baking, cooking, soft toys and training for the ladies and she do not have any accommodation for the same and for such reason, she carries on her business at her home.

It is further stated that the area and situation of the house is not sufficient to carry on such business. She further stated that a request was made to tenant to vacate the premises but same was not adhered too.

16. In the cross examination of the plaintiff, she has stated that apart from his residential house and the suit premises, no other premises exists in her "own name". On a suggestion further given, it is stated that the premises in front of Shyam Talkies, main road, she does not have two storied house but volunteered that the shops are situated. Therefore, the submission made by the appellant that the plaintiff has admitted the fact that she owns shop do not appear to exist in the statement. Categorically she has stated that except the suit premises and the residential house, she does not have any other property in her own name.
17. Now when the statement of DW-1 is examined, at Para 5 of the cross examination, the admission is made by the defendant with respect to the properties situated at front of Shyam Talkies which was stated to be the available accommodation of landlord that in such shops Dilip Bhandari sits and therefore the shops belonged to Dilip Bhandari. It is not in dispute that Dilip Bhandari is husband of plaintiff. It is also admitted in the cross examination that rent was not enhanced for last six years. So conjoint reading of the statement of plaintiff and defendant, it do not substantiate that fact that shops situated in front of Shyam Talkies belongs to plaintiff. It has not been admitted that the said shops are in her own name. Consequently, if the property stands in name of husband of plaintiff, it cannot be read into the Section 12(1)(f) of the Accommodation Control Act so as to hold that the shops belonged to the plaintiff. The defendant/ tenant was not able to place any documents to establish the fact that the other properties, which were stated to be in name of plaintiff belonged to her.

18. The word 'own' used in Section 12(1)(f) is qualified with the word that the landlord or such person has no other reasonably non-residential accommodation of his 'own'. Therefore, necessarily the word 'own' will lead to interpret that the concept of ownership, if the property is held by the husband, cannot be taken into account to dilute the word 'own' as used in Section 12(1)(f). No evidence have been led by calling any witness by the appellant tenant that those premises which were projected to be that of plaintiff, ownership of it vested within the plaintiff and on the contrary the evidence is on record that those properties are of her husband. So the argument advanced by the learned counsel for the appellant is misconceived that the landlord has admitted the fact of alternate accommodation.
19. In the result, the law relied on by the learned counsel for the appellant cannot be applicable in the given facts and evidence.
20. The landlord has further stated that she presently carries on the business on her residence, which is not suitable for want of proper area and the situation. It is a settled proposition that it is for the landlord to decide whether she wanted to carry on her business. The Hon'ble Supreme Court in case of ***Mohd. Ayub and another v. Mukesh Chand*** reported in (2012) 2 SCC 155, held that the Court cannot direct the landlord to do a particular business against his will. Consequently, in my considered opinion, this Court cannot dictate the landlord to continue her business in her house against her will.
21. Therefore, considering the evidence, which is existing in this case, I am of the opinion that there no fault has been committed by the learned trial Court whereby a decree of ejectment has been passed against the appellant under Section 12(1)(f) of the Accommodation Control Act. Consequently, the appeal having no merit, is hereby dismissed.

22. Taking into the fact that the appellant tenant is carrying on his business of Press, therefore, considering those aspect, further time of two months is provided to the appellant / tenant to vacate the premises. The appellant shall bear the cost of litigation.
23. The decree be drawn accordingly.

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